Philosophical Perspectives on the Israeli-Palestinian Conflict

Tomis Kapitan
Editor

Philosophical Perspectives on the Israeli–Palestinian Conflict

PHILOSOPHICAL PERSPECTIVES ON THE ISRAELI–PALESTINIAN CONFLICT

TOMIS KAPITAN
EDITOR

M.E. Sharpe
Armonk, New York
London, England

Library of Congress Cataloging-in-Publication Data

Philosophical perspectives on the Israeli-Palestinian conflict / [edited by] Tomis Kapitan.
p. cm.
Includes bibliographical references and index.
ISBN 1–56324–877–8 (hc : alk. paper). —
ISBN 1–56324–878–6 (pbk. : alk. paper)
1. Jewish-Arab relations.
2. Israel-Arab conflicts—Moral and ethical aspects.
3. Palestinian Arabs—Politics and government.
4. Self-determination, National—Palestine.
5. Human rights—Israel.
I. Kapitan, Tomis.
DS119.7.P495
1997
956.94'0049274'001—dc20
96–44649
CIP

Printed in the United States of America

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z 39.48-1984.

∞

BM (c) 10 9 8 7 6 5 4 3 2 1
BM (p) 10 9 8 7 6 5 4 3 2 1

Contents

Preface

The conflict between Israeli Jews and Palestinian Arabs has endured for a century. It centers on control of territory and, as common in such disputes, is characterized by conquest, destruction, and revenge, with all the animosity and sorrow that these actions bring. Because the land in question is *terra sancta* to three major religions, the conflict evokes powerful passions involving identity, honor, and the propriety of cultural claims. That its disputants employ sophisticated arguments and armaments, that they are willing to combat not only each other but rival voices within their own ranks, and that decades of international diplomacy have failed to produce a satisfactory solution, render it what Martin Buber called "one of the most difficult political problems of our time, perhaps the most difficult of them all" (Mendes-Flohr 1983, 202). Marked by a series of surprising achievements, deceptions, and atrocities in which each side has underestimated the tenacity and resourcefulness of the other, it also guarantees fascinating study.

The conflict is partly fueled by rival normative claims that challenge our philosophical thinking. When does a community have a *right* to govern or possess a certain territory? Under what conditions are peoples entitled to self-determination? Are religious claims and affiliations relevant in resolving political disputes over territory? Do political institutions, states, or resistance organizations have moral legitimacy? Is a state ever entitled to territorial expansion and conquest of foreign territory? Is violent resistance to occupation ever justified? Under what conditions and in what modes?

Those who accord no place to normative assertion outside the bounds of positive law may find philosophical debate on these questions hopelessly inconclusive. Yet every system of law emerges from an underlying level of normative thinking that differs from legal adjudication and interpretation. Such basic philosophical reflection need not be viewed as having access to a separate system of "natural law" standing in competition to existing legal codes. Its conjectures are the creatures of our thinking, informed by our accumulated experience. Through them legal provisions are appraised and statutory changes recommended. No legal system is the final word about how humans and societies ought to behave, and to restrict normative thought to enactments would immunize positive law from rational evaluation.

The need for imaginative normative thinking is apparent when it comes to the questions posed. Centuries of effort have generated the moral codes and legal systems that prevail in modern societies, and it should not be expected that progress in the global arena will be any more rapid. International law is not yet at a stage to provide decisive answers, but moral philosophy should be able to give intersocietal disputes more precise form and suggest approaches that may not have occurred to those with power to pass laws and move armies.

Alternatively, a conflict like that between Israelis and Palestinians might provide valuable data for philosophy, and this volume might better serve the discipline than contemporary policymakers. The philosophical issues evoked are as difficult as they are intriguing, and if anything, the relevant *normative* problems have become more frustrating. With time, new realities emerge—new problems, grievances, alliances, and ideologies—each modifying the pattern of argument and reply. The conflict has long been marked by the unexpected. To the astonishment of many, a Jewish state, currently home to some 4.5 million Jews, has been reestablished after a 2,000-year hiatus and in the span of five decades has gained recognition from former antagonists. Contrary to some expectations, 6.5 million Palestinian Arabs continue to claim their traditional homeland, and a substantial segment have achieved a measure of autonomy in disputed territory. Future political developments are likely to alter the normative agenda in unanticipated ways.

Some might ask why the focus should be upon the Israeli-Palestinian conflict rather than the Arab-Israeli conflict. For one thing, the latter is a distinct dispute, and, despite interdependence, a settlement of one is not necessarily a resolution of the other. For another, tensions in the Middle East are often conceived by Western audiences in terms of interstate relations, thereby marginalizing the grievances of the stateless Palestinian Arabs and presenting a skewed picture of the actual odds. Why not pose the conflict in terms of a *Western*-Arab one, since Israel was created and has been sustained by Western intervention in the Near East? Indeed, why not a Western-*Islamic* conflict? Either choice would change the complexion of the debate, shifting focus to a different set of positions and passions.

This volume represents disparate perspectives, and it is to the credit of the contributors that they have allowed their essays to be juxtaposed with viewpoints they might otherwise oppose. (I had hoped for an even greater range, but discovered that not everyone appreciates the ecumenical approach—one prospective contributor described the project as "fraught with danger.") The contributions address a broad array of philosophical concerns while adding important historical details. The introduction provides additional background to the main philosophical problems. Its historical survey is selective, especially on topics treated in the contributions. Its philosophy is largely expository, though, in places, spiced with bits of advocacy.

Acknowledgments

The contributors to this volume have been admirably patient, and at various junctures the advice of Robert Ashmore, Lynne Belaief, David Burrell, Hugh Harcourt, and Robert Holmes was especially helpful.

I am indebted to Saul Smilansky, Barry Kogan, Ariela Lazar, Michael Mamurra, Tommy Lott, Shukri Abed, Manfred Vogel, and Susan Einbinder for recommendations concerning potential contributors; to Michael Gelven, Mary Lincoln, and Peter Coveney for advice on publishing; to Rich Vaupel of the NIU Cartography Lab for a map; to Mark Ahlstrom for help with some of the references; and to Sherman Stanage, the Graduate School, and the College of Liberal Arts and Sciences at Northern Illinois University for financial assistance.

I am very grateful to Abd'l Aziz Aluwaishiq from whom I have never ceased to learn, and to my daughter Rima Kapitan with whom I have discussed many of the issues treated herein. Most of all, I am indebted to my wife, Orayb Najjar, for all that she has taught me about the Middle East and for her helpful comments during the preparation of this volume.

Israel/Palestine

Philosophical Perspectives on the Israeli–Palestinian Conflict

Historical Introduction to the Philosophical Issues

Tomis Kapitan

Nationalism and Prejudice

As social animals, we are heirs to a variety of cultural influences that shape our identities, aspirations, values, and tastes. It is not unusual to feel trust and affinity with persons of like background, to desire primary and even exclusive association with them. The result is the rich satisfaction that comes from joint participation in culturally specific activities, from artistic expression to sports, romance to worship. Yet the very attitudes and conventions that bind individuals also partition humanity into distinct cultural groups, even within a single locale. When the resulting contrast of "we" with "they" is added to our unenviable propensity to shift blame for our misfortunes and anxieties to others, intercommunal suspicion often results. In times of intense political competition and social upheaval this tendency can generate open hatred and persecution.

What is the proper response to culturally driven prejudice? Through what mechanisms and ideals can a society mitigate its negative impact? How should cultural minorities themselves respond? Most educated people are aware of the benefits of variety and are cognizant of the fact that it thrives only with a significant degree of institutionalized tolerance. But when dominant majorities are prejudicial, the question of how minorities should react becomes especially poignant. Answers to it waver between calls for *assimilation* and demands for *cultural autonomy.* The former may involve anything from self-eradication of distinguishing traits to mere verbal acquiescence to prevailing norms. The latter may take the form of nonconfrontational concealment, open advocacy of an autonomous cultural group within majority culture, emigration to more favorable locales and, finally, formation of a politically separate national unit through secession or relocation.

The history of the Jews in nineteenth- and twentieth-century Europe illustrates the problem. Enlightenment and economic development had brought about a gradual emancipation of Jewish populations from previous ghettoization. But liberation was concurrent with rising nationalism in countries that had com-

monly excluded Jewish participation in the political arena. Because of their differences and their connections, real or imaginary, to Jewish communities in other countries, Jews were thought to be opposed to national interests.[1] As a result, anti-Semitism erupted in the Russian pogroms of 1881–84 and in the early twentieth century, resulting in massive emigration of Jews from Russia. Similar sentiments were widespread in other parts of Europe as well, and were vividly voiced in France during the 1894 Dreyfus Affair. In each case, government complicity heightened Jewish alarm.

Emancipation itself posed a threat. Promising integration into mainstream European culture, many Jews came to believe that assimilation was their future and that adherence to old ways would expose them to further discrimination, yet others feared assimilation would dilute what was distinctive about Judaism and Jews. The Jewish community thereby faced a difficult choice: by assimilating, their distinctive culture might very well be lost, whereas opting for cultural autonomy would carry the risk of continued anti-Semitism. In both cases, survival of a separate Jewish people was threatened.

Zionism

Zionism emerged in the late nineteenth century as an effort to resolve the dilemma of assimilation versus cultural autonomy. In its political form it called for establishment of a Jewish state, and in both its nationalistic aspiration and identification of Palestine as the Jewish homeland its roots are ancient. Some of its leading spokesmen were convinced that anti-Semitism could not be eradicated and that preservation of a distinct Jewish people required an independent Jewish homeland. Leo Pinsker argued that while emancipation may solve the problems of individual Jews, it will not solve the problem of the Jewish *nation.* If the Jewish people do not acquire the effective external attributes of a nation, they will remain "everywhere as guests" and "nowhere *at home.*"[2] Assimilation would be "national death," whereas a Jewish state would not only provide the benefits of emancipation under the guise of "normalization" (Selzer 1970, xii) but a place of refuge where Jews could manage affairs in their own way without the perpetual stigma of minority status. With this reasoning, Zionism was as much an instance of nineteenth-century nationalism as it was a response to emancipation and anti-Semitism (Avineri 1981, 13; Reinharz and Shapira 1995, 7).

By the time Theodore Herzl convened the first Zionist Congress in 1897, several thousand European Jews had already immigrated to Palestine. The Congress called for creation of a Jewish home "secured by public law" and established the World Zionist Organization to work toward this end. Herzl's strategy included strengthening Jewish national sentiment, stimulating Jewish investment in Palestine, promoting immigration to assure a Jewish majority, and obtaining the assistance of foreign powers. Failure to gain support from the Turkish government led some to suggest that prospects might be better in such places as

Uganda or Argentina, but it was eventually agreed that the link of Jews to Palestine provided a more effective rallying point for gaining adherents.[3] As the Ottoman grasp on much of the Near East weakened, it became apparent that European nations would soon determine the political fortunes of the region.

At the outset, many Jews opposed Zionism. Thinkers like Simon Dubnow acknowledged that Jews form a distinct nation, but he distinguished between nation and state, arguing that a nation can achieve social and cultural autonomy even if it lacks political independence. Opposed to both separation and assimilation, Dubnow argued that Jewish creativity resulted from the fact that Jewish nationality is spiritual rather than territorial and thrives in autonomous Jewish communities (Selzer 1970, 131–56). Others disliked the nationalism and particularism of Zionism. In 1918, Hermann Cohen, a leader of the Marburg school of neo-Kantianism, spoke of a parallel between Kant's call for a federation of nations under law and the universalism of Judaism, arguing that the latter would be compromised if Judaism took on nationalistic overtones. Not only does Zionism insult the patriotism of Jews who feel at home in their countries of birth, but to think that the teachings of Judaism are reserved for the Jewish people alone effectively denies the "One God of Messianic mankind." Israel's chosenness must be regarded as history's means to accomplish the divine chosenness of mankind (Cohen 1971, 169–71). A year later, the American philosopher Morris Cohen echoed Dubnow by contending that Jews contributed the most to civilization when they were mixed with other peoples. The key to resolving the Jewish problem lay not in nationalism but in the liberal tradition of tolerance and pluralism. The Zionist call for a state "founded on a peculiar race, a tribal religion, and a mystic belief in a peculiar soil" is "profoundly inimical to liberal or humanistic civilization" (Cohen 1946, 329). Liberal democracy gives Jews, with all other individuals, equal protection of rights and freedoms under the law; it alone holds the cure to the woes produced by the evil of tribalism.

Both philosophers met with opposition. While agreeing with Hermann Cohen that Judaism had a universal message, Martin Buber argued that the mission of Jews requires a separate state wherein they can set an example of "good living," where a "biblical humanism" might prevail in a nation abiding by demands of justice and mercy. Horace Kallen challenged Morris Cohen's caricature of Zionism, maintaining that Zionism is an extension of the assumptions of liberalism from the individual to the group. Nationalities themselves have the rights of life, liberty, and the pursuit of happiness, and if liberal enlightenment means anything, then it must support the rights of thought and association on the parts of cultural groups as well as on the part of individuals. Liberalism does not deny the legitimacy of nationhood, and there is no reason why a Jewish state cannot be both secular and liberal (Hertzberg 1977, 528; and see Kallen 1921).[4]

Zionism eventually prevailed within the Jewish community. In the United States alone, the Zionist movement headed by Justice William Brandeis grew from 12,000 members in 1914 to 176,000 members by 1919. Its appeal in-

creased dramatically as anti-Semitism took an ugly turn during the 1930s, and when the horrors of Nazi genocide were brought to light after World War II, Zionism triumphed in the minds of most Jews and a large segment of non-Jews. More than ever, Zionism seemed to offer "the only political answer the Jews have ever found to anti-Semitism" (Arendt 1968, 120).

Zionism and the "Arab Problem"

The lure of Zionism blinded many to the fact that Palestine was already inhabited. By 1897, that 10,000–square-mile area had been under Turkish rule for nearly four centuries and contained 600,000 people, 95 percent Arab (predominantly Muslim) and 5 percent Jews.[5] By 1918, after the first two waves of Jewish immigration, the percentage of Jews rose to approximately 10 percent. Ownership of about half the land was in private Arab hands, 2.6 percent was privately owned by Jews, and while the remainder was state property under the Ottoman law, much of it had been farmed by generations of Arab villagers.

The greatest moral challenge to Zionism was (and remains) that a seemingly noble, and to some, intensely spiritual, vision—the restoration of the Jewish people to their ancient homeland—could be fulfilled only at the expense of another people, the Arab inhabitants of Palestine. While a few Zionists accepted the fiction that Palestine was "a land without people" waiting for "a people without a land,"[6] most were aware of an indigenous population but argued that Jewish needs and rights to a homeland Jews had been unjustly deprived of 1,900 years earlier outweighed the claims of the Arabs. Others ignored the problem, their priority being to create a Jewish socioeconomic infrastructure in Palestine by encouraging immigration, acquiring land, building Jewish institutions, and developing the capacities of Jewish labor.

The issue could not be neglected for long, and by 1905 there was debate among Zionists over strategies to pursue in the face of incipient Arab nationalism. Mainstream political Zionism, under the leadership of Chaim Weizmann, sought to convince Arabs that there was room for both peoples in Palestine, that Zionism had no intention of dispossessing people of their property, and that Arabs stood to benefit by cooperation with the Jews. Others, like the writer Ahad Ha'am, were less sanguine, believing that relations with the local Arabs constituted the principal moral difficulty faced by Zionism. He complained of Zionists who

> wax angry towards those who remind them that there is still another people in Eretz Israel that has been living there and does not intend all to leave its place. In the future, when this illusion will have been torn from their hearts and they will look with open eyes upon the reality as it is, they will certainly understand how important this question is and how great is our duty to work for its solution. (Selzer 1970, 196–97)

Already in the 1890s, Ahad Ha'am warned against arrogant behavior toward the Arabs—regarded by some as "wild beasts of the desert"—and of the senti-

ment expressed by the slogan that "the only language that the Arabs understand is force" (Sachar 1979, 163; Avineri 1981, 123–24). The priority of Zionism should be to create a "spiritual center" that would foster an atmosphere of peace with the Arabs.

Inspired by Ahad Ha'am, Zionist movements such as the *Brit Shalom* in the 1920s and its successor in the 1940s, the *Ihud* movement of Buber, Moshe Smilansky, and Judah Magnes, favored development of a common Jewish-Arab society under a *binational* state with sovereignty shared by the two peoples. For Buber, Zionism is justifiable if it leads to both a creative renewal of the Jewish spirit and an ethical Jewish community existing in "human solidarity" with the Arabs. "We have not settled Palestine together with the Arabs but alongside them. Settlement 'alongside' [*neben*], when two nations inhabit the same country, which fails to become settlement 'together with' [*mit*] must necessarily become a state of 'against' " (Mendes-Flohr 1983, 91). Without agreement with the Arabs, Buber continued, the aims of Zionism will never be realized. Like Magnes, he urged that *parity* of distinct nationalities under a single political framework was a "noble goal" and a "challenge to the intelligence and moral qualities of peoples constituting multi-national lands" (Laqueur 1976, 107).[7]

Others were convinced that neither cooperation nor parity would solve the Arab problem. Vladimir Jabotinsky, founder of the Revisionist branch of Zionism, argued that it was folly to expect the Arabs to acquiesce peacefully to the Zionist program; as is natural, they would prefer to remain in the majority and that Palestine be another Arab state. They would resign themselves to minority status only when they became aware of Jewish military strength. Since the end of Zionism is moral, so are the necessary means to carry it out, even if this requires the establishment of an "iron wall" of separation between the two communities. "Zionism is a colonizing adventure and therefore it stands or falls by the question of armed force. It is important to build, it is important to speak Hebrew, but, unfortunately, it is even more important to be able to shoot" (Brenner 1984, 78).

A more radical brand of Zionism advocated expulsion of the Arabs. Already in 1895 Herzl wrote of the need to "try to spirit the penniless population across the border by procuring employment for it in the transit countries, while denying it any employment in our own country" (Patai 1960, 88). Israel Zangwill, another prominent Zionist writer, proposed the "transfer" of Arabs to other Arab countries (Tessler 1994, 137), as did Joseph Weitz, a director of the Jewish National Fund in the 1930s: "it must be clear that there is no room for both peoples in this country" (Weitz 1965, 181–82). By 1940, Jabotinsky argued that a population exchange was a necessary evil, neither unprecedented nor a historical injustice (Gorny 1987, 270). While political leaders such as David Ben-Gurion—Israel's first prime minister—occasionally spoke against removing the Arabs, during the 1948 war he declared that "I am for compulsory transfer: I don't see anything immoral in it" (Flapan 1987, 103).

Arab Reaction and British Intervention

The Arab response to the Zionist project was initially one of incredulity, but, as Zionism gained ground, this attitude gave way to outrage and hostility. The reaction was what one could predict from a resident population whose lands were claimed by an external community. In 1899 the mayor of Jerusalem, Yusuf al-Khalidi, wrote to the chief rabbi of France telling him that while Zionism could be understood in theory, its implementation would require brute force, since Palestine was an inhabited country under Ottoman rule. It would be better for everyone that "Palestine be left in peace" (Smith 1996, 35). Herzl himself replied to this letter, reassuring al-Khalidi that Arabs had nothing to fear from the immigration of the Jews, who would make "faithful and good subjects" of the Turkish sultan and "excellent brothers" for the Arabs (Hirst 1984, 17).

Brotherhood remained distant. Already in the 1880s and 1890s, Palestinian peasants protested after being evicted from land sold to immigrant Jews (Hirst 1984, 21–32; Muslih 1988, 71; Khalidi 1988). The movement of European Jews into Palestine also coincided with a growing Arab national awareness. In 1905 a Palestinian author, Nagib Azouri, wrote that Arab nationalism and Jewish nationalism were destined to fight until one prevailed, and voices were increasingly heard in the Palestinian press that Jews planned to expropriate property and drive Arabs from the country, generating calls to refuse to sell land to Jews. Palestinians like 'Izzat Darwaza argued that Zionism posed a far greater danger than French or British imperialism because the Zionists take themselves to be "natives" of the land. "Palestine is purely Arab land . . . surrounded on all sides by purely Arab lands. National *(al-qawmi)* feeling has begun to awaken and gain strength among the Arab population which has lived uninterruptedly in its own territory." Darwaza went on to say that the "introduction of a nationality of separate blood, tongue, aims, traditions, religion and policy would be dangerous indeed" (Porath 1974, 49).

Since the Ottomans fought with the Axis powers in World War I, Britain, with a foothold in Egypt, saw an opportunity to strike at Ottoman power from the south and strengthen its own presence in the Near East. It found a willing ally in Sheriff Hussein of Mecca, who offered assistance in exchange for Arab independence throughout the region. A 1915–16 agreement to this effect, set forth through letters between Hussein and the British high commissioner in Cairo, Sir Henry McMahon, was interpreted by Arabs as a treaty to which Britain was bound.[8] The joint Arab-British campaign was successful; by December 1917 British troops entered Jerusalem and soon occupied the remainder of Palestine.

Zionists had already sensed an opportunity through collusion with a British government whose prime minister, David Lloyd George, was sympathetic to Zionist aims. The British entry into Jerusalem came on the heels of a momentous statement of policy by Lloyd George's government, set forth in a letter to the

Zionist financier Baron Edmund de Rothschild from the British foreign minister, Arthur Balfour. Its critical paragraph stated:

> His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

This carefully crafted document—the Balfour Declaration—was the product of extensive Zionist diplomacy. Overt reference to a Jewish state was avoided in favor of the euphemism "national home" for fear of inflaming Arab passions against the Jewish minority, though Lloyd George subsequently acknowledged that a Jewish state was intended. The Arabs, 90 percent of Palestine's population, were referred to as members of "non-Jewish communities," and while their "civil and religious rights" were recognized nothing was said about their political rights or their national aspirations. In contrast, explicit reference was made to the "political status" of Jews in other countries. Boundaries had not been fixed (Vereté 1982, 77), though Zionists lobbied for a Jewish state on both sides of the Jordan.

As the terms of the Balfour Declaration became known, Palestinian opposition to Zionism crystallized into organized political expression. The first Palestinian Congress in 1919 issued a manifesto that dismissed Zionist claims to the land and was sharply critical of the Balfour Declaration. The contention of some Zionists that the Balfour Declaration was tantamount to the creation of a state of Israel created alarm among the Arabs that was heightened by Weizmann's pronounced goal in the Paris Peace Conference of 1919 that "Palestine become Jewish as England is English." Palestinians like 'Izzat Darwaza thought that the best response was to favor a union within "greater Syria," but this option faded by 1920 as Syria and Lebanon fell under French dominance in accord with the British-French agreements of 1916. The result was to isolate the Palestinian national movement from similar independence movements elsewhere in the Arab world.

Rights to Territory

Disputes over land are among the most contentious in human affairs. Property is viewed as necessary to ensure survival and further a particular lifestyle, and a community's association with a particular territory is but an extension of this concern. The very passion with which it presses its claims suggests that difficult normative issues lurk nearby. It is one thing to ask who *owns* a particular parcel of land, another to inquire who has the right to *reside* within its boundaries, and yet another to determine who has political rights of *sovereignty* and *self-determination* in it. It must also be asked how these rights, if "rights" is the correct term, are acquired.

When attention turns to the territorial rights of communities, national groupings, or states, sovereignty is the principal concern. Within international law, *de facto* power over a territory, say, of occupying forces or trustees, is insufficient to possess or acquire sovereignty (Brownlie 1990, 111). The modern concept is that governmental authority is derived from the consent of the governed, and sovereignty over a particular territory is vested in the resident population. It is simple enough to identify the latter with the current inhabitants, but demographic flux makes this a loose criterion. Does an immigrant noncitizen share in sovereignty? Suppose he or she has arrived in the country illegally? What about long-term expatriates or those who have been expelled from their homelands? Presumably sovereignty rests with those who are entitled to live in the territory, with its *legitimate* residents, and the most obvious candidates are inhabitants who were born and raised to adulthood therein and whose discernible ancestors were equally indigenous. Those on the outside, without historical, cultural, or legal ties, provide the clearest cases of nonresidents.

Which individuals or groups have the right to inhabit Palestine? Who owns its fields, cities, and seaports? Who has the right to determine which legal and political structures are to prevail? Most important, who possesses sovereignty? Answers to these questions depend on the time frame; the eonsiderations offered in 1917 or 1947 could draw on factors absent in 1897, and the same holds for the interval between 1947 and 1997. Differences in population distributions, in prevailing institutions, and in political developments are all relevant in approaching these questions.

In the aftermath of World War I, both Arabs and Jews claimed political legitimacy in Palestine. Zionists argued that the *historical connection* of Jews to Palestine extends over three millennia—maintained by a "thin but crucial line of continuity" (Eban 1972, 26). The cultural roots of Jews in Palestine are universally acknowledged, and having never established a state elsewhere, there is no other place to which they can claim an original organic link (Shimoni 1995, 352–59). Palestine is also the center of Judaism and owes "the luster of its history" to the Jewish connection (Jewish Agency 1947, 105). Despite having been unjustly exiled from Palestine since Roman times, Jews have a unique claim to the land that they have never abandoned, a claim that implies that their political reestablishment would not be a matter of conquest and domination by an external entity but of *restoration* (Eban 1956) or *return* (Fackenheim 1988) of a people to what was originally theirs.

By contrast, it was argued, Arabs have other centers of culture and religion, and the region including Jerusalem was never as monumental to them as the great cities of Mecca, Damascus, Baghdad, and Cairo. Nor did Arabs ever establish an independent state in Palestine, and, hence, Palestine's Arabs did not constitute a political unit with entitlement to sovereignty (Gorny 1987, 145, 213–14). They are part of a larger Arab entity, not themselves a distinct *people* with a claim to Palestine as such. Jews, in contrast, currently constitute a single iden-

tifiable nation in need of a territory to further its culture. Their right to self-determination in Palestine is not simply a matter of their preference; the government that rules Palestine had recognized the Jewish claim to establish a national home there. For these reasons, Zionists concluded, historic title to Palestine and sovereignty over its territory belong to the Jews.

The Arabs argued that their right to dwell in Palestine, to possess and establish dominion over its territory, derived from the fact that they constitute not only the majority of its current inhabitants but have maintained this majority during the thirteen centuries since the Islamic conquest—if not longer, given their descent from ancient Canaanites, Hittites, and Philistines. The predominant language and culture of the country have remained Arabic throughout this period, including under Turkish rule. Even if Jews have a "historical connection" to Palestine, the inference that they have an exclusive "historic title" that gives them the right to return, establish a state, and possess it forever "contains more of poetry in it than logic." By that reasoning, "Arabs should claim Spain since once upon a time they conquered it and there developed a high civilization."[9] All systems of law include a statute of limitations by which a legal title expires after a considerable duration; without it, the world would face a cacophony of unresolvable claims and counterclaims. Jews native to Palestine are entitled to reside there and share in self-determination (Porath 1974, 61), but sovereignty belongs to the predominantly Arab indigenous population.

Arab spokesmen insisted that the Balfour Declaration was invalid. When the existing state power is removed, as happened in Palestine in 1917, sovereignty reverts back to the established population. In particular, the British military occupation neither transferred sovereignty to the occupying power nor removed it from the legitimate residents; Britain had no right to give Palestine as a "gift" to anyone, and therefore its commitment has no binding force. But *if* any credence is to be given to promises of external powers, then it must be remembered that Britain had pledged its support for Arab independence throughout the Middle East *prior* to issuing the Balfour Declaration and had reiterated it in 1918 (Antonious 1965, 264). Since this pledge was made with an established monarch, it was superior to the Balfour Declaration, which was given to "an amorphous body lacking political form and juridical definition" (Porath 1974, 52).

The Principle of Self-Determination

As the Balfour Declaration was penned, a concept was advanced that was to have a profound influence on deliberations concerning sovereignty over territory. Termed a "principle of self-determination" by its chief advocate, U.S. President Woodrow Wilson, it specified that the settlement of all economic and political questions depends on the "free acceptance of that settlement by the people immediately concerned." Both Arabs and Jews appealed to it at once. The clash of

their claims requires a closer look at what the principle actually is. The basic issues are these:

- What is called for in a demand for self-determination, that is, what is it that an entity possesses in being a self-determining unit?
- What is the normative status of the concept of self-determination; is it a legal right, a moral ideal, a regulative principle, etc.?
- Who are the proper beneficiaries of self-determination?

In general terms, self-determination is a community's *autonomy,* its right to manage its affairs as it sees fit independently of external interference. But in the *strict* sense usually intended, self-determination is a matter of sovereignty over territory. When existing self-governing countries are viewed as beneficiaries, the principle calls for *recognition* of state sovereignty and *nonintervention* in internal affairs. For a deserving community that is not yet self-governing, it provides that the community be allowed to determine the form of government that shall exercise authority over its territory and resources.[10]

Whether self-determination is best conceived as a legal right, a moral ideal, or a political maxim is a more difficult matter. After World War II, the principle was enshrined in agreements conditioning the development of international law, principally, Article 1 of the UN Charter, which calls on its members "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." That a *right* is recognized is indicated in the French version—"du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes"—and by a number of General Assembly resolutions. While these provisions do not settle the issue, the use of self-determination in justifying independence movements and prohibiting intervention has established its normative importance if not its *jus cogens* status in international law.[11]

The more difficult problems lie in determining beneficiaries among nonautonomous communities and fixing the territories in which they are entitled to (strict) self-determination. Obviously not just any group qualifies; families do not, nor do business organizations, professional associations, or social clubs. Minimally, a beneficiary must be capable of political independence and its members must share enough means of communication and moral ideals to constitute a *politically coherent* community (Ofuatey-Kodjoe 1977, 156–59). Ideally, the group resides in a territory that is geographically unified and politically integrable so that any point in the region is accessible from any other point without having to pass through foreign territory, other than international byways (Berg 1991, 214). But typically, linkage to a territory is more complicated, and attempts to apply the principle must reckon with current inhabitants as well as exiled communities, minorities dominating historically recognized subregions, and majorities occupying larger areas containing or surrounding those subregions.

Beyond this, there is an important divergence. On one interpretation, *peoples* are the best claimants of a right to self-determination, where a "people" is any potentially autonomous group whose members share cultural or *national* ties. Alternatively, self-determining units are *populations* defined solely by reference to all and only legitimate residents of a given territory. These distinct ways of delineating beneficiaries underlie a difference between two concepts of strict self-determination. *Regional self-determination* occurs when the inhabitants of established regions, territories, or states settle for themselves all questions of sovereignty over that territory. While historical facts might be paramount in individuating a territory, beneficiaries include all and only its legitimate residents. By contrast, *national self-determination* exists when a nation or people preserves itself and manages its affairs as it sees fit, including when it constitutes itself as an independent sovereign state. At its crux is the idea that a beneficiary must be a community whose members self-consciously share a culture vital to the self-identity of each.[12]

An Argument for Regional Self-Determination

How are beneficiaries best conceived? Many have construed Wilson's principle along nationalistic lines (for example, Cobban 1944, 19–22; Feinberg 1970, 45), but Wilson's language is less clear. The democratic ideal of popular sovereignty seemed foremost in his thinking when he first employed the term "self-determination" publicly in a 1918 speech, and this has little to do with national ties:

> People are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected; peoples may now be dominated and governed only by their own consent. "Self-determination" is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. (Wilson 1927, 180)

A more complete statement of the relevant principle came on July 4, 1918:

> The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery. (Wilson 1927, 233)

Who are "the people immediately concerned"? Two points are relevant in determining Wilson's intent. First, he spoke of self-determination more in terms of a political maxim to guide those "statesmen" entrusted with making decisions about the future status of given territories and less of a "right" of peoples. Second, despite the use of terms like "peoples" and "national," Wilson spoke in regional terms when he said that the principle underlying the Paris Peace Confer-

ence was that "every land belonged to the native stock that lived in it" (Wilson 1927, 49). Apparently he envisioned the primary use of the principle would be to resolve questions concerning the status of *territories* unsettled by conflict or that are or previously had been under foreign domination.[13]

So conceived, the principle of self-determination is most relevant when applied to "unsettled territory," that is, to a region satisfying at least *one* of the following conditions: (1) it was formerly dominated by another community but is currently free from that domination and not yet self-governing; (2) it is currently under some form of internationally sanctioned trusteeship; (3) it has been accorded the right of secession by a larger state of which it is at present a part; (4) it is under the domination of either a foreign community or an internal tyranny that threatens the human rights of its members; or (5) it is under a real and present danger of such domination. The relevant form of the Wilsonian principle of (strict) self-determination can be phrased as follows: The legitimate residents of an unsettled territory shall be permitted to constitute themselves as a self-governing unit upon qualifying as a politically coherent community. Agents with the moral prerogative—whether by circumstance or investiture—to affect what institutions prevail in that territory, must ensure that self-governance is achieved through popular consent.

There are limits on the application of this principle; specifically, there must be institutional protection of individuals' human rights and of legitimate cultural interests of significant subgroups. It is not a *carte blanche* for majorities to establish objectional forms of discrimination, and therefore it is not the sole or overriding normative principle relevant to decisions concerning the political status of disputed territories (see Emerson 1971, 466–67; Umozurike 1972, 192; Pomerance 1984, 332–37; Etzioni 1992–93, 34).

An argument for viewing regional self-determination as a norm of international justice is straightforward. Any political settlement in a territory must be responsive to what its established inhabitants take to be in their legitimate interests. By voluntarily binding themselves to a social-political arrangement, people impose on themselves a moral obligation to abide by its terms, and in this way chances are heightened that the arrangement will conform to what they perceive as just, if not to what is just. Prospects for stable peace and orderly development are thereby enhanced. Imposing an arrangement on the inhabitants against their will, by contrast, creates resentment that threatens future instability. Thus, observing self-determination—whether construed as a political principle for solving conflicts over sovereignty, a legal right of groups, or a human right of individuals—is the crucial mechanism for securing governmental authority and the rule of law within a given territory.

On National Self-Determination

The case for including within international morality a principle of *national* self-determination—each *people* is entitled to self-governance—is examined in the

essays by Yael Tamir and Muhammad Ali Khalidi. Tamir appeals to the rights of individuals to enjoy the benefits of participating in "the national life of their community," rights satisfiable through "the establishment of national institutions, the formation of autonomous communities, or the establishment of federal or confederal states" (1993, 75). Khalidi discusses a similar argument by Margalit and Raz (1990) that since there is value to membership in a "self-encompassing" (national) group, including participation in the political activities of that group, then there is an inherent value in that group's being self-governing. Like Tamir, they are concerned that such self-governance does not damage the "fundamental interests of [all] its inhabitants" and "the just interests of other countries" (457, 461).

That there is an inherent value in national self-determination cannot be disputed, but whenever we consider a proposed practical principle, we distinguish what it might yield if people were perfectly impartial from what it is likely to produce in practice. By definition, a nation-state is constituted for the sake of a specific people, and inevitably its institutions, laws, and policies will reflect the culture of that people and favor their interests. Here are where the dangers lie. Few areas of the world are culturally homogeneous, and the "unsettled" regions typically are not. A state that institutionalizes the values of a particular culture and not those of others creates the dual risk of intolerance and officially sanctioned discrimination. Since human beings are unlikely to abandon the habit of identifying with groups to which other collectives are unfavorably compared, the *de jure* favoring of the majority's cultural values is bound to be resented by minorities while posing a permanent threat to their interests.

Also, ethnic and cultural divisions tend to multiply over time. Is each people entitled to self-determination? If so, not only would secession movements proliferate, so would the number of incompatible claims to one and the same region. Either the problem concerning the *linkage* of people to territory—discussed at length in the Khalidi essay—would become an insurmountable hurdle for implementing national self-determination or there would be an ever-increasing panorama of competing sovereignties (Etzioni 1992–93). Thus, establishing nation-states in culturally diverse regions poses a risk not only to individual human rights but to domestic and international political stability.

To avoid these problems, a regional rather than a national construal of the principle of self-determination should be favored in deciding the fate of unsettled territories. *Populations,* not *peoples,* are the proper beneficiaries. It does not follow, of course, that peoples are not relevant agents in international law or ethics, or that national self-determination in a *broad* sense is undesirable. The point is that peoples should not be conceived as the possessors of *sovereignty.* (Having said this, the reader should turn to Tamir's defense of *liberal* nationalism and Khalidi's examination of both hers and my positions below.)

The Palestine Mandate

In the summer of 1919 President Wilson sent a commission headed by the prominent Americans Henry King and Charles Crane to investigate the political situation in the Near East. The commissioners' report, submitted to the Paris Peace Conference in August, argued that the wishes of Palestine's population must be decisive if the principle of self-determination is to rule. Since the non-Jewish population of Palestine—nearly nine-tenths of the whole—were "emphatically against the entire Zionist program," then, "to subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted and of the peoples' rights, though it kept within the forms of law" (Antonious 1965, 449).

The report noted that "no British officer believed that the Zionist programme could be carried out except by the force of arms," and it recommended that the project for making Palestine a distinctly Jewish commonwealth be abandoned. Their report reached Wilson a day before his collapse and it is doubtful he read it. Lord Balfour's own response to the commissioners' recommendations was blunt:

> . . . in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country, though the American Commission has been going through the form of asking what they are. The Four Great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.[14] (Ingrams 1972, 73)

International Recognition of Zionism

At the San Remo conference in 1920, the Supreme Allied Council of the victorious powers accorded Britain mandatory powers in Palestine. The provisions of the Balfour Declaration were incorporated into its terms, the preamble noting the "historical connection of the Jewish people with Palestine" and calling for a reconstitution of their "national home in that country." In 1921, Britain removed Trans-Jordan from the promises of the mandate, contrary to the wishes of the Zionist organization, and in 1922 the League of Nations officially awarded the mandate to Britain. The American administration had already supported the Balfour Declaration in August 1918, and in 1922 the U.S. Congress endorsed an essentially similar document in a joint resolution. The result was that not only had the Balfour Declaration received support from two of the victorious powers in the war, it was also given *international sanction.* In the relatively short span of a quarter century, Zionism had taken a giant step toward realizing the principal aim set forth in its 1897 platform. Preparations for a Jewish state could now

proceed under British protection until such a time as a decisive Jewish majority was established.

Through all this, the Palestinian Arabs had no hand in a decision that was to have a monumental impact on their future; they were not consulted, no plebiscite was ever held, and no approval from Palestinian representatives was ever secured.[15] Remarkably, the Mandate seemed at odds with Article 22 of the Covenant of the League of Nations, which dealt with newly liberated territories. Its fourth paragraph stated:

> Certain communities formerly belonging to the Turkish empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.[16]

Exceptions were specified in subsequent paragraphs of the article, and since Palestine was not mentioned by name, the assumption is that it was covered in the fourth paragraph. Britain countered that Palestine was a special case, though in a 1922 White Paper was careful to qualify its position by stating that the Jewish national home is to be *in* Palestine and that there would be no disappearance or subordination of the Arab population or customs.

Immigration and Revolt

The Mandate added to Palestinian suspicions of British intentions and raised tensions between Jews and Arabs. Postwar attempts to bring the two sides together had failed, and the predicted violence was not long in coming. By 1919, the Zionists were calling for an increase in armed Jewish force in Palestine, and in 1920 rioting in Jerusalem took the lives of five Jews and four Arabs, with scores injured; while in the Galilee, eight Jews were killed in battle. In May 1921 more serious disturbances took the lives of forty-seven Jews and forty-eight Arabs. The terms of the Mandate obliged Britain to open the doors of Palestine to Jewish immigration, which increased the Jewish presence to 17 percent of the population by the end of the decade. Tensions mounted, and in 1929 serious outbreaks of violence included the massacre of more than sixty members of Hebron's ancient Jewish community after local Arabs were told that Zionists had attacked the Jerusalem mosques.

In the 1930s, immigration jumped dramatically with the ascension of the Nazi Party in Germany, reaching nearly 65,000 in 1935 and raising the percentage of Jews to 31 percent of the population by 1939. The Jewish Agency was founded in 1929 to settle the new immigrants, who brought funds and agricultural expertise that allowed Zionist settlements to flourish and expand. Land purchases were supervised by the Jewish National Fund (founded in 1901) whose charter speci-

fied that land once acquired becomes the inalienable property of the Jewish people. In 1923 nearly 75 percent of the land worked by Arab peasants was owned by absentee landlords who lived in cities (Smith 1996, 84). Of the land Zionists purchased by 1945, sales by Palestinian peasants accounted for 9.4 percent, sales by Palestinian large landowners were 24.6 percent, and sales by non-Palestinian Arabs (Lebanese and Syrians) were 52.6 percent (Stein 1984, 226–27; Khalidi 1988). The policy of redeeming the land with Jewish labor resulted in large numbers of Arab farm workers turned out of lands they had previously worked and forced to seek employment in cities. In 1933 the Arab Executive Committee declared that Jewish immigration "has terrified the country" (Khalidi 1984, 90).

These events severely dampened hopes for Jewish-Arab reconciliation. Leaders on both sides continued to seek rapprochement, though, like Jabotinsky, Palestinian politicians such as Awni Abd'l Hadi and George Antonious eventually concluded that agreement was impossible. The discovery that Zionists were smuggling arms into the country caused men like Sheikh 'Izz ad-Din al-Qassam, a religious leader in Haifa, to advocate open revolt against British rule and Zionist colonialism. He was killed in November 1935 during a battle between his guerrilla group and British forces, but his "martyrdom" was a call to action inspiring the newly formed Arab Higher Committee to organize a general strike to press demands for halting Jewish immigration, prohibiting land sales to Jews, and forming a representative government. The strike evolved into the 1936–39 revolt with Arab fighters arrayed against Jewish communities and the British military. The superior armaments of the latter prevailed; by the time violence ceased, 101 British soldiers, 463 Jews, and more than 5,000 Arabs had lost their lives.

Yet the revolt altered British policy. Realizing that Arabs would never peacefully acquiesce to the imposition of a Jewish state in Palestine, the Peel Commission of 1937 recommended a partition of the country into an Arab state and a Jewish state, despite arguments by the former high commissioner for Palestine, Herbert Samuel, that two states with interwoven territories would be bound in an endless struggle. The plan was rejected by both sides. In 1939, after exiling Palestinian leaders, Britain issued a White Paper calling for the establishment of a single state within ten years in which Arabs and Jews would share authority in government. Jewish immigration would be limited to 75,000 persons within the next five years, and thereafter no immigrant would be admitted without Arab approval. The high commissioner was empowered to regulate, delimit, or prohibit transfer of Arab land to Jewish ownership, and Palestine was to be partitioned into Arab, Jewish, and neutral zones under one administration. Britain justified its action by a study of the McMahon-Hussein correspondence, concluding that it was not free to disregard the wishes of the Palestinian Arabs (Cattan 1969, 260).

Neither Arabs nor Zionists found the White Paper to their liking. Arabs rejected its authorization of continued Jewish immigration, while the Jewish

Agency accused Britain of "a breach of faith and surrender to Arab terrorism" (Laqueur 1976, 76). Although the Permanent Mandates Commission of the League of Nations declared the 1939 White Paper to be incompatible with the terms of the Mandate, Britain did not rescind it. In response, Zionists intensified preparations for future armed conflict and redoubled political efforts in the United States. In 1942, they issued a statement calling for fulfillment of the promises of the Balfour Declaration and the Mandate, opening of the gates of Palestine to immigration, and establishment in Palestine of a Jewish commonwealth that would right the "age-old wrong to the Jewish people" (Laqueur 1976, 79). This so-called Biltmore program was successful in generating additional support within both political parties and among Americans generally—though Buber criticized its design to "conquer" Palestine through international maneuvers (Arendt 1978, 211). Immediately after the war, Congress passed a resolution calling for Palestine to be "opened for free entry of Jews," and in August 1946 Truman pledged the administration's support for Zionism despite opposition from the State Department. Truman's endorsement was equivalent to the Balfour Declaration in 1917 (Khalidi 1971, 64). The subsequent UN partition plan, like the Palestine Mandate, was a direct result of a superpower taking the Zionist movement under its wing.

The Debate at the United Nations

In 1947 Palestine contained approximately 1.35 million Arabs and 650,000 Jews, and only in the district around the city of Tel Aviv did Jewish numbers exceed that of the Arabs. Over half of the Jews had immigrated since 1919. Jews had acquired roughly 6 percent of mandated territory, though their percentage was higher in the agricultural areas along the coast and in the Galilee.

The situation had grown more intense. The Nazi genocide of Jews had stunned the world, generating great sympathy for the establishment of a Jewish state and increased demands for Palestine to be opened to Jewish immigration. Britain's refusal prompted direct conflict with Jewish underground militias, the Irgun Z'vai Le'umi and LEHI groups. Assassination, hangings, and bombings—the most spectacular of which was the Irgun's demolition of British headquarters in 1946—marked the conflict. Britain responded by applying a stringent set of Defence Laws, initially devised to counter the Arab Revolt, and accusing the Jewish Agency of condoning terrorism. Opposition of Palestinian Arabs to Zionism remained as strong as ever, their hopes lifted by the 1945 formation of the Arab League, which supported their aspirations. The Palestinian leadership was fragmented (Lesch 1979; Khalaf 1991), however, and a leading spokesman, the exiled Al-Hajj Amin Husseini, had discredited himself by backing Germany during the war, though Palestinians had generally favored Britain. The Palestinians were decidedly less successful than the Jewish community in preparing for future conflict.

In May 1946, an Anglo-American Committee of Inquiry recommended that until Arab-Jewish hostility diminishes, the government of Palestine should be continued under Mandate pending execution of a UN-sponsored trusteeship agreement. Palestine should be neither a Jewish nor an Arab state, a recommendation that satisfied neither party. When the Truman administration renewed calls for immediate immigration of 100,000 Jewish refugees into Palestine, Britain, exhausted by war and frustrated by opposition, announced it would end its administration of Palestine by May 1948. Foreign Secretary Ernst Bevin declared that there was no prospect for compromise between the two communities. In 1947 the problem of Palestine was taken up by the United Nations, which created a special committee (UNSCOP) to make recommendations to the General Assembly. A number of arguments were heard that continue to be relevant to ongoing normative debates.

The Case for the Establishment of a Jewish State

A *combination* of considerations were advanced in favor of a Jewish state. The argument from "historical connection" has already been mentioned, but in 1947 Zionists could point to additional factors. Of central importance was their contention that the Palestine Mandate constituted legal recognition of Jewish national rights in Palestine: "The Balfour Declaration became a binding and unchallengeable international obligation from the moment when it was embodied in the Palestine Mandate" (Feinberg 1974, 242). This "right" to establish a "national home" in Palestine was preserved by the UN Charter, whose Article 80 stipulates that nothing be done to alter the rights "of any states or any peoples" in territories currently under mandate. Hence, the world community is obligated to honor the commitments of the Mandate.

But an older argument resurfaced with greater weight than ever before. The Nazi genocide of the Jews strengthened the moral case for the Zionist insistence that as perpetual outsiders without sovereign power of their own, the survival of the Jews will continually be under threat. "Hitler is gone now," argued Moshe Shertok (Sharett), "but not anti-Semitism. . . . Anti-Semitism in Germany and in many other parts of Europe is a rife as ever and potentially militant and fierce. . . . The very age of European Jewry serves only to accentuate the basic historic insecurity of Jewish life in the dispersion" (Robinson 1971, 212). Since it is a matter of "life or death" that Jews be allowed into Palestine (Jewish Agency 1947, 514), and since the Jewish community there has proven itself capable of political and economic independence, then Palestine is the natural place for a sovereign Jewish state. This state would be able to absorb an influx of some 400,000 Jewish refugees from Europe and soon become a "pillar of progress in the Near East" (Robinson 1971, 214).

A related argument was anchored on the Lockean premise that the land belongs to those who develop it. It was popularized by such Labor Zionists as A.D.

Gordon (Taylor 1974, 93) and Ben-Gurion (Gorny 1987, 210), but also impressed the more conciliatory. For instance, Buber wrote, "Ask the soil what the Arabs have done for her in 1300 years and what we have done for her in 50. Would her answer not be weighty testimony in a just discussion as to whom this land belongs?" (Shimoni 1995, 348); and Hannah Arendt felt this argument was "better and more convincing" than considerations of the Jews' "desperate situation in Europe" (Arendt 1978, 173).

Weizmann advanced a balance-of-justice argument. Both Arabs and Jews have a legitimate claim to Palestine. In depriving the Jews of a state, however, you deprive all the world's Jews of independence and nationhood, whereas in refusing to create another Arab state in Palestine you do not deprive all Arabs of political independence. According to Feinberg (1970), this reasoning "turned the scale in favour of the Zionist solution of the Palestine Problem," for the minute territorial allocation that a Jewish state entailed would not be a hardship placed on Arabs in the context of the Arab Middle East (p. 53). Shertok added that its Arab citizens would not only retain their association with the Arab world but would enjoy the rights of citizenship in a Jewish commonwealth as "there is nothing inherent in the nature of either the native Arab or the immigrant Jew which prevents friendly cooperation" (Robinson 1971, 213). When the Arab claim is weighed against the international promises to Jews, the achievements of fifty years of Jewish settlement, recurrent anti-Semitism, and the current plight of Jewish refugees, then the route of least injustice favors establishment of a Jewish state.[17]

The Arab Case

For their part, the Arabs repeated that no credibility be given to the argument for historical title on the basis of distant historical connection. Aside from the statute-of-limitations consideration, most modern-day Jews cannot claim descendance from the Jews of biblical times and hence have not inherited a claim from those who were previously dispossessed.[18] Before the General Assembly, Arabs like Henry Cattan (Palestine), Faris al-Khouri (Syria), and Fadhil Jamali (Iraq) argued that appealing to historical connection in settling international issues "would mean redrawing the map of the whole world. It has been said you cannot set back the hands of the clock of history by twenty years. What should then be said when an effort is made to set the clock of history back by twenty centuries in an attempt to give away a country on the grounds of a transitory historic association?" (Robinson 1971, 227).

If historical connection is relevant at all, it is certainly the Arabs who have the stronger case, since they have been the established majority in Palestine during the more recent centuries. No amount of propaganda, said Cattan, can alter the Arab character of Palestine's history and culture. Arabs have done the greater part in developing the land, establishing its citrus and olive groves, and building

its terraces, its villages, its cities. The assumption that they had let the land lay fallow and the country undeveloped is as much a distortion as the earlier myth that the land was "empty." Even if Jews have done well with the sectors they own, the argument that development grants title could be used to justify any aggression of a technologically advanced society against a more "backward" people.

As for the lesser injustice, while it may be true that Jewish refugees need a home, this is not to be granted at the expense of those who were not responsible for Nazi actions. That the refugees be settled in Palestine against the wishes of Arab residents would be an injustice to the majority and a violation of a 1946 General Assembly resolution concerning resettlement of displaced persons. In measuring the injustice of alternative proposals, Arabs would stand to lose more by the creation of a Jewish state, since they outnumber Jews by two to one and hold the bulk of its property. The 1919 King-Crane commission had correctly predicted that the pressures of Jewish capital would result in the displacement of many poorer Arabs, while others would find economic and political opportunities blocked. "No room can be made in Palestine for a second nation," concluded Albert Hourani in 1946, "except by dislodging or exterminating the first" (Smith 1996, 130). Not only would Palestinian Arabs be affected; the Anglo-American Committee emphasized that a Jewish state in Palestine would give a non-Arab power control of the only land bridge between the western and eastern halves of the Arab world, disrupting the latter's communications and territorial unity.[19]

Finally, sovereignty is an inalienable possession of the inhabitants of a territory and a trusteeship only temporarily suspends its exercise (Cattan 1969, 252–53). The "commitments" and "guarantees" of the Balfour Declaration and Palestine Mandate cannot override the rights of the indigenous Palestinian inhabitants, which derive from more fundamental principles. In 1946 Akram Zuaiter, a prominent Palestinian politician, appealed to self-determination as a *moral* principle, insisting that Palestinians have a "natural right" to self-governance that is not dependent on the promises of the British, the Americans, or international bodies (Zuaiter 1994, 272). The philosopher W.T. Stace argued in the same vein: self-determination provides "the only 'abstract' or 'moral' principle which is needed for the adjudication of the Palestine controversy," and it "will not be outdated a year from now or in fifty years" (Stace 1947, 83). It is "aggression" for an external agent to neglect the wishes of the majority and their "natural right of self-determination" in favor of an alternative arrangement. The Arab Higher Committee added that Jews legitimately entitled to reside in Palestine have every right to share in its self-determination, but that "foreign residents of diverse nationalities, mostly of the Jewish faith, can under no legal or moral justification, be entitled to a say in the formation of this government. . . . This, in short, is our legal position in Palestine. As the overwhelming majority, we possess the unquestionable right of sovereignty over the country" (1948, 11–12). Since Palestine's legitimate residents opposed both the Balfour Declaration and the

Mandate provisions from the outset and have persisted in their opposition to the present day, then imposition of a Jewish state on them would be an unmistakable denial of self-determination.

Rejoinder on Self-Determination

The appeal to self-determination is double-edged, as British Foreign Secretary Lord Curzon noted in 1919; "both Arabs and Zionists are prepared to make every use of it they can" (Lloyd George 1939, 739–40). At times, Ben-Gurion argued that the right of self-determination may be overridden (Jewish Agency 1947, 384), but other members of the Jewish Agency maintained that it is a misconception to view the Palestine Mandate as violating the principle of self-determination. Any beneficiary of self-determination must demonstrate itself to be a viable political unit, and unlike the Arabs of Palestine, the Jews have been recognized by the international community as having achieved this status. Echoing earlier arguments of Jabotinsky (Shimoni 1995, 367), the Agency contended that the right of self-determination should not be looked on as applying to static populations alone, but as a mechanism for rectifying ancient wrongs and giving unpossessed peoples a share in the world's land and resources. "If there was justice in the general concept of self-determination, there was also justice in the particular expression of that concept in terms of the 'historic reparation' to Jewry. No man of liberal spirit could deny that it was justice long-delayed. Nor could he gainsay the right of his people to find its way once more into the society of nations" (Jewish Agency 1947, 110).

The Zionist argument for self-determination can be summarized as follows: (1) Jews, as a people capable of political independence, meet the necessary and sufficient conditions for being a beneficiary of self-determination; (2) Palestine is the only territory to which Jews as such have historical, cultural, legal, and moral ties; (3) Palestine is *not* the only area to which Arabs have such linkages (Gorny 1987, 213–14); (4) there is (in 1947) "no identifiable Palestinian Arab people" who have emerged as a viable political unit with international recognition whose own national aspirations for independence would suffer on creation of a Jewish state (Jewish Agency 1947, 325, 384). Therefore, Jews are entitled to a sovereign state in Palestine.

Comment on the Rejoinder

The first premise of the argument is plausible only on a principle of national self-determination. On a regional interpretation the premise is false because self-determination is not to be conferred on peoples. Instead, it belongs to the entire community of legitimate residents, and in 1947 the Jewish inhabitants of Palestine—only one-third of the population at best—were not the exclusive beneficiary. In fact, the claim for regional self-determination *in Palestine* by the majority of

Palestine's inhabitants had been strengthened during the period of the Mandate. In 1919 it was by no means clear that the inhabitants of Palestine were entitled to self-determination *qua* inhabitants of Palestine rather than as part of a larger regional unit. The effect of the British Mandate was to isolate Palestine, keeping it under trusteeship while the rest of the Arab world gained independence. Since the vast majority of its population contested the Mandate's provisions, Palestine remained an "unsettled" area for the next quarter-century, and, arguably, its inhabitants acquired "national aspirations" and were as capable as other Arabs of political independence. This discredits the fourth premise of the argument *even if* the logic of national self-determination is retained. But according to the regional principle, not only is the first premise false, the argument is invalid because of the presence of a majority of Arabs. At the least, adherence to that principle would have called for a plebiscite on the partition proposal whose result would have been contrary to Zionist ambitions.

Partition, Independence, Catastrophe

> Palestine has become the acid test of human conscience. The United Nations will find that upon their decision will depend the future of humanity, whether humanity is going to proceed by peaceful means or whether humanity is going to be torn to pieces. If a wrong decision flows from this august Assembly, you may take it from me that the world shall be cut in twain and there shall be no peace upon earth.[20]

In the autumn of 1947 UNSCOP issued both majority and minority recommendations. The minority proposal, claiming that the provisions of the Mandate were inconsistent with the League of Nations Covenant, called for a binational state. It was rejected by Arabs who denied a parity between Arab and Jewish political claims, and by the Jewish Agency, which argued that a binational solution would result in constant political deadlock and reliance on external parties (Jewish Agency 1947, 130–35, 345, 549). The majority proposal recommended the partition of Palestine into two states, a Jewish state on approximately 56 percent of the mandated territory and an Arab state on 43 percent, with Jerusalem to be placed under international administration (see map). Arabs would lose control of the rich coastal plain that produced their most valuable export, citrus fruit, while the central highlands would be excluded from the Jewish state. The plan was adopted by the General Assembly on November 29, 1947, as Resolution 181 (II) with a vote of thirty-three in favor, thirteen against, and ten abstentions.

Although the plan fell short of their aims, the Jewish Agency acquiesced. The Arabs rejected it, arguing that the United Nations had no right to grant any portion of Arab territory to Zionists and that the Western world was making them pay for the suffering of Jews. It was, at the time, unreasonable to expect Arabs to accept what they regarded as a "grotesquely skewed misallocation" (Ball and Ball 1992, 21; Khalaf 1991, 245–46). There were no negotiations

between the two communities—neither Jew nor Arab would acknowledge the existence of the other (Cunningham 1948, 481)—and fighting immediately broke out. By April 1948 the better-equipped and more numerous Jewish forces established a clear superiority, securing their recommended allotment while capturing territory assigned to the proposed Arab state. Civilians on both sides were targeted, but massacres like that at the Arab village of Deir Yassin (more than 250 people) by Jewish irregulars precipitated a wide-scale exodus of Arabs from their homes and villages.

On May 15, the day after Israel declared its independence, forces from Egypt, Syria, Lebanon, Jordan, and Iraq entered the fighting. Despite population differences, Israelis placed more soldiers in the field and had the advantage of working in familiar terrain under unified control. UN-sponsored truces in the summer provided belligerents with the opportunity to rearm, while the UN mediator, Count Folke Bernadotte of Sweden, recommended immediate repatriation of the Arab refugees as a condition for any just and lasting peace. His assassination in September by members of the Jewish underground was followed by renewed fighting in October, which lasted until early 1949. When the last armistice was signed in July, the Israel Defense Forces (IDF) had taken over 77 percent of mandated Palestine, including West Jerusalem and the Galilee. The remainder was occupied by Jordan (West Bank and East Jerusalem) and Egypt (Gaza Strip). Palestinian Arabs were not permitted to establish a state and at least 750,000 became refugees through flight or expulsion by Israeli forces.[21] The long-debated "transfer" alternative had now become reality; for Palestinians, the massive dislocation was, simply, their Catastrophe *(al-Nakba)*. Although a General Assembly resolution of 1948 stated that refugees "should be permitted to return to their homes and live at peace with their neighbors," chances for peace in 1949 were lost when Israel refused Arab demands for withdrawal to the partition plan boundaries and the return of refugees. Israel countered that Arab countries had waged war in defiance of the international community and that they could absorb Arab refugees just as Israel was now accepting Jewish refugees not only from Europe but also from the Middle East and north Africa (numbering 335,000 from 1949 to 1952).

The Existence and Legitimacy of States

Under what conditions can a state be said to exist? How does it gain legitimacy? When does a claim for statehood merit international recognition? Each of these questions has been relevant since declarations of independence by Israel in May 1948 and, subsequently, by the Palestine National Council in November 1988. From its inception, Israel has satisfied the minimal conditions necessary for the *existence* of a state, specifically, a permanent population, a fixed geographical territory in which the population resides, and exercise of independent organized governmental control over the population within that territory. State-

hood is more a matter of fact rather than of right. Whether a Palestinian state has met these conditions is discussed by Jerome Segal later in this volume.

Legitimacy

The question of *legitimacy* concerns sovereign power and the implied entitlement to recognition. It can be raised at two levels; whether the state was legitimately *established* and whether the state is legitimately *constituted,* that is, whether its basic laws and institutions conform to minimal demands of justice, for example, observance of human rights and the sovereignty of other nations. Israel's legitimacy has been challenged at both levels.

Upon declaring its independence, Israel was soon recognized by many countries, including the United States and the Soviet Union, and was admitted to the United Nations in 1949. Recognition is certainly *a* criterion of legitimacy, though in the first thirty years of its existence, Arab states refused recognition on the grounds that Israel had been imposed on the Palestinian majority[22] and had seized territory in excess of the area specified in the partition plan. Whether the Partition Resolution itself yields an argument that Israel's establishment was legitimate is a matter of debate. Without the power to convey sovereignty, the recommendations of the General Assembly were not binding (Brownlie 1990, 172–73). Although the International Court of Justice declared in 1950 that the Assembly was the legally qualified successor to the League of Nations with a right to carry out supervisory functions over the mandated territories, it emphasized that mandates were created in the interests of the inhabitants of the mandated territory (Brownlie 1990, 567). Further, the Partition Resolution violated the principle of self-determination (Cattan 1969, 1976; Bassouni 1974; Mallison and Mallison 1986)—one of the few mechanisms for establishing states by law rather than force (Crawford 1979, 84–85).

Feinberg (1970) and Stone (1981) have argued that the Palestine Mandate was itself an application of the principle of self-determination, and the Partition Resolution merely confirmed the "natural and historic right" of the Jewish people in Palestine. The fact that the Arabs of Palestine later distinguished themselves as a national group with a claim for self-determination—not until the 1960s—is "neither a juridical nor moral basis for undoing that initial application of President Wilson's self-determination principle after World War I" (Stone 1981, 58). Thus, regardless of the moral merits of the Partition Resolution or the Mandate, that these agreements *have received* international sanction creates an obligation to respect them. But apart from this, the mode of establishment becomes increasingly irrelevant to a state's legitimacy as it gains recognition, enters into agreements, develops its institutions, and extends its protection to newly born generations that had nothing to do with its emergence. After nearly fifty years, doubts about the justice of Israel's establishment may have been overridden by time.

Nevertheless, a state's legitimacy also depends on its *character,* a matter taken up in the essays by Robert Ashmore, Milton Fisk, Alan Gewirth, James Graff, Erin McKenna, and Manfred Vogel in this volume. Israel prides itself on being both a democracy and a Jewish homeland. While its Declaration of Independence asserts that it is "the natural right of the Jewish people to lead, as do all other nations, an independent existence in its sovereign State," it also proclaims that Israel "will uphold the full social and political equality of all its citizens, without distinction of religion, race, or sex." But Israel has fallen short of this latter ideal. Though one-sixth of its citizens are non-Jews, it remains a *Jewish* state. Its official symbols are Jewish religious symbols, and statutes governing landownership and the Law of Return explicitly favor Jews over non-Jews.[23] Successive Israeli governments have discriminated against Arabs in areas of education, municipal funding, and economic development (Jiryis 1976; Lustick 1980).

The irony that has accompanied Zionism throughout remains: to solve one case of prejudice against a cultural minority it has effectively generated another. *If* a state's legitimacy forbids its basic institutions from *de jure* discrimination against cultural minorities, then the Jewish state—like any state favoring one religious, ethnic, or national constituency over another—is illegitimate. To be sure, this antecedent takes us back to the debate on national self-determination. Whatever its outcome, Israel is a young country—it remains without a constitution—and perhaps it can find a way of fusing democratic ideals with those of a "Jewish" state in which the problems of discrimination will be overcome. In 1991, the General Assembly acknowledged this possibility by rescinding its 1975 resolution describing Zionism as a form of racism, partly because of pressure by the United States, but partly because of a growing recognition that a realistic compromise is possible. In the eyes of much of the world, Israel has gained legitimacy even if it did not possess it at the outset. Yet unless it can find some creative way of harmonizing its national character with equitable relations to the Arabs, the nature of its symbols, laws, and institutions will keep the question of Israel's legitimacy alive.

Expansion

The defeat of Arab forces in the 1947–49 war fostered revolutionary movements in the Arab world, notably in Egypt, where Gamal Abd'l Nasser assumed power in 1952. His resolve in the face of the Anglo-Franco-Israeli invasion of 1956 and his insistence that Israel is an alien presence created and sustained by Western imperialism eliminable only through a unified Arab front, made him one of the more prominent figures in the Arab world for over fifteen years. Yet he miscalculated when he blockaded the Gulf of Aqaba, replaced UN troops in the Sinai with two divisions of Egyptian soldiers, and concluded a defense treaty with Jordan in late May 1967, unwittingly providing Israel with a *casus belli.*

Israel's attack on June 5 destroyed Egypt's air force and routed the exposed Egyptian forces in the Sinai, most of which Israel captured within three days. After fighting broke out in Jerusalem, Israel quickly overpowered the light Jordanian forces, occupied East Jerusalem and the West Bank by June 8, and the Golan Heights by June 11. Nearly one-fifth of the West Bank population fled, finding borders sealed on attempting to return.[24]

The real victory for Israel was not damage to Arab military capacity—this was quickly restored—but the capture of territory later used for political and economic ends, a public relations bonanza bringing increased Western support and Jewish immigration, and defeat of a popular brand of Arab nationalism. Security Council Resolution 242 (November 1967) called for mutual recognition of all states in the region and Israeli withdrawal from the Occupied Territories. But Arab countries were unwilling to negotiate after the humiliating defeat, and Israel denied that the resolution required withdrawal from all the territories. For thirty years, Israel has remained in the Occupied Territories, ruling what is by now more than 2 million Palestinians. In the eyes of the world community, its presence there is subject to international law dealing with belligerent occupancy, specifically, the Fourth Geneva Convention of 1949 (see, for example, Security Council Resolution 446 of March 1979). Allowing for measures of military necessity, the convention forbids alterations of the legal system, forcible transfer or deportation of the resident population, and resettlement by the occupying power of its own civilian population within the occupied territory. Israel has violated these provisions, but contested their application on the grounds that the West Bank (in particular) is "disputed" or "unallocated" rather than the occupied territory of a nation that is party to the Geneva Convention.

The most contentious aspects of the occupation are Israel's settlements and land expropriation (see McKenna's chapter). Though initially confined to sparsely populated areas and large neighborhoods around East Jerusalem, civilian settlements were soon established near heavily populated areas in the West Bank, a tendency accelerated by the Likud government of Menachem Begin. Some settlements were built on land formerly under Jordanian control, but wide tracts of private Arab land were also confiscated. In 1979 the Israeli Supreme Court ruled that requisition of Arab-owned land for civilian settlements was lawful if it furthered the security of the occupying forces and occupied areas.[25]

In its plan for development of settlement in Judea and Samaria 1979–83, the World Zionist Organization said that "settlement throughout the entire Land of Israel is for security and by right" (Mallison and Mallison 1986, 446). In 1980, the government of Israel defended its settlement policy by challenging Jordan's claim to sovereignty in the West Bank and by citing the Mandate provisions that permitted Jewish settlement in Palestine.[26] Israel has frequently cited security concerns to justify control over the West Bank, but as Shlomo Avineri observes, in "the era of missiles launched from distances of hundreds or thousands of kilometers, holding on to the West Bank or refugee camps in the Gaza Strip has

no security significance" (*Ha'aretz,* January 16, 1996). The more likely reasons are resources—Israel takes one-third of its water from the West Bank—and *lebensraum.* Apart from the eastern sectors of Jerusalem, Israel has not annexed the West Bank or the Gaza Strip but, instead, has followed a policy of creating "facts" to make it increasingly difficult for any future Israeli government to envision a complete pullout. According to a UN report in summer 1995, Israel has taken possession of 73 percent of the West Bank alone, with over 17,500 acres confiscated since the Oslo Agreement in September 1993. There are over 140 settlements in the West Bank and 20 in the Gaza Strip. More than 300,000 Israeli Jews have been settled in the territory taken in 1967, approximately 160,000 in East Jerusalem, 140,000 in West Bank settlements, and 6,000 in Gaza (*Jerusalem Times,* August 18, 1995). The settlers themselves are differently motivated; some take advantage of government-subsidized housing while the more ideologically committed act to hasten the incorporation of all "Eretz Israel" (the Land of Israel) into the Jewish state.

Resistance, Retaliation, Representations

In the first half century of conflict, much of the intercommunal violence was waged not on battlefields but in marketplaces, villages, city streets, and buses, with victims being not only those who have taken up arms but civilians. After Israel declared independence in 1948, one side gained the apparatus of state power and a modern military. As the Palestinians regrouped in the 1960s, the arena and methods of struggle broadened, but civilians on both sides continued to bear the brunt of bullets and bombs.

The Recourse to Violence

Israelis and Palestinians alike have cited self-defense in their recourse to arms. Some have also argued that violence has produced desired political results, whether in terms of weakening a political adversary, gaining concessions, attracting attention to one's cause, or unifying one's own community. As the Palestinians could cite the impact of their resistance on British policy in 1939, a similar argument was available to Jews in the 1940s. In articulating his "iron wall" strategy, for example, Jabotinsky justified "retaliation" against Arab attacks even when this involved civilians: "the choice is between . . . retaliating against the hostile population or not retaliating at all" (Schechtman 1961, 480). To Menachem Begin, who headed the Irgun after Jabotinsky's death, armed revolt against the mandatory government paved the way for creation of the state of Israel. Though Begin denied any massacre of Arab civilians had occurred at Deir Yasin, he acknowledged that the story "invented" about what happened there "helped carve the way to our decisive victories on the battlefield" (Begin 1977, 165). Yitzhak Shamir of LEHI also justified the use of terror: ". . . terror-

ism is for us a part of the political battle being conducted under the present circumstances, and it has a great part to play . . . it proclaims our war against the occupier" (Talhami 1990, 236).[27]

In 1946, the Arab Higher Committee predicted that Jewish terrorist organizations will give rise to similar organizations by the Arabs. Frustrated by the lack of respect for UN resolutions calling for their repatriation, a few Palestinian refugees took up arms in the early 1950s in raids against Israeli settlements. Organized resistance materialized only in the late 1950s with the founding of *Al-Fatah.* In 1964 the Palestine Liberation Organization (PLO) was established as an umbrella organization to unite a variety of Palestinian groups. Its charter called for an end to the state of Israel, a return of Palestinians to their homeland, and establishment of a single democratic state throughout Palestine. It was initially led by politicians, but the ascendance of *Al-Fatah's* Yasir Arafat to the chairmanship in 1969 revealed that the engine of the PLO lay in its military wing.

The 1967 war marked a sharp rise in Palestinians' self-consciousness, convincing many that if their homeland was to be liberated, then it was *they* who must do it. Outgunned and outmanned by the Israeli military, their fighters resorted to guerrilla tactics from staging grounds in Jordan and Lebanon. Some, like George Habash of the PFLP—the "Palestinian mirror image of Jabotinsky" (Al-Azm 1988, 98)—spoke of turning the Occupied Territories into an "inferno whose fires consume the usurpers" (Hirst 1984, 282). While this did not happen, by 1969 the activities of Habash and others were in the international spotlight as a consequence of cross-border raids and airplane hijackings. No incident was more spectacular than the hostage taking by the Black September group that led to the deaths of eleven Israeli athletes and five Palestinian commandos during the 1972 Olympic Games in Munich. Israel's response was not only to pursue PLO activists abroad but to bomb targets in Jordan, Syria, and Lebanon. The civilian casualties in these airraids far exceeded those of the incursions that prompted them; after Munich between 200 and 500 people, mainly civilians, were killed (Hirst 1984, 251; and see Khalidi 1989 for additional casualty figures).

Recourse to arms brought mixed results. On the one hand, Palestinians were branded as "terrorists" in the Western press and were accorded little sympathy after Israeli reprisals. On the other hand, their resistance restored a measure of self-respect and confidence, publicized their grievances—after twenty long years of neglect by the world community—and gained them recognition. At the Rabat Conference in 1974, Arab leaders affirmed that the PLO is the sole legitimate representative of the Palestinian people, and later that year the General Assembly recognized the Palestinians' rights to self-determination, national independence, and sovereignty.

War and Massacre

Diplomatic gains in the 1970s reinforced Palestinian willingness to accept a two-state solution of the conflict, but the Israeli government of Menachem Begin

opposed any compromise with the PLO. With his defense minister, Ariel Sharon, Begin planned to destroy the PLO infrastructure in Lebanon. The IDF invaded in June 1982, and after devastating Palestinian population centers in the south of Lebanon and forcing a large exodus of Lebanese northward into Beirut, besieged West Beirut for two months. Entrenched PLO fighters foiled an Israeli attempt to enter West Beruit in early August, and on August 12 the IDF responded with a massive aerial bombardment that was halted only with the intervention of U.S. President Reagan. The Americans then arranged an evacuation of nearly 12,000 PLO fighters in late August.

On September 12, Lebanon's new president, Bashir Gemayel, agreed to Israel's request that Phalangist forces—a militia from one of Lebanon's Maronite faction—eliminate the 2,000 "terrorists" that Israelis claimed were still in Beirut's refugee camps. On September 14, Gemayel was killed in a powerful explosion, and a day later the IDF moved into West Beruit in violation of the evacuation agreement, sealing off the Sabra and Shatilla refugee camps with tanks. Sharon authorized entry of the Lebanese militia on September 16 and for the next thirty-eight hours, aided by Israeli flares at night, the militiamen raped, mutilated, and massacred civilians. The International Committee of the Red Cross gave a figure of 2,400 killed or unaccounted for (Ang 1989, 72), but some bodies had been buried before evacuating and sources among both Phalangists and Palestinians claimed that at least 3,000 people had perished (Hirst 1984, 428). Among the dead, none could be identified as members of any PLO military unit.

The massacre was a wild suspension of law and morality, and the interesting normative questions concern the scope and degree of responsibility. The killers entered the camps at the behest of Israeli officials, who were certainly aware of Phalangist hostility toward Palestinians. An Israeli commission of inquiry ridiculed the claim that a massacre was not foreseen by Israeli officials, especially after Gemayel's assassination, and concluded that "indirect responsibility" rested on the shoulders of Sharon, IDF commanders, Foreign Minister Yitzhak Shamir, and Prime Minister Begin. Presumably, the qualifier "indirect" was based on the assumption that Israeli soldiers did not actually do the killing. Yet, allowing the revenge-seeking Lebanese forces into the camps suggests "complicity in genocide,"[28] if not outright instigation. In other circumstances, those responsible—directly or indirectly—would have been convicted of war crimes.

Some have argued that Israel's invasion was an act of self-defense against Palestinian terrorism and the PLO's avowed aim to eliminate Israel and that the amount of force "was proportionate to the goal of expelling the PLO" (O'Brien 1991, 209). But an armed attack on Israel from the PLO was not even imminent, since the PLO had honored a 1981 agreement to cease cross-border hostilities and was receptive to political compromise. Although the presence of a hostile armed force near its border provided Israel with a rationale, Begin admitted that this was a war of choice (*Jerusalem Post,* August 22–28, 1982). As for proportionality, it is estimated that at least 80 percent of the approximately 20,000

Lebanese and Palestinians killed in the invasion were civilians, many of them killed by cluster and phosphorus bombs. On this account, Israel's aggression failed the test of *jus in bello,* and despite propaganda about combating "terrorists," of all Israel's wars, this drew the most international and domestic criticism.

Comment

The 1982 war revealed the limitations to the logic of political violence, especially when the adversaries are not easily vanquished. As the pattern of strike and revenge persists, the line between oppressors and nonbelligerents is blurred and innocent people become the victims of terrorism, whether committed by guerrilla resistance or state military. The Israeli-Palestinian conflict turns from intrigue to tragedy when we consider the casualties and suffering of civilians from the early 1920s to the mid-1990s. Sabra and Shatilla did not mark the end of atrocity. Besides the civilian casualties of the Intifada (see below) in 1994 a Jewish settler, Baruch Goldstein, murdered twenty-nine Palestinians worshipers in Hebron, and beginning in 1993, Palestinian extremists launched suicide bombings in Israeli streets killing scores of Israeli civilians. Rather than frighten the opposition into submission, each round of violence only intensified the hatred and hardened the will for yet another cycle of vengeance.

Violence and the Media

It has become a familiar observation that only by violence do the oppressed gain a hearing. Yet, as mentioned, the Western media were largely hostile to the Palestinian recourse to arms, especially when civilians were targeted (Picard 1993). To anyone familiar with the Israeli-Palestinian conflict, the discriminatory manner in which the "terrorist" label has been applied conceals the actual facts, a point underscored in Ashmore's chapter in this volume. Because states are viewed as legitimate international actors in a way that liberation movements typically are not, placing a bomb in a car or at a bus stop seemed more sinister than dropping it from an airplane, even though civilians were the victims in both cases. Then too, those sympathetic to Israel had greater access to Western media (Lilienthal 1982, chs. 8–10; Chomsky 1983, ch. 5; Said and Hitchens 1988).

The ethics of journalism are complex. Since news reports influence decision makers and those who place them in power, the obligation of the news media is to produce accurate and relevant representations of what has happened. To even approximate these virtues, it must learn to avoid use of inflammatory language and to put events into historical context. Unfortunately, much of the coverage of the Israeli-Palestinian conflict has sinned on both accounts. A term like *terrorism,* for example, suggests an unlawful and immoral act in a way that *retaliation, resistance,* or *self-defense* do not. To use the former in labeling the actions of one party and the latter in describing the same actions of another is a distortion

that unduly affects the audience's judgments and dehumanizes an entire class of people. The negative connotations of "terrorism" and "terrorist" obscure rather than illuminate. For purposes of understanding, we are better off using them clearly and consistently or avoiding them altogether.

The Intifada

The most noticeable weakness of any defense of Israel's continued occupation is its neglect of the interests of the resident Palestinian population. Since 1967, the Palestinians of the West Bank and Gaza Strip have been denied self-determination and the considerable civil rights enjoyed by Israeli citizens. Their economic development has been stifled, their resources placed under Israel's control, and, perhaps worst of all, their land has been steadily confiscated. They are taxed without representation, and meager government expenditures have resulted in poor education and health services, far below the standards in Israel and neighboring Arab countries. There has been routine censorship, and in several cases Palestinian villages and regions have been renamed. The pattern of land confiscation and road networks has unfolded a type of "Bantustans" arrangement with pockets of Arab population surrounded by Israeli-dominated territory. All of this is done under legal auspices; as Meron Benvenisti pointed out, Israeli rule in the territories is rule *by* law, not the rule *of* law (see Benvenisti 1984; Shehadeh 1985).

Few Palestinians have opted for life elsewhere, preferring to express their attachment to the land in the virtue of *sam'ud* (steadfastness). As the pace of land confiscation and settlements increased under the Likud governments, their protests escalated. The Israeli military responded with force, continuing the pace of imprisonment and deportation while using lethal means against young demonstrating Palestinians. The unrest in 1981–82 in which over forty Palestinians were killed was a prelude to the more widespread protests of the Intifada (1987–93) when opposition to Israeli occupation was expressed not only by daily demonstrations and stoning of Israeli soldiers but also by commercial strikes, nonpayment of taxes, and boycott of Israeli products. The demonstrations, the contexts in which they occurred, and the Israeli response are discussed at length in the chapters by Robert Ashmore, James Graff, and Daniel Statman.

The results of the Intifada were numerous. The spectacle of Palestinian civilians being beaten and shot at by heavily armed soldiers revealed that the Israeli occupation did not possess the "benign" character its supporters had formerly claimed. A split in the Israeli public widened. Citing security concerns, a sizable number felt the IDF response was justifiable, but homegrown human rights groups such as B'tselem and the Israeli League for Human and Civil Rights joined its Palestinian counterpart Al Haq and international organizations such as Amnesty International and Human Rights Watch in documenting brutality. The Israeli philosopher Yeshayahu Leibowitz referred to the sponsors of repression as "Judeo-Nazis" and urged Israeli soldiers to refuse service in the Occupied

Territories, subsequently comparing the Israeli undercover agents who killed Arab teenagers with the members of the Islamic movement Hamas (*Chicago Tribune,* January 25, 1993). The Intifada also changed the perceptions of many Israelis about Palestinians: it "has forced us to acknowledge a nation in revolt rather than individuals" (Hartman 1990, 238). It was a step that moved the parties toward negotiation, perhaps even Palestinian independence. After the Oslo Accords of 1993, Leibowitz said that "every rational person can now see that the Palestinian state has been founded" (*New York Review of Books,* November 4, 1993).[29]

Religious Claims

There are few places on which religious passion pours with such vigor as the *terra sancta* that includes Nazareth, Nablus, Hebron, Safad, and, especially, Jerusalem. The territorial claims of the three Abrahamic religions have long been used to justify political activism and armed aggression. None has made a virtue of tolerance, though a demand for tolerance may be deducible from their fundamental moral canons. But within each tradition there are articulate people who emphasize certain doctrines at the expense of others, scorn rival interpretations, and regard alternative faiths with suspicion. They have used religion to justify political extremism and to cultivate zealots willing to take life on a massive scale—and die in the process. Their presence and numbers make the Israeli-Palestinian conflict a test case to determine whether meaningful compromise between Christianity, Judaism, and Islam is possible.

It is not surprising to find a vibrant strain of religious nationalism within Zionism, especially given the popular justifications for Zionism in terms of divine promise and the religious mission of the Jews. The Ashkenazi chief rabbi from 1921 to 1935 in Palestine, Avraham Kook, taught that redemption of the land is as important as redemption of the people, and he lauded the young Jews of Jabotinsky's Betar movement for being "willing to sacrifice their lives in the cause of their Holy Place" (Smith 1996, 89). "The arousal of desire in the whole nation to return to its Land, to the essence of its spirit and character, reflects the glow of repentance. It is an inner return, despite the many veils that obscure it" (Shimoni 1995, 148). His son, Zvi Yehuda Kook, inspired the messianic *Gush Emunîm* (Bloc of the Faithful) movement that has been at the forefront of Israeli settlement in the West Bank since 1973. He declared that the *Halakha* forbids giving up any land that has been restored to Israel: "There is no Arab land here, only the inheritance of our God—and the more the world gets used to this thought, the better it will be for them and for all of us" (Friedman 1992, 19). Holding that Eretz Israel should be settled and defended at any cost, Kook's followers settled on the outskirts of Hebron in 1970 and in the center of the city in 1979. As settlers protested in the summer of 1995 against any withdrawal of Israeli troops from the territories, a group of rabbis (the Union of Rabbis for the

Land of Israel) reiterated Kook's *Halakha* prohibition and urged soldiers to disobey evacuation orders, angering Prime Minister Yitzhak Rabin (*Chicago Tribune,* July 13, 1995). Yigal Amir, Rabin's assassin some months later, stated that he had been directed by God to prevent Rabin from endangering Israel by handing over land to Palestinian rule: "Everything I did was for the God of Israel, the Torah of Israel, the people of Israel and the Land of Israel" (*New York Times,* March 28, 1996, A7).

No less intense is the Islamic revival among Palestinians, part of a much larger movement spawned, in part, by Western attempts to gain hegemony over the Middle East. It is an important Islamic doctrine to reserve the right of *jihad* for the protection of Dar-al-Islam (the Islamic community). One of the more established Islámic revivalist groups in the Arab world, the *Ikhwan al-Muslimin* (Muslim Brotherhood), considers all of Palestine to be Islamic territory. The Brotherhood rejects a Palestinian state in the territories if that entails recognizing Israel, for such recognition would legitimize the conquest of Muslim land (Abu-Amr 1994, 23). Beginning in the mid-1920s, 'Izz al-Din al-Qassam (see above) advocated a combination of spiritual renewal and militancy to combat British rule and Zionist colonization. Convinced that *jihad* was the only means of liberation, he demanded that funds from the Muslim religious endowment (the *waqf*) be spent on arms rather than mosque repairs (Mattar 1988, 67).

Al-Qassam's legacy lives on in the Islamic movement *Harakat al-Muqawama al-Islamiyya* (Hamas), which emerged from disillusionment with secular Palestinian politics in 1987. Its spiritual leader, Sheikh Ahmed Yasin, currently imprisoned by Israelis, said, "*Jihad* is a duty on every Muslim if the Muslim's land is violated" (Abu-Amr 1994, 59). According to its 1988 charter, Palestine is "consecrated for future Muslim generations," and no Arab country has the right to give it up. The movement works to "raise the banner of God over every inch of Palestine" and insists that "*jihad* is the path, and death on God's path is our most sublime aspiration." Inspired by this policy, Hamas has sent suicide bombers into Israeli streets to sabotage the peace process. The *Islamic Jihad* organization, whose slogan is "God's book in one hand, and the rifle in the other," holds that Israel is integral to a Western plan to divide the Islamic community, "to subjugate it, to enslave it, to paralyze its will, and to cast an eternal yoke over its neck" (Abu-Amr 1994, 102). One of its leaders, Fathi al-Shaqaqi, assassinated in 1995, wrote that elimination of the "Zionist entity" is a religious duty.

Passions aside, religious *claims* bear little normative relevance to resolutions of intercommunal conflict. Philosophers have long realized that disputes can be adjudicated and settled peacefully only if there is *common ground* on which the issues can be approached, and for this reason they have sought normative standards to which any rational being could acquiesce. But discourse within a single religious framework is essentially private and cannot provide that common ground for disputants rooted in different traditions (Fackenheim 1988, 13; Hartman 1990, 232). Each side can clamor all it wishes about the content of God's

decrees, but if the opposition has a different vision of divine will, then propositions about the rights of one and the obligations of another—however "true" they might be—will not generate reciprocal motivations. Both David Burrell and Manfred Vogel address this matter more fully in this volume.

The relevance of religion to the conflict is not so much the bearing of dogma upon normative debate as the capacity of faith to motivate. Since religious affiliation is frequently at the center of an individual's identity, an insult or injury to traditions, rituals, symbols, or beliefs evokes the same sort of emotions that a deeply personal affront might. Reaction varies, but for those already prone to selective emphasis and quick to seek vengeance and restitution, it can result in a willingness to liquidate and be sacrificed. In 1996, after Israelis assassinated Yahya Ayyash, noted for his ability to design bombs strapped to suicide bombers, a Hamas political leader in Gaza was quoted as saying: "Of course there will be revenge against Israel. The principles of the Hamas movement command us not to lose Palestinian blood without revenge." Over 100,000 people attended Ayyash's funeral in Gaza. In the streets some chanted "Death to Israel. We are all Yayha Ayyash. We are all 'Izz al-Din al-Qassam" (*New York Times,* March 15, 1996, A7). Israeli extremists were no less subtle. The gravesite of Baruch Goldstein (see above) in Kiryat Arba became a shrine and place of pilgrimage for his sympathizers. One is reminded of Voltaire's warning that those who believe absurdities will commit atrocities. Yet beliefs are part of the political landscape; to ignore them is folly, while giving them too much credence is to bolster intransigence. At best, those who look to religion for a peaceful solution can appeal to countervailing religious doctrines in working toward acceptable compromise.[30]

Tolerance, Compromise, Tragedy

> *In the adjustment of Jews and Arabs, one-sided bargains are to be dreaded. They spell disaster for the future.*
>
> —Alfred North Whitehead, 1939

Only after a century of conflict have Palestinian Arabs and Israeli Jews begun to negotiate. At all previous crucial junctures, in the early 1920s, in the late 1930s, in 1945–47, they failed to do so because the two national movements did not recognize each other. In 1988 the PLO unilaterally declared a Palestinian state, an acceptance of the UN Partition Proposal, and a readiness to recognize Israel. In 1991 the two sides faced each other across the table. Their first tangible compact was the Declaration of Principles signed in Oslo in 1993, followed by subsidiary agreements in 1994–95. Among other things, these provide for the redeployment of Israeli troops away from Arab population centers in the territories, establishment of a democratically elected Palestinian Authority with limited powers of self-rule, Israeli-Palestinian economic cooperation, and, most important, a five-year period of negotiations on the permanent status of the territories that would address Jerusalem, the settlements, refugees, and borders.

These agreements may seem promising, but there is no guarantee that they will lead to peace. Many Israelis think that they endanger Israeli security (Halkin 1994), and since they do not guarantee self-determination or an end to Israeli occupation they have been received with skepticism by numerous Palestinians—an "offense to the Palestinian spirit" (Said 1996a, 30). It is uncertain what sort of "permanent status" they will produce, if any. Assuming that the status quo is unstable, what sort of options are available as a final resolution of the conflict?

Maximalism

Short of pacifism or skepticism about military solutions, maximalist proposals cannot automatically be ruled out. Israeli maximalists can argue that Zionist aims of providing a haven for Jews and Jewish culture cannot be achieved with anything less than a Jewish state throughout the mandated territory, and they can add that this state will survive because of the Israel's superiority of arms. Arab maximalism need not be Islamic inspired; it can be argued that the existence of a pro-Western Jewish state in the very center of the Arab world constitutes a threat not only to the Palestinian community but to Arab independence and security throughout the Near East. This danger will remain regardless of local treaties.

Rejectionist arguments are appealing in their simplicity and force. They affirm one's initial predilections, put an end to doubt, and provide a decisive response to all requests for sacrifice of ideals. With their long-range optimism they make it easier to endure contemporary discomfort. Yet they are singularly insensitive to the interests of other parties and often devoid of imagination about possible consequences. If anything is clear about the Israeli-Palestinian conflict it is that ardent attachment to maximal ideals will guarantee further violence and bloodshed that might easily assume global proportions. How can Arab rejectionists eliminate Israel in the face of Israel's military superiority and abiding support from a powerful West? How can Israeli maximalists establish peaceful relations with the rest of the Middle East; is their solution not a recipe for either a perpetual state of war or massive genocide?

Toward a Negotiated Solution

"The real task of world statesmanship," said the Lebanese philosopher Charles Malik in 1948, is "to help the Jews and the Arabs not to be permanently alienated from one another" (Arendt 1978, 211). This task cannot be undertaken blindly; are there any normative principles that might guide movement toward a negotiated solution? Whitehead (1939) argued that any attempt to overcome the Arab-Jewish conflict in Palestine required observance of these guidelines:

- The reconciliation of Jewish and Arab interests "must be produced by the Jews and Arabs themselves."

- No solution should depend on the military might of a foreign power.
- Political compromise is essential to political success.
- Indiscriminate extension of European legal ideals to the Near East should be avoided, particularly as regards personal land rights.
- The proposed solutions must be guided by a principle of parity, one that avoids humiliation for either side—"one sided-bargains are to be dreaded."

These strictures may seem "commonplace," to use Whitehead's words, yet they are not easily implemented, especially the demand for compromise given the current imbalance in comparative strength. Long-range vision is required here too, and probably a less rigid stance on perceived justice than one might be first inclined to give. Compromise merits attention because it is less evil than the maximalist alternatives.

What else can be said? James Graff argues later in this volume that both sides must be serious in respecting human rights, for nothing undermines the hopes of future coexistence more than insults to personal and national consciousness that come from persecution. Yet Graff is concerned that however "commonplace" this ideal might be, it is often subordinated to a *realpolitik* and nationalistic hubris that too easily overlooks rights abuses. On the other hand, rigidity about "rights" may be the very obstacle to overcome, especially when the rights of collectives are in question. Leibowitz thought it futile to argue over which "people" has rights to the land; no *nation* as such has rights to land, since "rights" are derived only from human legal institutions (1992, 225–29). The link of a nation or people to any particular territory exists only in the consciousness of its members, and such a mental entity is incapable of sustaining any legal claim to that territory. "This conflict has no 'just' resolution grounded in considerations of law or the 'rights' of the sides" (p. 242). In his contribution, Hugh Harcourt cites Leibowitz in articulating a similar vision, and Robert Holmes is also skeptical that unbending insistence on "rights" is helpful.

While something may be said for each of these proposals, neither resolves the pressing issue of sovereignty. For this, we must consider yet further options.

A Two-State Solution

One widely touted compromise is the two-state solution, an alternative that returns to the principle of partition. To some, it is "the only possible solution to the Arab-Israeli conflict" and the only way for Israel to survive as a Jewish state (Harkabi 1992, 22; and see Leibowitz 1992, 226, 242).[31] Partition is a direct application of parity that accords each community its separate sovereignty while insisting on mutual recognition, and in many ways it is more reasonable now than in 1947. Demography and prevailing institutions have changed; Israeli Jews have established a thriving nation, while Palestinian Arabs have rebounded

after their Catastrophe with surprising vigor and, as Sari Nusseibeh points out in his essay, with a growing sense of national identity.

Achieving this "peaceful divorce" (Oz 1994) between the two communities requires honesty about what has happened and sober-minded realizations of what could happen. It may well be the best solution. But there is a risk; by definition, the two-state scenario would preserve the spirit of nationalism and reinforce the collective memory of past aspirations and grievances. Though it promises temporary breathing space, it can result in polarized "divorcees" competing for resources in a small region where cooperation is essential. It also raises the specter of future conflict driven by concerns to secure what one already has or ambitions to regain what one had formerly lost (Rice 1994, 184–86), especially when one side allies with outside parties to enhance its position vis-à-vis the other. Although a two-state compromise would be an enormous stride toward permanent peace in the Middle East, it would remain particularly vulnerable to political developments elsewhere in the region.

Alternatives

The binationalist alternative remains one way of satisfying the demand for (broad) national self-determination; it permits development of culturally based institutions, although it insists that sovereignty be shared. Milton Fisk speaks favorably of this approach in his essay, whereas Manfred Vogel reiterates earlier misgivings of the Jewish Agency. There is little likelihood that binationalism will be taken seriously in the short run, since it is opposed by both sides. But should continual conflict prove exhaustive, it may once again present itself as the only mechanism for overcoming nationalistic animosity, discrimination, and shortsightedness.

A liberal cosmopolitan state would steer away from any settlement of the conflict in terms of national self-determination. Currently, it is even less popular than binationalism, but, with an eye on long-term stability, no major alternative should be left unexamined. As a *proposal* it awaits a reappraisal of the arguments for national self-determination.

Is Zionism the preferable course in the long run? Is it the best answer to the problems that Jews have confronted during the past century? For the vast majority of Jews today these questions are answered affirmatively: Zionism has been "one of the greater success stories among national movements in the twentieth century" (Reinharz and Shapira 1996, 27), and identity with Israel has become a unifying force for Jews around the world (Avineri 1981, 13). But it should be clear by now that these achievements alone are not enough to justify Zionism. What can? It is doubtful that Israel can provide adequate refuge in the event of renewed anti-Semitism. Less than one-third of the world's Jews currently live in Israel, and the prospects of mass emigration of the remainder is infeasible. Should anti-Semitism become so strident that Jews felt forced to gathered them-

selves into a single state, then, very likely, Israel would itself be targeted, and its citizens would not be immune from the consequences of modern weaponry. It does not take great historical or philosophical acumen to realize that identification with Israel might be a new source of prejudice. Edwin Montagu, the only Jewish member of Lloyd George's cabinet, opposed the Balfour Declaration on precisely these grounds (Smith 1996, 54; Khalidi 1971, 145–47). In 1936 the Nazis exploited Zionist ideology and confirmed Montagu's fears when they conveniently appended to their calls for *Juden Raus!* that of *nach Palestina* (Brenner 1983, 81–86).

Yet these same Nazis marched the eighty-year-old non-Zionist Simon Dubnow to his death, as they did to countless others. Has the modern technological world reached a stage where Jewish culture can flourish only when fully self-governing, where Jews cannot afford again to face annihilation as a minority? One must consider seriously the view of Emil Fackenheim (and others) that the survival of Judaism is dependent on Israel's existence which, "for the profoundest religious reasons, is not negotiable" (Morgan 1987, 303).

Curiously, the experience of the Palestinians in their half-century diaspora lends some support to this separatist logic. Palestinians have been subjected to discrimination under Israeli rule as well in Arab countries where they have minority status. They have been embroiled in civil conflict in Jordan and Lebanon, and Palestinian civilians in Lebanon and Kuwait have been targeted because of PLO political and military activities. It is no accident that a type of "Palestinian Zionism" has emerged within their ranks (Steiner 1975; Al-Azm 1988) and that Palestinian arguments in favor of a "return" *(Awdah)* to their homeland and creation of a separate state should parallel those of Herzl and others. How else are they to end their status as stateless outsiders at the mercy of foreign rule? Ironically, the very success of Zionism has spread the slogan, *Next year in Jerusalem!* more widely than it ever intended. Yet the phenomenon is not a new one for Palestinians, Arabs, or Muslims; the capture of Jerusalem by the Crusaders in 1099 inspired a countercrusade that lasted for much of the next two centuries.

We are back where we began, with rival claims for national self-determination in one and the same territory. Precisely *this* tension is what the liberal cosmopolitan alternative aims to dissolve by breaking the link between sovereignty and nation while handling cultural prejudice and discrimination through the kind of pluralism and tolerance advocated in liberal democratic societies. It is sensitive to Tamir's reminder that humans exist only as members of particular cultures, never in the abstract, but it proceeds as though the opposite were true in the allocation of fundamental rights and duties. Cultural prejudice may be impossible to eradicate, but its harmful effects can be muted by prohibiting official favoritism. A degree of mutual adjustment is inevitable for those who live among people of other cultures. Individuals "assimilate" in speaking a common language and tolerating different lifestyles. Countries themselves adapt to the international community just as their citizens and corporations conform to global

economic standards. To live in a multicultural world is to adjust, but by maximizing tolerance and restricting the role of special cultures in legislation a cosmopolitan state minimizes the demand of uniformity.

Most Jews are likely to continue to live outside Israel, and even if a Palestinian state were created, substantial numbers of Palestinians will remain on the outside. Adaptation is their common experience, and it should not be forgotten how deeply cosmopolitan the history of both peoples has been, not only because of dispersal but also the location of the territory to which both lay claim. Tolerance and intercultural exchange have established roots in the Middle East (Quandt 1996, 11–12), and this should be a source of optimism.

For these reasons, it is unfortunate to think that opponents of a nationalist creed necessarily bear animosity toward a particular cultural group (for example, Bauer 1990, 207; Morgan 1987, 298). The judgment confuses criticism of a political movement with cultural prejudice and is oblivious to alternatives that are equally motivated by concerns for the welfare of that group. Jean-Paul Sartre wrote: "l'antisémitisme n'est pas un problème juif: c'est *notre* problème" (Sartre 1946, 196–97), and so is any discrimination based on the accidents of birth and heritage to which we are even remotely linked. The twentieth century has seen what happens when nationalistic forces circle their wagons or launch their blitzkriegs; the result has not been pretty. In contrast, the cosmopolitan alternative, actively opposed to both everyday bigotry and official favoritism, seems irresistible. Perhaps it has not reached full flower either in reality or imagination.

Tragic Justice

For both Israeli Jews and Palestinian Arabs, the presence of the other is their most significant and inescapable challenge. Whether we agree that their dispute pits "right" against "right," it is no less dramatic by a clash of powerful *convictions.* A central theme of Lynne Belaief's contribution is that the quest for "absolute justice" in this conflict is futile and, consequently, that fixation on the past must be transcended and a "tragic justice" accepted. The Israeli author Amos Oz reminds us that tragedies can be resolved in two ways:

> . . . there is the Shakespearean resolution and there is the Chekhovian one. On the one hand, at the end of a Shakespearean tragedy, the stage is strewn with dead bodies and maybe there's some justice hovering high above. A Chekhov tragedy, on the other hand, ends with everybody disillusioned, embittered, heartbroken, disappointed, absolutely shattered, but still alive. And I want a Chekhovian and not a Shakespearean one for the Israeli/Palestinian tragedy. (Oz 1994, 16)

Yet this is not the last word. One generation's heartbreak and disillusionment is often fuel for another's cause. What is essential is not only *that* both Israelis and Palestinians remain alive, but *how* they remain alive. The safest normative

conclusion is that each must retain enough dignity and capacity for interacting in a manner that is conducive to long-term stability throughout the region. Whether this *will* be achieved remains an open question as the conflict enters its second century.

Notes

1. An early Zionist, Moshe Lilienblum, described nationalism as a progressive trend but noted that "the drive for national self-determination, is the very soil in which anti-Semitism flourishes" (Avineri 1981, 69).

2. Quoted in Avineri (1981, 76). Pinsker insisted that anti-Semitism "as a psychic aberration is hereditary, and as a disease transmitted for two thousand years it is incurable" (p. 77). Against this pathological hatred of Jews, "an inherited aberration of the human mind," polemics are useless (Vital 1975, 129).

3. Avi Erlich (1995) puts the point more strongly: "Had not Zionism been complete and intellectually satisfying in ancient times, and had the ancient Hebrews not bequeathed the idea, modern Israel would never have reemerged, no matter what later Zionists thought or did. In any case, Zionism is not a modern invention, nor is it an idea still trying to define itself, as some of Israel's friends and enemies imagine" (pp. 11–12).

4. The Cohen-Buber debate is excerpted in Mendes-Flohr and Reinharz (1980, 458–62). Responding to Buber, Hermann Cohen acknowledged that while Palestine is the Holy Land of Jewish heritage, the future and "true homeland" of Judaism was in the entire evolving historical world. Writing in 1945, Morris Cohen remained steadfast in his opposition to tribalism "whether it bears the label of Zionism, Aryanism, Anglo-Saxon America, or Pan-Islam" (1946, 333).

5. The term "Arab" is primarily a linguistic, not an ethnic, designation. The Arab inhabitants of Palestine are partly descended from ancient Semitic peoples, and there was no displacement of population when conquered by the Muslims from the Arabian Peninsula in the seventh century.

6. See Garfinkle (1991, 543) on the origins of this slogan. One of the persistent problems in studying the Israeli-Palestinian conflict is the abundance of myth and distortion. The infamous *Protocols of the Elders of Zion* comes to mind, and more recently Peters (1984), which argues that a large segment of Palestinian Arabs immigrated to Palestine at the same time as European Jews. Peters's book was immediately debunked by critics such as Yehoshua Porath, Edward Said, and Albert Hourani, and more recently in McCarthy (1990) and Finkelstein (1995). Forty years earlier, arguments similar to Peters's were presented in Frankenstein (1944, 128–30).

7. A similar view was favored by Albert Einstein in 1938: "I should much rather see reasonable agreement with the Arabs on the basis of living together in peace than the creation of a Jewish state. . . . I am afraid of the inner damage Judaism will sustain—especially from the development of a narrow nationalism within our own ranks (Einstein 1967, 237–38). Lilienthal (1982, 342–43) writes of Einstein's continued opposition to Jewish nationalism even after World War II.

8. There is debate about what was promised to Arabs in the Hussein-McMahon letters. Two days after the agreement, McMahon wrote that the only areas excluded from Arab independence were "portions on the Northern Coast of Syria" (Porath 1974, 322). In a 1937 letter by McMahon to the *Times,* however, he claimed that Palestine "was not or was not intended to be included in the territories in which the independence of the Arabs was guaranteed in my pledge" and that this was understood by Sheriff Hussein (Stone 1981, 146–47). This interpretation did not agree with Lord Curzon's view, nor with the description of Hussein's views by Lloyd George, who wrote that McMahon himself was then (in

1915) "very reluctant" to discuss boundaries despite the insistence of Hussein to include all the area along the eastern Mediterranean coast up to Mersîna, an area that incorporates Palestine even though it was not mentioned by name (Lloyd George 1939, 660–62). See also the discussions in Antonious (1965, ch. 9) and Smith (1996, 43–49, 56–59). On the interpretation of the agreement as a treaty see Porath (1974, 46).

9. This argument was made in a report by the Executive Committee of the Arab Palestine Congress presented to Winston Churchill on March 28, 1921.

10. Crawford reports that self-determination applies mainly to mandated and trust territories (1979, 92–96), while Bassiouni and Fisher speak more broadly of "non-self-governing territories" (1974, 647). In application to established states the principle is primarily a doctrine of nonintervention (thus, Brilmayer 1989, 105). Buchanan (1991a) describes the principle as inherently vague and suggests that its main value is as a "placeholder for a range of possible principles specifying various forms and degrees of independence" (p. 50).

11. The precise status of self-determination in international law is debated (see Emerson 1971). Several authors are explicit that self-determination is a recognized right of certain collectives (e.g., Suzuki 1976, 828; Ofuatey-Kodjoe 1977, 160–67; Mallison 1986, 193; and Brilmayer 1989, 105). Paust (1980) observes that a case can be made for ranking self-determination as a human right, given Article 21 of the "Universal Declaration of Human Rights" (adopted by the UN General Assembly on December 10, 1948). Friedlander (1980, 309), concludes that self-determination is a "principle" of international law, language that is also used in Crawford (1979, 84–118) and Brownlie (1990, 597). On the other hand, Emerson (1964) argues that there is no legal right of self-determination and Pomerance (1984, 337), denies that there is any "single right to self-determination in all cases."

12. See the informative discussion of "self-encompassing" groups in Margalit and Raz (1990). A "people" is more a historical category than a biological one, wrote Buber, whose members are bound together by self-consciousness of their difference from other communities and thus by a "unity of fate" (Buber 1963, 217). Kedourie (1961, 31) describes *nationalism* as the doctrine of national self-determination.

13. It was with just this regional emphasis that the principle was utilized in the Peace Conference, though its application was contested precisely in the "unsettled" regions of Alsace-Lorraine, Upper Silesia, and Palestine due to *nationalistic* pressures. The regional interpretation of self-determination prevails in many discussions of international law (for instance, Crawford 1979, 84–106; Ofuatey-Kodjoe 1977, ch. 7).

14. A fuller version of Lord Balfour's text appears in Khalidi (1971, 201–11). See also the discussion in Lloyd George (1939, 750).

15. Emir Feisal, son of Sheriff Hussein of Mecca and a leader of the Arab resistance in 1915–18, represented the Arab kingdom of the Hejaz and appealed to self-determination in advocating Arab independence. In a 1919 agreement with Chaim Weizmann, Feisal consented to Jewish immigration into Palestine provided that the rights of Arab farmers be protected and "no religious test shall ever be required for the exercize of civil or political rights" (Antonious 1965, 438). Feisal added that the agreement shall be void unless the Arabs achieve independence as promised by the British, and subsequently argued that Arabs would accept only a possible Jewish province in a larger Arab state (Khoury 1976, 12). There was no popular representation of, or support by, Palestinian Arabs in the making of this agreement (Khalidi 1971, 502); to the contrary, there was outright opposition (Muslih 1988, ch.5). In 1925, the lawyer, Quincey Wright, wrote that the terms of the Mandate constituted "a gross violation of the principle of self-determination proclaimed by the Allies" (Quigley 1990, 18).

16. Porath (1974, 44) writes that Wadi al-Bustani was among the first Palestinian Arabs to publicize the apparent incompatibility of the Mandate with Article 22. In 1948

the Palestinians' Arab Higher Committee cited this article in justifying entrance of Arab states into Palestinian territory. For contrasting interpretations see Cattan (1972, 65–68; Feinberg 1970, 41–44).

17. Ben-Gurion echoed this argument: "The conscience of humanity ought to weigh this: where is the balance of justice, where is the greater need, where is the greater peril, where is the lesser evil and where is the lesser injustice?" (Jewish Agency 1947, 325). In 1937 Jabotinsky made the same point in contrasting Arab preference with Jewish need: "it is like the claims of appetite versus the claims of starvation" (Hertzberg 1977, 562).

18. There is evidence that a large segment of the eastern European Jews are descended from the Khazars, a central Asian people who adopted Judaism as their religion and fled westward to escape the Mongol invasions (see the sources cited in Quigley 1990, 70–71, 259). Wexler (1996) argues that Sephardic Jews primarily descend from converts to Judaism in Asia, North Africa, and the Iberian Peninsula. Thus, any constancy of historical presence or of right to "return" belongs, at best, to a cultural unit, not to an ethnic community united by historical ancestry.

19. This point was made in the 1946 Anglo-American Committee's report (Esco Foundation 1947, 1225). The American philosopher William Ernest Hocking wrote that the Zionist territorial demands were "like asking for a microscopic section across one wrist" (Hocking 1945, 222).

20. This statement was made by Asaf Ali, delegate to the United Nations from India in 1947 (Robinson 1971, 201).

21. The figure of 770,000 is given by Flapan (1987, 216), whereas Morris sets it from anywhere between 600,000 and 760,000 (1987, 298), and Khalidi at 727,700 to 758,300 (1992, 582). For many years, defenders of Israel propagated the notion that the Arab refugees left their homes at the behest of Arab authorities; for example, Abba Eban in a 1958 speech (Laqueur 1976, 151–64). This myth has since been exposed (see Childers 1961; Flapan 1987; Morris 1988; Finkelstein 1995). The refugees and their descendants currently number over 3.5 million.

22. A statement by Ben-Gurion in 1956 is revealing: "Why should the Arabs make peace? If I was an Arab leader I would never make terms with Israel. That is natural: we have taken their country. . . . Why should they accept that?" (Goldman 1978, 99).

23. Emil Fackenheim writes that the Law of Return is next in importance to the Jewish essence of Israel as the Return itself (1988, 14). Michael Rice, in contrast, finds the law to be "a nakedly racialist concept" because it allows any Jew, from the Hungarian banker to the Yemenite farmer, a right to immigrate to and become a citizen while denying the same to Palestinian indigenes to whom it stands as "a most cruel affront" (Rice 1994, 41–42). See the brief but interesting defense of the law in Margalit and Halbertal (1994, 509–10).

24. There is a debate about whether this was a just war. According to Walzer (1977), Israel's existence was imperiled by Egypt's military buildup, making its anticipatory strike a "clear case of legitimate anticipation" (p. 85), but there is little to support the charge that Nasser was preparing an invasion that justified Israel's strike. U.S. intelligence reports to Israelis in late May indicated that Egypt had no plans for attack and that Israel would prevail in any case, an assessment subsequently confirmed by Israeli Generals Yitzhak Rabin, Matetiyahu Peled, and Ezer Weizmann (Lilienthal 1982, 557–58).

25. The Israeli defense minister at the time, Moshe Dayan, was one of the sponsors of Israeli settlement in the territories. He argued that "there is nothing sacred about the previous map from 1948" and that settlements are important in contributing to the creation of "a new psychological reality" (Lustick 1993, 357–58).

26. See Moore (1991, 729–34). Stone (1981, 167–82) has defended Israel's position, and so has Rostow (1990) who speaks of settlers as "volunteers," not "transferees," and

argues that the Jewish right of settlement in the territories is conferred by the British Mandate. Others have criticized Israel's refusal to accept applicability of the Fourth Geneva Convention. See, for example, Mallison and Mallison (1986, ch. 6); Quigly (1990, ch. 24); Roberts (1990). See also the discussion in Benvenisti (1993, ch. 5).

27. Recourse to violence by Jews and Arabs produced comments from curious quarters, putting advocates of peace such as Mahatma Gandhi and Martin Buber at loggerheads. Writing in 1938, Gandhi emphasized that it is "wrong and inhumane to impose the Jews on the Arabs" and that "according to the accepted canons of right and wrong, nothing can be said against the Arab resistance in the face of overwhelming odds" (Gandhi 1938, 367–69). Responding in a 1939 letter, Buber wrote: "in view of the accepted canons you cast a lenient eye on those who carry murder into our ranks every day without even noticing who is hit" (Mendes-Flohr 1983, 120). Gandhi did not reply, nor did he waver from his opposition to Zionism and to the activities of the Jewish underground in the 1940s (Jansen 1971, 179).

28. This was how the International Commission chaired by Sean MacBride described Israel's responsibility for what occurred at Sabra and Shatilla (Mallison and Mallison 1989, 400).

29. A similar view was expressed by Israel's environmental minister, Yossi Sarid (*Chicago Tribune,* January 23, 1996). But it was not shared by then prime minister elect, Benjamin Netanyahu, who responded to Arafat's claim of a Palestinian state with "never" (*Chicago Tribune,* June 6, 1996).

30. Many Jewish religious thinkers have carried on the tradition of Ahad Ha'am and Martin Buber in their sensitivity to Palestinian aspirations. Though a committed Zionist, Yeshayahu Leibowitz found the worship of the land of Israel as a form of idolatry and argued that religion forbids regard for state and nation as absolute or religious values (1992, 210, 227). Israel's physical survival depends on its moral survival and continued settlement will add fuel to the flames and render dialogue with Palestinians impossible: "Honest dialogue is not possible between rulers and ruled: it is possible only between equals" (p. 240). David Hartman has stressed that the *Gush Emunîm* is not the only voice drawing on Jewish theological tradition (Hartman 1990, 241). Warning the Jewish extremism is a threat to Israel, he cautions that permanent control over Palestinians will destroy the centrality of Israel for world Jewry: "We will not heal our own rage and frustration through military control over the Palestinians but only through dealing constructively with their will for self-determination" (Hartman 1990, 227). Among Palestinians religious thinkers, Sheikh Akrimeh Sabri, a member of the Supreme Muslim Council, states that no one of the three religions has an exclusive claim to Palestine and that, consequently, peace requires "mutual respect, a recognition of rights on all sides" (Bergen et al. 1991, 121). Reverend Naim Ateek (1989) reaches into the Christian tradition of compassion and forgiveness in calling for mutual recognition of Israelis and Palestinians and for a "dynamic, healthy federation" of states in the Near East (p. 172).

31. The two-state solution comes in different forms, one calling for an independent Palestine in the territories, the other for a federation of the Palestinian state with Jordan, and yet another for a Palestinian state only in Jordan. The latter shares most of the drawbacks of one of the maximalist approaches.

1

The Right to National Self-Determination

Yael Tamir

I have seen, in my times, Frenchmen, Italians, and Russians: I even know, thanks to Montesquieu, that one may be a Persian; but as for Man, I declare I have never met him in my life; if he exists, it is without my knowledge.

—De Maistre

The right to national self-determination has often been at the crux of the modern political debate, but theoretical analyses of this right are few and far between. Most of this analysis has been the work of international lawyers and is therefore highly influenced by legal and political precedents. Political philosophers have also tended to infer the content of this right from past and present political arrangements, and have therefore suggested that the core content of national self-determination is the right to determine whether "a certain territory shall become, or remain, a separate state."[1] The thrust of this right, in the interpretation which has become prevalent in the postcolonial era, is that "a people—if it so wills—is entitled to independence from foreign domination, i.e. it may establish a sovereign state in the territory in which it lives and where it constitutes a majority."[2]

I shall take issue with this approach and argue that, at the core of the right to national self-determination, lies a cultural rather than a political claim. The right to national self-determination is the right of a nation to preserve its existence as a unique social group. This right is distinct from the right of individuals to govern their lives and to participate in a free and domestic political process.

The cultural interpretation of the right to self-determination has two main advantages: (1) it allows us to understand this right in the context of similar rights granted to other cultural groups such as ethnic minorities and indigenous people; (2) it is better suited to a world in which the sovereignty of separate nation-states is declining while the importance of federal and regional political arrangements is growing.

The view that the right to national self-determination is, first and foremost, a

cultural claim is heavily dependent on a perception of nations as particular types of cultural communities. My first step, therefore, will be to substantiate this perception.

Nations, States, and Cultural Communities

Nation is a very elusive concept, and it might therefore be advisable to begin by determining what a nation is not: a nation is not a state. This statement might seem to be obvious, but it is not. A report on nationalism, written by a study group at the Royal Institute of International Affairs, defines nation as "used synonymously with 'state' or 'country' to mean a society united under one government." This sense of the term does not merely reflect the prevalent common speech usage, but appears in such official expressions as "law of nations" or "League of Nations."[3]

This identification between state and nation is endorsed by Weil, who claims that "there is no other way of defining the word nation than as a territorial aggregate whose various parts recognize the authority of the same State."[4] Complementary claims are made by Deutsch, who defines a nation as "a people who have hold of a state,"[5] and by Hertz, who asserts that the identification of a nation with a people constituted as a state is very widespread and that, according to this view, "every state forms a nation and every citizen is a member of the nation."[6] Thus there is no adjective in English derived from the noun state, and the term national is employed for designating "anything run or controlled by the state, such as the national debt or national health insurance."[7] These definitions might lead to the conclusion that state and nation are identical concepts or, at least, two aspects of the same concept—one relating to the institutional sphere and the other to the individuals who participate in the formation and activities of these institutions. We would therefore expect the definition of state, reciprocatively, to include parameters found in the definition of nation. However, this is not the case: the concept nation, if at all mentioned when defining state, appears in the combination nation-state as one of various possible forms of a state. *The Encyclopedia Britannica* defines state as the political organization of soeiety. The term is used in two ways, one more general, to refer to a body of people who are politically organized, and the other more specific, meaning the institutions of government. It is distinguished from other associations by its goals, by the methods it employs in accomplishing these goals, by the marking of territorial limits, and by its sovereignty. Sovereignty distinguishes the state from other kinds of human associations: it entails the monopoly of power as well as the creation and control of law.

According to Dyson, the main characteristics of the state are: the specific quality of its authority (its sovereignty), its extraordinary and growing resources of physical power, and its well-defined territory.[8] None of these features is considered an essential characteristic of the concept "nation."[9]

In his concluding remarks on the development of the concept state in the *Dictionary of the History of Ideas,* D'Entreves predicts that the nation-state will be replaced by "a new supranational state." He follows this hypothesis with an interesting question:

> But will this [the disappearance of the nation-state] mean the disappearance of the state, its "withering away"—to use the familiar Marxist phrase? So long as there will be an organization capable of controlling force, regulating power and securing allegiances, one thing seems certain . . . that organization will still be a state.[10]

For D'Entreves, then, the link between states and nations is a historical coincidence which should not blur the conceptual distinction between them. As Seton-Watson rightly emphasizes, a state is "a legal and political organization with the power to require obedience and loyalty from its citizens," while a nation is "a community of people, whose members are bound together by a sense of solidarity, a common culture, a national consciousness."[11]

How then did the conceptual confusion between nation and state arise? One explanation would see it as part of a deliberate attempt to obscure the difference between the claim that every nation ought to have a state—or, rather, that every state ought to derive its legitimacy from a nation—and the claim that a nation as a state. The attempt to present the nationalist slogan "one people, one country, one language" as descriptive rather than normative illustrates well the tendency to identify state and nation.[12] Yet the wide prevalence of this false identification is due not only to the conscious attempts of nationalists; rather, it resulted from the historical processes that accompanied the emergence of the modern nation-state.

Let us look back at this formative period—the end of the eighteenth century. Following Rousseau's philosophy and its influence on the ideology of both the American and French revolutions, the state has been identified with its subjects rather than with its rulers. This belief, that the state should he the "institutional representation of the people's will,"[13] lies at the heart of the American and French revolutions. These revolutions thus mark a substantial shift in the type of legitimacy sought and claimed by political institutions—from divine or dynastic rulers to popular voluntary consent. This shift has placed the democratic ideal of self-determination, perceived as the right of the citizens to rule themselves, at the core of modern political thought.

The history of self-determination is bound up with the history of the doctrine of popular sovereignty proclaimed by the French Revolution. Government should, according to this view, be based on the will of the people. In the context of the French Revolution, self-determination is therefore seen as "a democratic ideal valid for all mankind."[14]

This fit between the democratic universalistic ideal and the emerging national ideology was contingent on the political realities of the period, since the body of citizens empowered to participate in political matters was identical with the

nation. This identification emerged in the course of the revolutionary processes. The American Revolution created a new nation, including all the individuals who had been entitled to political participation before the Declaration of Independence and excluding all those who had lacked political rights. Thus there was a complete overlap between the citizens of the state and the members of the nation. The right to national self-determination became equivalent to the right of the people to self-rule. So strong was this identification between state and nation that it still holds today, and in the United States the term nation refers to the federal state.

A different process, though with similar results, unfolded in France. While in America the new state had created a new nation, in France the nation had established a state and identified it as the fatherland. As Abbe Volfius put it in 1790:

> The true fatherland is the political community where all citizens protected by the same laws, united by the same interests, enjoy the natural rights of man and participate in the common cause.[15]

Hence at this particular historical stage, the question of who constitutes the people—the members of the state or the members of the nation—seemed irrelevant: in the French case, because the nation had created the state, and in the American case, because the state (the union) had created the nation.

Consequently, the nation—now equated with the body of citizens—came to be understood as the "body of persons who could claim to represent, or to elect representatives for, a particular territory at councils, diets or estates."[16] It therefore became widely accepted that "the principle of sovereignty resides essentially in the nation; no body of men, no individual, can exercise authority that does not emanate from it." Accordingly, the Third Estate proclaimed itself to be the true representative of the nation and thus the rightful holder of state power.

The nation became the unique symbol of fellowship among all members of the political framework, as well as the tie between the rulers and the ruled. A new political norm ensued, fostering the belief that "the legitimating principle of politics and state-making is nationalism; no other principle commands mankind's allegiance."[17] The shift from a justification relying on democratic principles to one based on national ones, from a belief in the right of citizens to self-rule to support for the right of nations to self-determination, was completed. The transition was smooth and the internal contradictions between the democratic version and the national one were not apparent.

In contemporary political discourse, the right of individuals to determine their government remains a basic tenet of both liberal and nationalist doctrines. Yet, since the end of the eighteenth century, history has been marked by a series of social, economic, and political changes caused by immigration, the establishment of new states inhabited by more than one nation, and the inclusion of groups which had previously been excluded from the political process. All these have marred the identification between the citizens of the state and the members of the

nation—collapsing together the democratic ideal of self-rule and the belief in the right of nations to self-determination no longer seems plausible.

Today, there are hardly any states that are nationally homogeneous but, surprisingly, our political discourse has not adapted itself to these developments. As late as 1960, when the Covenant on Human Rights was drafted, it was clear that neither people nor nation had ever been adequately defined, and a disquieting confusion reigned between these two concepts and the concept of majorities.

The norm that the only valid source of state legitimacy is the nation still prevails. As a result, every group of individuals who consider themselves a nation desire to establish their own independent state, and members of each state desire to transform themselves from a population into a nation. Governments which are pressured to prove that they represent nations rather than mere gatherings of individuals develop an interest in homogenizing their populations—they intervene in the populations' languages, in their interpretations of history, myths, and symbols or, to put it more broadly, in their cultures. Thus the modern state becomes an agent for cultural, linguistic, and sometimes religious unification—it attempts to build a nation. However, we should remember our starting point; though nations may attempt to establish states and each state may prefer to present itself as representing a nation, these two concepts are mutually independent.

The above discussion has clarified what a nation is not. I will now seek to take on the much more difficult task of elucidating what it is.

What Is a Nation?

The modern concept of nation-building, namely, the intentional creation of a nation, might help to shed light on this question. Osterud defines nation-building as the sum of politics designed to promote national integration:[18] "Nation-building is an architectural metaphor for the process induced within a state to integrate the country and tie the inhabitants together in a national fellowship."[19] The ideal of national fellowship symbolizes a belief in the existence of special ties and obligations among members of the nation that nationalists wish to see as a natural outcome of a shared faith and a common history. However, there appears to be a contradiction between the concept of a nation as a natural community and the idea of nation-building. This tension has evoked a compulsive tendency to "go back" to the ancestral origins of new nations, clinging to even the faintest evidence of historical continuity and supporting blatantly false claims in order to "prove" that the nation's roots lie in a distant past rather than in the bureaucratic decision of some foreign office or in some international agreement:

> Nationalism teaches that all nations have a past by definition, those movements which could not fall back upon a community with long and rich cultural heritage sought to imitate those which could do so by, if necessary, "inventing" or rather "rediscovering" and annexing history and cultures for their

> communities, in order to provide that cultural base without which no nationalism can attain widespread legitimation.[20]

The histories of nation-states are saturated with invented traditions.[21] Invented tradition is defined by Hobsbawm as "a set of practices, normally governed by overtly or tacitly accepted rules of a ritual of a symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past."[22] Invented traditions are the result of this urge for continuity, of a desire to present at least some parts of social life as unchanging and invariant in the midst of an ever-changing world.

The concept of nation-building, its internal tensions and contradictions notwithstanding, provides clues to the understanding of the concept nation or, rather, of the illusion of what a nation is: a nation is a group of individuals who feel themselves linked by special ties because of their mutual relations, which are further enhanced through their sharing in the same history, traditions, and culture.

No set of objective facts could be defined as necessary and sufficient for the creation of a nation. Attempts to single out objective features—common history, collective destiny, language, culture, religion, territory, climate, race, ethnicity—have failed, though all have been mentioned as characteristics of a nation. Although no nation will have all of them, all nations require a "sufficient number" of these characteristics in order to exist. There is only one subjective fact necessary for the existence of a nation—a national consciousness. The best we can say, according to Cobban, is that "any territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community, is a nation."[23] A similar claim is made by Seton-Watson, who asserts that a scientifically precise definition of a nation is impossible and, at best, this phenomenon can be said to exist when "a significant number of people in a community consider themselves to form a nation, or behave as if they formed one."[24]

In fact, there are two features that constitute a nation, says Renan: "One is a possession in common of a rich legacy of remembrances; the other is the actual consent, the desire to live together, the will to continue to value the heritage which all hold in common. The existence of a nation (pardon this metaphor!) is an everyday plebiscite."[25] It might appear that, according to Renan, the "legacy of remembrance" and the "common heritage" are objective facts, that we could look at the histories of social groups, their norms of behavior and their customs, and find out which constitute a nation and which do not. However, for Renan, "a shared amnesia, a collective forgetfulness, is at least as essential for the emergence of what we now consider to be a nation."[26] Thus nations choose not only what to collectively remember but what to collectively forget; the French nation tends to emphasize its oneness rather than the specific histories and traditions of the Bretons, Provencaux, Burgundians, Germans, Basques, and Catalans, just as the English nation disregards the differences between Britons, Angles, Saxons,

Jutes, and Danes in order to promote a feeling of unity. As I have said before, nations, old as well as new, invent traditions, reinterpret their cultures, construe their histories, forget differentiating features, and embrace common characteristics in order to create the illusion of a "natural" unit that has a long and mostly glorious history and a promising future.

There is, however, nothing natural about nations. "Nations are not something eternal. They have begun, they will end."[27] Renan denies any naturalistic determination of the boundaries of nations. Nations are not created by language, geography, race, religion;[28] they are creations of the human will.

It is important at this point to differentiate between two closely related terms—nation and people. Although in the literature the two are quite frequently used interchangeably, I would like to draw the following differentiation: while "nation" refers to a cultural community conscious of its particularistic existence, "people," as Disraeli puts it, is a concept of natural history—"a people is a species." Thus "people" belongs to the same social category as "family" and "tribe," namely, to those social units whose existence is independent of their members' consciousness. It follows that there must be some objective facts, such as relations of blood, race, a defined territory, and so on, that will allow one to define a people without reference to the awareness of its members. The endurance of nations, unlike that of peoples or of ethnic groups, depends on the presence of a national consciousness, on the will of individuals to determine themselves as members of the nation and to actively associate their common future.

A nation exists when individuals are able to recognize each other as members and come to believe that their membership carries with it special mutual responsibilities. The role of mutual recognition and exclusion in the formation of a nation is of the utmost importance. Hence, belief in the existence of some shared characteristics, which will allow members to recognize each other, as well as exclude nonmembers, is essential for the formation of a nation:

> Two men are of the same nation if and only if they recognize each other as belonging to the same nation. In other words, nation marketh men; nations are artifacts of men's convictions and loyalties and solidarities. A mere category of persons (say, occupants of a given territory, or speakers of a given language, for example) becomes a nation if and when the members of the category firmly recognize certain mutual rights and duties to each other in virtue of their shared membership of it. It is their recognition of each other as fellows of this kind which turns them into a nation, and not the other shared attributes, whatever they might be, which separate that category from non-members.[29]

A nation is a distinct group of individuals recognizable to each other as well as to nonmembers. This recognition is often based on the belief that it is possible to identify other members of one's nation, since all members of a nation share norms, beliefs, and patterns of behavior that are constitutive of their personalities, hence generating a "national character." This concept is much disliked

nowadays, yet it is useful in turning our attention to the importance of cultural influences in identity formation.

Although most generalizations inherent in the concept of national character are stereotyped, all of us still go through the "guessing game"—trying to identify our fellow nationals and telling ourselves "I can pick them out at first sight." This sense of familiarity and recognition is fundamental to our understanding of the concept nation: the belief in the presence of certain shared and identifiable characteristics strengthens the assurance in the existence of the nation.

What are the distinguishing factors that allow members of a nation to recognize each other and distinguish between members and nonmembers? I shall define this set of distinguishing characteristics as culture. According to the social definition of culture, culture is a "description of a particular way of life, which expresses certain meanings and values not only in art and learning but also in institutions and ordinary behaviour."[30] Culture, defined as a set of symbols, language and group patterns, allowing for mutual recognition, is essential to the existence of a nation. Its necessity derives from the fact that it serves as a means of demarcation, as a means of imagining members of the nation. Hence, as Gellner rightly suggests:

> Two men are of the same nation if and only if they share the same culture, where culture in turn means a system of ideas and signs and associations and ways of behaving and communicating.[31]

But culture does not function only as a means of recognition, or else it could be substituted by a set of arbitrary characteristics: culture is believed to represent a historical continuity.[32] Culture, by definition, has a past, a history, "the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values."[33] Through this alleged connection with the past, culture supports the nation's pretension to be "natural," genuine, and unique.

However, as Anderson suggests, communities are to be distinguished not by their falsity or genuineness, but by the style in which they are imagined. Nations are imagined through culture, and are therefore "cultural artifacts of a particular kind."[34] Claiming that a nation is a community imagined through culture implies that the two most important features of a nation are the willingness and the ability of its individual members to imagine it. This willingness is the voluntary active element of national consciousness. It is this willingness to structure our imagination in a particular way—emphasizing the importance of national ties, and the distinctiveness and uniqueness of our nation—that grants nations their existence.

Obviously this definition of a nation, as a community imagined through culture, raises many questions. There are many types of cultural groups, some as large as Western civilization and others as small as the Amish community. Some

are concentrated in a particular area while others, small as they may be, are separated—such as the Habad community, which is located both in Williamsburg, New York, and in Kefar Habad in Israel. Intuitively, we would not tend to define these groups as nations, though they might be seen to fall within the parameters of the above definition. How then can we distinguish between nations and other cultural groups? I have found no satisfactory answer to this question, but I cannot draw more rigorous boundaries either. Greater precision, if at all possible, would force us to overlook the immense variety of social phenomena laying claim to the title nation. Limitations concerning numbers, territory, or language are generally advanced by established nations in order to prevent others from achieving the recognition that they themselves have already acquired.

I would therefore suggest that, if and when members of a particular group define themselves as a nation, they are one. I think that this definition is valuable even if it gives rise to a certain number of marginal, borderline cases. The fact is that most claims for national self-determination are put forward by groups to whom the term nation applies without many difficulties. Yet, as my analysis of the nature of the right to national self-determination will demonstrate, the whole issue of "borderline" cases and the fear of fragmenting the political system as a result of loose definitions of the term nation has been highly overrated. This fear is nurtured by the suspicion that behind all demands for national recognition lurks a separatist claim for the establishment of an independent nation-state.[35] But, as I will demonstrate, the right to national self-determination is meant to assure individuals of their rights to preserve their national life; under no circumstances does this imply that they must always do so within the framework of an independent state. If my assumption is correct, then the need to attend to the justified demands of all nations, small or big, old or new, does not necessarily imply the fragmentation of the world into an endless number of small nation-states.

But before we turn to discuss the practical implications of the right to national self-determination we should consider the justification of this right. On what grounds do nations establish their right to national self-determination?

A Right to National Self-Determination

The right to national self-determination has been at the heart of the political debate at three turning points in the twentieth century: after World War I, during the days of Wilson's Fourteen Points; after World War II, throughout the process of decolonization; and at the end of the 1980s, following the upheavals in Eastern and Central Europe. A different justification was adduced for this right at each of these points, in line with the ambiguities entailed by the definition of nation alluded to above.

National self-determination has been historically interpreted in two distinct ways. Each version refers to a different definition of the term nation and hence derives its justification from the protection of a different interest:

(a) The cultural version, in which the nation is defined as a cultural community sharing a language, a tradition, and a historical-national consciousness. Self-determination is understood as the right of a nation to preserve its national and cultural uniqueness. It is meant to secure the ability of individuals to create political institutions and manage communal life in accordance with the customs and traditions of the people.
(b) The democratic version, in which the nation is defined as "the governed"—the group of individuals living under the same rule. In this case, self-determination is understood as the right of individuals to participate in the governing of their lives. This right relies on the principle explicitly affirmed in the 1947 Universal Declaration of Human Rights: "Everyone has the right to take part in the government of his country directly or through freely chosen representatives."

I argue that these interpretations offer two independent approaches toward fundamental principles concerning the formation and development of states. Only the first version suitably reflects the right to national self-determination. The second is concerned with ideals unrelated to national ideologies and relies on liberal democratic justifications. Nevertheless, both the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966) still define the right to self-determination as follows:

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[36]

This definition certainly falls within what I have called the democratic version of the right. Its thrust is that "a people—if it so wills—is entitled to independence from foreign domination, i.e. it may establish a sovereign state in the territory in which it lies, and where it constitutes a majority."[37] It assumes that, as a rule, peoples deserve to be self-governing.

Yet self-rule and national self-determination are distinct concepts, differing in both their individualistic and communal meanings, representing two distinct human goods and deriving their value from different human interests. In its individualistic aspect, self-rule is a component of personal autonomy, dealing with the right of individuals to govern their lives without being subject to external forces prescribing "do's" and "don'ts." On the other hand, national self-determination is only one facet of the general right to self-determination, which concerns the right of individuals to define the sort of person they want to be—their moral and cultural identity. In their individual version, both rights celebrate personal autonomy and the right of individuals to make constitutive choices: self-determination concerns the way in which individuals define their

personal and communal identity, while self-rule emphasizes the process by which they set their ends and strive toward them.

In its communal aspect, national self-determination entails a process whereby individuals seek to express their national identity within the public sphere. Hence, it is often described as the right of people to have a public space where they can live in accordance with the customs and the traditions of the people. The right to national self-determination thus implies that individuals should be allowed to establish institutions and manage their communal life so that these will reflect their communal values, traditions, and history or, in short, reflect their culture. The communal aspect of self-rule refers to the process through which individuals have a say in the determination of the ends and means adopted by the political group to which they belong, thereby placing the right to participate in the political process at its core. Hence, self-rule is the expression of the claim stated in the Universal Declaration of Human rights that "everyone has the right to take part in the government of his country directly or through freely chosen representatives." Accordingly, if individuals participate in a fair political process—where all members are given an equal chance to take part as well as to present and convince others of their views—they could be said to enjoy self-rule.

It is important to stress that claiming that one enjoys self-rule does not necessarily imply that one's preferences are accepted. At the conclusion of a fair process, individuals might find themselves in a minority position and unable to influence, let alone imprint the political process with their culture, beliefs, or norms of behavior. However, they can hardly claim that their right to self-rule has been violated. In pluralistic and heterogeneous communities—such as most modern states—it is inevitable that one will be outvoted on a variety of issues. Hence, if given a fair opportunity to participate in the process that structures their lives, individuals can be said to enjoy self-rule regardless of the results of this process.

But national self-determination is related not only to the right to participate in determining the cultural nature of the social and political system, but also to the results of this process. National self-determination is said to be attained only when certain features, unique to the nation, find expression in the political sphere.

Some examples might help to clarify the distinction between self-rule and national self-determination:

(a) The process of European unification might, at the end of the day, lead to the creation of one European state in which all European citizens enjoy a full range of civil rights; this state would allow all Europeans to fulfill their right to self-rule but would not allow them to materialize their right to national self-determination.
(b) A nondemocratic nation-state deprives members of the nation of their right to self-rule but not of their right to national self-determination.

> History has taught us that individuals might desire to secure status and recognition for their nation even at the cost of relinquishing civil rights and liberties. The yearning for national self-determination is different from, and may even contradict, the liberal democratic struggle or civil rights and political participation. The Human Rights Committee might hence have been misled when assuming that the right to national self-determination is of particular importance "because its realization is an essential condition for the effective guarantee and observance of individual human rights."[38] Members of nations granted national self-determination can, and indeed have, established regimes that restrict the human rights of their fellow nationals, while individuals can enjoy a full range of civil rights even when not governed by their fellow nationals. Therefore, the formulation of the rights of minorities to national self-determination in civil-rights terms, adopted by the UN Charter, is particularly alarming, since it might suggest the endorsement of an assimilationalist ideology presuming that "in a world where individual rights are fully protected, minority groups will disappear with time and the 'nationality problem' would cease to pose a threat to world stability."[39]

As is evident from the above examples, national self-determination has little to do with civil rights and political participation—it is the search, as Berlin defines it, not for Millian freedom and civil liberties but for status. This is neither a struggle for the "equality of legal rights" nor for the "liberty to do as one wishes" (although one may want these too) but for status and recognition. It expresses the desire to live in a meaningful society where one feels (rightly or as a result of a comfortable illusion) a sense of familiarity or even identification with the rulers:

> It is this desire for reciprocal recognition that leads the most authoritarian democracies to be, at times, consciously preferred by its members to the most enlightened oligarchies, or sometimes causes a member of some newly liberated Asian or African state to complain less today, when he is rudely treated by members of his own race or nation, than when he was governed by some cautious, just, gentle, well-meaning administrator from outside. I may feel unfree in the sense of not being recognized as a self-governing individual human being; but I may feel it also as a member of an unrecognized or insufficiently respected group: I wish for the emancipation of my entire class, or community, or nation, or race, or profession. So much can I desire this, that I may, in my bitter longing for status, prefer to be bullied and misgoverned by some member of my own race or social class, by whom I am nevertheless recognized as a man and a rival—that is, an equal—to being well and tolerantly treated by someone from some higher and remoter group, who does not recognize me for what I wish myself to be. This is the heart of the great cry for recognition on the part of both individuals and groups, and in our own day, of professions and classes, nations and races.[40]

Individuals wish to be ruled by institutions imprinted by a culture that they find understandable and meaningful, and therefore allows a certain degree of transparency that facilitates their participation in public affairs. When one can identify one's own culture in the political framework,[41] when political institutions reflect familiar norms of behavior, traditions, and historical interpretations, one's conception of oneself as a creator, or at least a carrier, of a valuable set of beliefs, is reinforced.

Contrary to the widespread liberal assumption, the right to national self-determination cannot be reduced to other human rights, and particularly to the right to political participation and freedom of speech, press, assembly, and association As has been demonstrated, the claim that if civic rights are fully respected, "it is difficult to see how the right to self-determination could be denied"[42] has proved inadequate. Members of national minorities who live in liberal democracies, like the Quebecois and the Indians in Canada, the Aborigines in Australia, or the Basques in France, are not deprived of their freedom and civil liberties. Their grievances are altogether different. They feel marginalized and dispossessed because they are governed by a political culture and political institutions imprinted by a culture not their own.

If the right to national self-determination cannot be reduced to either self-rule or the assurance of a full range of civil rights and liberties, then what is its essence?

The Essence of Cultural Self-Determination

The cultural interpretation of the right to national self-determination regards it as an expression of the right to culture. The justification of this right is therefore grounded on the following assumptions:

(a) Membership in a particular cultural group—in our case the nation—and the freedom to openly express and preserve one's national identity is an essential human interest, no less essential than preserving and practicing one's religion or being able to voice one's political opinions.
(b) The interests individuals have in preserving their national identity is profound and intense. Hence it justifies the development of a set of rights aimed at the protection of these interests.
(c) Individuals cannot preserve their national identity unless they are able to express and practice it in both the private and public spheres.
(d) The existence of a public place is hence a necessary condition for ensuring the preservation of a nation as a vital and active community.[43] The ability to enjoy the liveliness of public life is one of the major benefits that accrue from living among one's own people. Only then can the individual feel that he lives in a community which enables him to express in public and develop without repression those aspects of his personality which are bound up with his sense of identity as a member of his community.[44]

(e) Aspiring to national self-determination is therefore bound up with the desire to see the communal space not only as an arena of cooperation for the purpose of securing one's own interests, but as a place for expressing one's identity.[45] The presence of a particular culture in the public sphere and the ability to conceive of a community as expressing one's national identity lie at the heart of the yearning for national self-determination .

(f) The right to national self-determination can only be fully realized if others recognize the national group as a distinct group whose members deserve a certain degree of autonomy. Such autonomy might be assured through a variety of political arrangements—the establishment of national institutions, the formation of an autonomous community, or the establishment of a federal or nation-state—ensuring individuals the ability to participate in the national life of their community.

Though the right to national self-determination involves a right of access to the public sphere, it does not necessarily entail a right to an independent state. The search for an overall guiding principle to determine when the right to national self-determination justifies a particular political solution is pointless. It is perfectly consistent and justifiable to turn down, in particular cases, the same policies one would support in others; one might endorse or reject an autonomous community, a federal or a nation-state, in line with specific circumstances. In each case, the costs entailed by alternative solutions should be weighed against their benefits, and a suitable policy determined in view of such considerations. Since the burdens and benefits of implementing this right should be balanced before a certain policy is adopted, it is reasonable to assume that the larger the number of individuals who would enjoy this policy, the heavier the burdens it would be justified to impose on others. Hence, as Raz suggests, although national self-determination is justified on the basis of the interests of individual members of the community:

> The interest of any one of them is an inadequate ground for holding others to be duty-bound to satisfy that interest. The right [of self-determination] rests on the cumulative interests of many individuals.[46]

The practical political arrangements derived from the right to national self-determination might vary; they depend both on the members' preferences and on the particular circumstances in which national demands arise. However, all political arrangements based on this right should draw upon the history, the culture, the language, and, at times, the religion of the national group, thereby enabling its members to regard it as their own. In other words, political units and institutions established on the basis of the right to national self-determination should reflect the unique character of the national group.

Adopting a cultural view of the right to national self-determination allows us

to place all the justifications of their right within one logical sequence. In other words, we can now view along one continuum the justification of the rights of nations—whether they are minorities or constitute majorities within particular states—as well as the rights granted to ethnic groups and indigenous peoples. In principle, all these groups are entitled to the same rights. The different justifications adduced as grounds for these groups' rights point to their special nature as cultural entities.

It thus becomes clear that national minorities, for instance, are entitled to special rights not because of their numerical status but because of their unique essence. Hence the word minority should not be understood as pointing to the group's proportional size; rather, a minority is a group whose culture is not adequately reflected in the public space. Dinstein also argues that minority should not be understood in numerical terms but, disregarding the cultural dimension, defines a minority as a group playing a "minor role in the affairs of the country." This definition seems misleading—it could very well apply to the American Communist Party, to stamp collectors, or to many other groups that, despite their minor political role, fail to qualify for minority rights. In light of the problems posed by Dinstein's definition, it is clear that formulating the right to self-determination in political rather than cultural terms obscures the issues.[47]

The cultural approach to minority rights was implemented in the agreements drawn up following World War I. However, one of the consequences of World War II was a strong opposition to all forms of cultural nationalism. As a result, in the UN Charter drafted in 1946, minority rights were formulated exclusively in civic-rights terms. It was suggested in this paper that the attempt to overlook national yearnings by reducing them to a demand for civic freedoms aids and abets assimilatory policies. It is only by means of the cultural interpretation of the right to national self-determination that we are able to understand the importance of provisions protecting the cultural, religious, and linguistic identity of minorities, aimed at assuring them an opportunity to live alongside the majority, "co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs."[48]

The demand for special rights put forward by indigenous peoples lends further support to the cultural interpretation of the right to national self-determination. Their claim does not merely call for justice and the redress of a wrong, but states a wish to give full expression to their distinct cultural identity.

The cultural interpretation of the right to national self-determination thus allows us to adopt a consistent view of the rights that ought to be granted to different cultural groups. But more than that, the cultural interpretation acknowledges that the realization of these rights does not necessarily require the establishment of independent nation-states and could be accomplished within a variety of political arrangements. It is this flexibility that makes the cultural interpretation more suitable to a world order that challenges the viability of

independent nation-states and offers to supersede them by larger, multinational regional frameworks.

Notes

This article first appeared in *Social Research* 58, no. 3 (Fall 1991): 565–90. The rejoinder (below) was written for this volume.

1. A. Margalit and J. Raz, "National Self-Determination," *Journal of Philosophy* 87 (1990): 440.
2. Y. Dinstein, "Collective Human Rights of Peoples and Minorities." *International and Comparative Law Quarterly* 25 (1976): 102.
3. E. Carr et al., *Nationalism.* A Report by a Study Group of Members of the Royal Institute of International Affairs (Oxford: Oxford University Press, 1939), xvii.
4. S. Weil, *The Need for Roots* (London: Routledge and Kegan Paul, 1952), 95.
5. K. Deutsch, *Nationalism and Its Alternatives* (New York: Knopf, 1969), 19.
6. F. Hertz, *Nationality in History and Politics* (London: Routledge and Kegan Paul, 1944).
7. Ibid., 3.
8. K. Dyson, "State," in *Blackwell Encyclopedia of Social Sciences* (Oxford: Blackwell, 1987), 591.
9. Though territory might be one of many features related to the determination of a nation, this territory need neither be well-defined nor recognized—two indispensable attributes of state territory—in order to be of importance to the formation of a nation.
10. A.P. D'Entreves, "The State" *Dictionary of the History of Ideas* (New York Scribner, 1973), 4:318.
11. H. Seton-Watson, *Nations and States* (London: Methuen, 1977), 1.
12. C. Geertz, *The Interpretations of Cultures* (New York: Basic Books, 1973), 315.
13. M.G. Forysth, "State," *Blackwell Encyclopedia of Social Sciences,* 506.
14. R. Sureda, *The Evolution of the Right to National Self-Determination* (Leiden: Sijthoff, 1973), 17.
15. Cited in H. Kohn, *American Nationalism* (New York: Collier Books, 1966), 326.
16. E. Kedourie, *Nationalism* (London: Hutchinson, 1985), 14.
17. A. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986), 129.
18. O. Osterud, "Nation Building," *Blackwell Encyclopedia of Social Sciences,* 379.
19. Except for what are considered primordial associations such as families, tribes, and ethnic communities.
20. A. Smith, *Theories of Nationalism* (London: Duckworth, 1983), xxiv, xxx.
21. In his book *Imagined Communities,* Anderson cites some fascinating examples of the ways in which new nations tie themselves to a fabricated past. Let me give just one example: "The late President Sukarno always spoke with complete sincerity of the 350 years of colonialism that his 'Indonesia' has endured, although the very concept 'Indonesia' is a twentieth-century invention, and most of today's Indonesia was only conquered by the Dutch between 1850 and 1913. Preeminent among contemporary Indonesia's national heroes is the early nineteenth-century Javanese Prince Diponegaro, although the Prince's own memories show that he intended to 'concord [not liberate!] Java,' rather than to expel 'the Dutch' " B. Anderson, *Imagined Communities* (London: Verso, 1983), 19.
22. E. Hobsbawm and T. Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), 1.

23. A. Cobban, *The Nation State and National Self-Determination* (London: Collins, 1969), 107.

24. Seton-Watson, *Nations and States,* 7.

25. Quoted in L. Synder, *The Dynamics of Nationalism* (New York: Van Nostrand, 1964), 26–29. The notion of "an everyday plebiscite" is of immense importance since it introduces the notion of choice to the concept of nation. The existence of nations depends upon the will of their members to be part of them, to participate in their public life, to communicate their identification with the nation. If no one chooses to act in this way, the nation disintegrates.

26. E. Renan, "Qu'est-ce qu'une nation?" (1882), quoted in E. Gellner, *Culture, Identity, and Politics* (Cambridge: Cambridge University Press, 1987), 6.

27. Renan, in Snyder, *Dynamics of Nationalism,* 10.

28. I take it that Renan did not mean to suggest that all these factors have no importance in the creation of the nation. In fact, many will regard common descent and race as of the utmost importance, since these features reinforce the sense of the natural and primordial aspects of nations. Yet descent or race could he ignored or intentionally forgotten, as Renan puts it, in order to create a nation; this has been the case even in most European nations, which grew out of a number of different cultural communities (see the examples of France and England just mentioned), and is obviously true of nations in the Third World, like Indonesia or India, and of nations in the Americas, like the United States or Mexico.

29. Gellner, *Nations and Nationalism,* 7; my emphasis.

30. R. Williams, *The Long Revolution* (Harmondsworth: Penguin Books, 1961, 57.

31. Gellner, *Nations and Nationalism,* 7.

32. This is true even in cases of newly invented cultures, as Hobsbawm shows so brilliantly.

33. Kroeber and Kluckhohn, cited by Singer, "Culture," *Encyclopedia of Philosophy.*

34. Anderson, *Imagined Communities,* 13, 15.

35. The claims that nationalism promotes separatist ideas contradicts the endeavor to define the concept nation as a union of individuals governed by one law, since the fear of separatists' demands must presuppose that the creation of the nation is independent of that of the state. The fact that nations can bring about the creation of new states, and that states can promote the creation of new nations proves that neither of these concepts should be seen as logically prior to the other.

36. *American Journal of International Law* 61 (1966):870–71.

37. Dinstein, "Collective Human Rights," 106.

38. P. Thornberry, "Is 'There a Phoenix in the Ashes?' International Law and Minority Rights," *Texas International Law Journal* 15 (1980): 883.

39. R.E. Hauser, "International Protection of Minorities and the Right of Self-Determination," Israel *Yearbook on Human Rights* I (1971): 92.

40. I. Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 157–58.

41. The term political is used here in a very wide sense, as encompassing all public activities regardless of whether or not they spring from formal political institutions.

42. J. Donnelly, *Universal Human Rights* (Ithaca: Cornell University Press, 1989), 148.

43. Though we might consider ancient Greek culture a valuable culture, it is not an available choice, since it is unlikely that its practice will be renewed today.

44. J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 207.

45. To say that a community is one's own is to say that one sees the community as expressing (some elements of) one's identity. Membership in different associations might be bound up with different aspects of one's identity: membership in a workers' trade union would be bound up with my class identity, membership in a charity organization

would be bound up with my moral identity, membership in a national community would be bound up with my cultural identity.

46. Raz, *Morality of Freedom,* 209.
47. Dinstein, "Collective Human Rights," 112.
48. Ibid., 116.

The Right to National Self-Determination: A Rejoinder

The theory of nationalism and national self-determination presented in the original article as well as in my book *Liberal Nationalism* evoked a considerable amount of discussion and criticism. These centered on three issues: Some have argued that my argument disregards the "context of fear and violence that so decisively accounts for the desperation of nationalist struggles."[1] Others suggested that viewing the right to national self-determination as an individual right, closely related to the right to culture, obscures the fact that different national group demands are entitled to different kinds of rights. Finally, there are those who claim that it is impossible to square my theoretical analysis with my political support for the establishment of a Palestinian state. In what follows I briefly refer to each of these criticisms.

National Rights: A Remedial or a Universal Justification?

While the importance of national claims and national rights was generally overlooked until the mid-1980s, today it is clear that their importance should be acknowledged. Nevertheless, most of the discussions concerning these rights make reference to past or present atrocities, to events in the former Yugoslavia or Rwanda, the expropriation and persecution of the native Indian nations, the Holocaust, or the expropriation and expulsion of the Palestinians from their lands. These discussion may seem to imply that a demand for national rights is justified only if it serves as a means to rectify damages and right a wrong. National rights are therefore seen as corrective means, as a way to compensate those who were victimized and maltreated. This type of argumentation has both moral and political value and could lead to some desirable outcomes, but it cannot substitute, nor can it be a part of, a coherent theory of national rights.

This claim could be clarified by the following analogy: Suppose one would defend freedom of speech by making reference to the fact that a certain group has suffered from a long history of defamation. Members of this group, one would argue, are entitled to defend themselves and should therefore enjoy freedom of speech. The problem with this type of reasoning is that it runs together a theoretical and a practical claim: a justification for a basic right and a policy

recommendation to use a certain means in order to assure the accomplishment of a particular political goal. By mixing the two types of claims one creates the false impression that the former depends on the latter. But justifications of freedom of speech are valid independently of the history of any particular group; they are derived from basic interests individuals are believed to have regardless of their personal or collective history.

Moreover, the claim that a nation's entitlement for national rights must be grounded in past suffering not only perpetuates a theoretical confusion but also encourages backward-looking policies, which intensifies feelings of victimization, expressions of hatred, and calls for revenge, and leads to the sanctification of suffering. The Museum of Barbarism established by the Turkish Cypriots in order to illustrate in the most graphic and harrowing way the atrocities done to them by the Greek Cypriots is a good example of the way national tragedies are not merely remembered but fostered and used politically in order to support national claims. The mandatory visit every official visitor to Israel is required to pay to Yad Va-Shem—the museum commemorating the victims of the Holocaust—or, mark the difference, to Palestinian refugee camps, demonstrates the way injustices and human sorrow are employed to achieve political gains. If suffering and injustice qualify a nation as a bearer of national rights, then these rituals are inescapable; if national rights could be supported on different grounds, they might be avoided.

A theory of national rights should also be independent of arguments concerning the survival of the group. Hence claims that the right to establish a state of one's own must be based on an experience of violence, sufficiently protracted and widespread to convince any observer that a people can only be secure if they have an effective means of self-defense, that is, a state of their own, should be rejected. Do nations, secure and content in their own territory, have no right to have their own states? If so, a rather ironic vicious circle is created—suffering nations have a remedial right to a state of their own that will grant them security and protection. Yet, no longer threatened and intimidated, they seem to lose the main prop buttressing their right to statehood. Should it then be demanded that they forgo this right and allow other "suffering nations" to take their place until their national survival is again sufficiently endangered to regain their national rights? And who is to judge what is a sufficiently protracted and widespread experience of violence, or which are the nations that can be secure only if they have a state of their own?

Moreover, the political effectiveness of "survival arguments" has led nationalists to describe every national conflict in existential terms, disregarding the fact that such descriptions are often theoretically unsound and embody great social dangers. Not only do they encourage hostility toward "the enemy(s)" who threatens the nation's survival, but also they entail dangerously illiberal consequences for members of the national group itself. If what is at stake is not the right to express one's national identity but the nation's survival, then it seems as if there

should be no restrictions on what one might be justified in doing. All means, including conquest and occupation, terror, torture, and disregard for the rights of members of other groups as well as of those member of the group that disagree with the group's ends, seem justified.

Here is a clear example of the latter phenomena: In discussing the Pueblo Indians, Svensson recognizes that members of this community persecute dissenters. He brings the testimony of one of them, Delfino Concha. "I was subject to the most cruel injustice done to anybody," Concha says, "that of imposing upon myself outright intimidation, and isolation from social affairs enjoyed by the community simply because I did not conform to the religious function."[2] Svensson's response to this testimony is sympathy not with the persecuted individual but with the persecutors. The tribe's reaction to religious dissent is more understandable, he argues, "when it is remembered that in tribal societies, and even more particularly in one which is a theocracy, religion is an integral part of the community life which cannot be detached from other aspects of community. Violation of religious norms is viewed as literately *threatening the survival* of the entire community."[3]

The term *survival* is doing here most of the justificatory work; if the freedom of an individual challenges the survival of the community, the latter seems to have much more weight. This would not be the case if the dissenter's interests were weighed against those of other individuals who endorses a more traditional point of view, especially if the dissenter's interests were weighed against the external preferences of the traditionalists, namely, their preferences as to how the dissenter ought to behave rather than the way they themselves ought to behave. Taylor also uses the language of survival in order to justify restricting some individual liberties. It is axiomatic for Quebec's government that the survival and flourishing of French culture in Quebec is a good, he argues; "it is not just a matter of having the French language available for those who might choose it. . . . Policies aimed at survival actively seek to *create* members of the community, for instance, in their assuring that future generations continue to identify as French speakers."[4] Behind this phrasing lurks a worrying support for language laws that compel individuals to identify as French speakers. These are only a few examples that demonstrate how arguments that draw on the notion of survival are used to support the claim that some of the recognized rights and liberties of liberal citizens should be limited and unequally distributed in order to assure the survival of certain national groups.

The suffering and survival approaches lead to even more dangerous results when the relations of the group to nonmembers are considered. If the nation's survival is at stake, if the issue is self-defense rather than a strife to assure members of the nation a set of political or economic interests, then it is much easier to justify harsh, even cruel means. This, however, is not to suggest that the survival of a nation cannot be threatened and that under such circumstances extreme means cannot be justified,[5] but to argue that a justification of these

means ought to be independent of the theoretical justifications of the right to national self-determination.

One should also recall that individuals may still be exposed to existential threats even after they are granted national rights. Are Uzbeks, Georgians, and Azeris more secure now that they have acquired their own states than they were before? If the United Nations were capable of imposing a settlement in Yugoslavia dividing it into several nation-states, would this ensure that Serbs and Croats would no longer attempt to intimidate each other? States created as solutions to national conflicts may continue a struggle begun before these states were established, only with improved means of mutual destruction. It is indeed well known that more people have been killed in wars between nation-states than in intrastate ethnic conflicts. And as the peoples of Czechoslovakia, Afghanistan, and Kuwait learned in 1939, 1989, and 1990, statehood is no assurance of either political independence or survival.

In their long and tormented history, Jews suffered major national catastrophes at times of the destruction of the First and Second Temples, when they did have a state, and during the Holocaust, when they were stateless. The establishment of the State of Israel, one ought to remember, did not save Jews from violence and intimidation at the hands of their neighbors, nor from threats of extermination, as their plight during the Gulf War attests. Jews were determined to live in Israel and establish their homeland in it despite these dangers. They knew that Israel was not a safe haven but a place where survival entailed a struggle, and they were ready to engage in this struggle in order to be able to enjoy their national rights.

Jews are not an exception; a future Palestinian state is unlikely to remove some of the more distressing kinds of threats the Palestinians at present confront. And yet, like many other nations, the Palestinians aspire to establish their own state; their main concern is not merely survival but the development of a shared public sphere where the national culture, language, and traditions attain expression.

Were physical survival the main consideration, it would appear that in an age facing atomic and chemical weapons, as well as the danger of ecological disaster, it would be prudent for nationalists to spread their risks by avoiding territorial concentration at all costs. Nationalists, however, measure their success not by the continued contribution of their nation to the universal gene pool but by the flourishing of their national life and culture. In order to achieve this goal, they are ready to assume personal risks and undertake personal sacrifices.

The attempt to merge measures necessary for the survival of particular nations with measures required to right past wrongs, while making both preconditions to the allocation of national rights, leads to a confused theoretical argument as well as to misguided political actions. Only when these issues are kept apart can one draw a distinction between policies meant to answer certain national needs or compensate for past injustices and policies meant to ensure members of a national group the ability to enjoy national rights.

The Muddy Middle Ground

Some have argued that the theory of self-determination offered in the original paper is far too abstract and cannot offer a set of practical solutions for actual national conflicts. Frustrating as this may be, I still hold that discussions concerning national self-determination and national rights can be held either at a very abstract theoretical level or at a very specific one. The former can make use of *a priori* theoretical arguments, the latter can be held only with reference to actual national demands taking into account the contingencies of each case. Between the abstract theoretical level and the search for practical political solutions lies a muddy middle ground that should be avoided.

One way to go astray in muddy middle ground is to attempt to generalize from actual cases, to create new categories supposed to apply to all circumstances, and to cut all incidents of national struggles to fit one conceptual framework drawn from a particular case study. This strategy disregards the fact that the structure and demands of particular national movements often reflect the structure and demands of the national movements they oppose. Hence, unlike the general justification of national demands, the nature of national political struggles cannot be properly understood outside a particular social, economic, and political context.

One example of the muddy nature of the middle ground is Kymlicka's unsuccessful attempt to draw a general distinction between national minorities and immigrant groups. His distinction may very well apply to Canada but is inapplicable to places like the Middle East, Asia, and Africa. Are Israeli Jews an immigrant or a national group? The same question could be asked with reference to the Palestinians, and if one looks back a century or two, with regards to most national groups. In fact even with regards to Canada one may wonder whether French- or English-speaking Canadians are immigrant groups or national groups. When does a group change its status? Kymlicka's answer makes reference to the notion of *societal culture.* This criterion is too amorphous and cannot allow us to either predict the nature of the different kinds of claims national groups may make or to justify the rights they are entitled to. Some national groups, despite the fact that they have developed over generations a thick societal culture, may behave like those groups Kymlicka defines as minority groups. Realizing that they are too small, too weak, or territorially divided, they may aspire for integration rather than for exit. The Samaritans are a good example. This is a very small and very old nation—remember the good Samaritan?—that has no aspirations for independence as its members acknowledge the fact that because of their circumstances—the size of the group, its location, and so on—the benefits of joining a larger social unit outweigh the costs.

Immigrant groups, in contrast, if they are large enough, territorial concentrated, and distinct from the majority culture, might seek some of the rights national minorities traditionally aspire to. This is what happened to the Palestin-

ians in Lebanon and the Turks in Cyprus. Once they created a large enough group, they aspired to change the political structure in order to acquire some measure of autonomy. The kinds of demands raised by members of minority groups thus seem to vary with their contingent political and social circumstances as well as with other factors. National groups may seek to secure the right to national self-determination by a variety of institutional means, among them local autonomy, federal, or confederal arrangements. In each particular case such arrangements will have pros and cons that cannot be evaluated in the abstract. One general remark can nevertheless be made: it is impossible to evaluate the weakness and strength of the different arrangements meant to secure a group its national rights without making reference to the current structure of international institutions. Nowadays national groups that do not have a state of their own cannot achieve an official standing in many international institutions, including the United Nations.

Indeed the United Nations, like the League of Nations that preceded it, attributes considerable attention to protecting the rights of national groups. The success of these policies varies, and yet members of national groups that are stateless are concerned not only with the relative success of such plans but also with the fact that they divide the world into protecting and protected agents. National minorities always find themselves in the latter group, dependent on the goodwill of others. They thus desire to transcend this stage of infancy, in which they must rely on others, who paternalistically protect them. They wish to become mature members of the community of nations, and this, ironically, they cannot achieve unless they have a state. Of all the centrifugal powers tearing states apart, this is one of the most important and least discussed one. Unless a radical change in the structure of international institutions comes about, nations will feel that they must have their own states. Hence, while one cannot provide a theoretical justification for granting each national group its own nation-state, there may be institutional justifications for so doing.

In Support of a Palestinian State

The approach presented here suggests that one cannot, *a priori,* judge what is the best political solution in each case. We must evaluate the particular circumstances of the case and use goodwill and common sense. Reasonableness and untidy compromise are the main keys to any workable political solution.

While there can be no support for the claim that the Palestinians have a right to an independent state—members of no nation have such a right, including the Jews—the contingent features of the Israeli-Palestinian conflict suggest that establishment of such a state is the best possible solution. In the light of recent developments, it seems conceivable that, someday, after a Palestinian state is established, the Israeli, Palestinian, and Jordanian states may create a confederation, renouncing aspects of their national sovereignty for the sake of regional

prosperity. This move ought to be based on full-scale reciprocity requiring all parties to sacrifice the same degree of autonomy in order to attain equal benefits. After long years of hostility, in the very days when Israelis and Palestinians have embarked on the troubled journey toward mutual reconciliation, we can dream of regional cooperation.

Am I being too optimistic? Maybe. Indeed, some critics have suggested that my theoretical conclusions that liberal nationalism is possible and that there are ways of balancing different national claims are unrealistically optimistic. This assertion, however, confuses two claims. The first is that a certain set of principles yields a valid inference; the second, that this conclusion can easily be implemented. In *Liberal Nationalism* I make only the former claim. Were it possible to define such theoretical claims as optimistic, then every theory offering valid justifications of virtue, justice, rights, freedom, or democracy would merit this label. There is, however, also room for actual optimism. The gradual progress of the peace process between Israel and its neighbors, and especially with the Palestinians, may suggest that reconciliation is possible not only on the level of abstract theory but could also turn into a reality.

Notes

1. I. Ignatieff, "Boundaries of Pain," *The New Republic,* November 1, 1993, p. 38.
2. F. Svensson, "Liberal Democracy and Group Rights: the Legacy of Individualism and Its Impact on American Indian Tribes," *Political Studies* 27, no. 3 (1979): 432.
3. Ibid., p. 433.
4. C. Taylor, "The Politics of Recognition," in *Multiculturalism,* ed. A. Gutmann. Princeton: Princeton University Press (1994), pp. 58–59.
5. A discussion of this issue could be found in J. Rawls, *Dissent* 42, no. 3 (summer 1995): 323–327.

2

Formulating the Right of National Self-Determination

Muhammad Ali Khalidi

Political philosophers have begun to devote some attention to the precise formulation of the right of national self-determination and the theoretical justifications that might be given for this right. Since this issue has begun to be examined in detail only relatively recently in the philosophical literature, there is no common vocabulary with which to discuss it, and the "right of national self-determination" is used to mean different things by different writers. To complicate matters, a number of related rights have been identified in connection with the right of national self-determination, such as the rights to national culture, political representation, self-government, independent statehood, secession, and autonomy; and their relation to the right of self-determination has been variously perceived. In trying to unravel this theoretical thicket, I begin by arguing that some of the theorists who have discussed these issues have distinguished, whether explicitly or implicitly, two rights or principles that might be used to help justify the right of self-determination. The first of these I call the *right of political participation* and is roughly the right of individuals to participate in the political process or in the political institutions that govern their lives. The second I call the *right of national self-expression,* which is roughly the right of individuals to express openly their affiliation with certain national or ethnic groups. I do not try to define these rights precisely, but their content will become clearer as we find some invocations of them in the works of a number of philosophers. The object is not to determine the precise content of these rights as such, but to examine their relationship to the right of self-determination in order to determine the proper formulation of that right. Hints of the distinction between the rights of political participation and of national self-expression appear in different guises in the work of Yael Tamir, Kai Nielsen, Avishai Margalit and Joseph Raz, and Tomis Kapitan. In order to get some idea of these rights, I begin by indicating how they are variously specified in the works of these authors. I then go on to argue that neither can be used on its own to ground the right of national self-determination. Then I draw on the work of a number of authors to emerge with the proper formulation of the right of self-determination. Finally, I conclude by observing how this formulation fares when applied to the Palestinian-Israeli conflict.

National Self-Expression and Political Participation

Tamir

Perhaps the clearest attempt to make the distinction between the right of political participation and the right of national self-expression appears in Tamir's work (1991, 1993). For Tamir, there are two versions of what she calls "the right to self-determination": the "cultural version" and the "democratic version." The cultural version is roughly coincident with what I have been calling the right of national self-expression; it is characterized as "the right of a nation to preserve its national and cultural uniqueness" (1991, 580), or as "the right to preserve the existence of a nation as a distinct cultural entity" (1993, 57). Meanwhile, the democratic version is closely akin to what I have called the right of political participation, which is characterized as "the right of individuals to participate in the governing of their lives." It can also be put as follows: "Everyone has the right to take part in the government of his country directly or through freely chosen representatives," a formulation borrowed from the Universal Declaration of Human Rights (1991, 581).

Nielsen

There is also a characterization of the right of national self-expression in Kai Nielsen's work (1993) on these topics. He spells out a number of different human values, among which are autonomy, liberty, self-realization, pleasure, and social self-identity (1993, 33–34). This last value is the relevant one. It can be defined as a need for "a sense of home, [for] being a member of a particular kind of people" (p. 31). Nielsen says that it is not just a matter of an individual's right to express openly membership in a certain group, since there is a prior question about whether a group has been allowed to manifest itself sufficiently so that one might express one's belonging to it. His formulation implies that one has a right to belong openly to whichever national group one happens actually to belong to, in the sense of being able to identify with it actively without hindrance. Of course, in certain circumstances, there may also be a question as to whether the group has a right to manifest itself as a group, in which case the question of individual rights to participate openly in group activities does not even arise. But in most actual cases, the rights of individuals will be granted in the context of granting the right to a whole group (or after group rights have already been granted).[1]

Margalit and Raz

The right of national self-expression is manifested rather obliquely in the course of Margalit and Raz's (1990) analysis of the right of self-government or self-determination. They characterize what they call "encompassing groups,"

which are prime candidates for having the right of self-determination or self-government. They do not simply help themselves to the concept of a "nation" or a "people" because they aim to identify the kinds of groups that would qualify for this right by characterizing them in such a way that the features they pick out may explain the value of the right of self-determination (p. 448). Therefore, they characterize encompassing groups with the help of a set of six features, which usually go together, that pick out groups, membership of which is important to one's self-identity. This is what makes them candidates for self-rule, not the mere fact that they usually coincide with nations (in fact, they admit that some religious groups meet their conditions, as do social classes and some racial groups). In discussing the importance of such groups to the lives of individuals, they hold that people's membership in encompassing groups is an important aspect of their personality and that their well-being depends on giving it full expression (p. 451). It seems that this idea could be used rather directly to ground what I have been calling the right of national self-expression.

Kapitan

Kapitan has identified three different moral principles of self-determination: regional self-determination, democratic self-determination, and national self-determination. The first is characterized as "a demand that inhabitants of well-established regions, territories, or states be allowed to settle for themselves all questions of sovereignty over that territory, even if they should choose to be politically autonomous" (1995, 226). The second requires "that the inhabitants of a territory ought to be democratically self-governing" (p. 226). And the third is "the conception that a nation or people has a right to constitute itself as an independent sovereign state" (p. 227). He goes on to say that some combination of the first and second emerged as the most important principle of self-determination after World War I, that is, that there should be self-government by the inhabitants of a territory through popular consent. But the distinction between the two rights I have been discussing comes out in the contrast between the second and third rights. While the second refers to democratic self-government, the third adverts explicitly to the right of a "nation" or "people" to have its own state. Kapitan makes the point that a combination of the first two principles is potentially in conflict with the third principle, for "a call for self-determination of a certain national group in a territory might be quite oblivious to the interests of the established inhabitants of that territory" (p. 227).

Self-Determination, Self-Expression, and Political Participation

Whether implicitly or explicitly, the authors discussed distinguish between a right of national self-expression and a right of political participation. Some remarks are in order on the relationship between these two rights and on their

connections to the right of national self-determination. All these philosophers seem to agree that neither of these rights follows from the other. Specifically, since the right of national self-expression is clearly the more problematic of the two, none of these authors thinks that the latter can be derived directly from the former. This claim can be appreciated intuitively by noting that one can be a full political participant in a state even if one's nation is not manifest as a group in that or any other state. In this case the right to political participation would have been granted to the individuals in that state, yet the right to national self-expression would be denied among at least some of those individuals.

More important, these authors do not seem to think that either of the rights discussed, the right of national self-expression and the right of political participation, is sufficient on its own to ground a *right of national self-determination.* I follow other authors in taking it that the latter is distinct from the two rights already considered and consists in the right to form an independent state or other political entity, or a right to secede from an existing state, or even a right to some form of political autonomy (it depends partly on the *status quo ante* which of these rights is operative). The central question concerning self-determination, as understood by most writers, does not involve the rights of political participation or national self-expression, but the right to decide which large-scale political units will come into being. This makes it a right awarded primarily to groups of people rather than to individuals. Typically, it is the right to decide which territories become independent states, but it can also pertain to the creation of autonomous regions within existing states, secession from existing states, confederation with other states, and so on. Thus Margalit and Raz (1990, 440) write: "the core content of the claim to be examined is that there is a right to determine whether a certain territory shall become, or remain, a separate state (and possibly also whether it should enjoy autonomy within a larger state)." In fact, what Margalit and Raz call the right to national self-determination comprises more than just the ability to decide that a territory be an independent state. It concerns the right to decide on all political decisions that concern the fortunes of a particular group. But given the international state system, they hold that "the right to determine whether a territory should be an independent state is quite naturally regarded as the main instrument for realizing the ideal of self-determination" (p. 441).

It does not seem possible to justify the right of national self-determination using only the right of national self expression—at least not without supplementing it with other, quite substantive assumptions. For example, Alan Buchanan (1991a, 329) states that "if there are more ethnic or cultural groups than available territory, it is hard to see how the mere existence of such a group could generate a valid claim to territory on its behalf." Similarly, Margalit and Raz do not think that there is a direct link between the right of national self-expression, which involves membership in encompassing groups, and the right to statehood or political autonomy or, as they put it, the right of self-government. According to them, a possible argument that would try to link the two would proceed roughly

as follows. Since people's membership in their groups is important to their personality, their well-being depends on giving it full expression. This expression includes membership in the public life of the community. This, in turn, involves membership in political activities. Therefore, the argument might conclude, self-government is required to provide the encompassing group with a political dimension. As they point out, the problem with this argument is that it is plausible that a person's identity as a member of a group of this kind will have an important public dimension, but this dimension is not necessarily a political one. Moreover, the political dimension may not require a political organization whose boundaries coincide with those of the group (Margalit and Raz 1990, 452). For these reasons, they conclude: "there is nothing in the need for a public or even a political expression of one's membership of an encompassing group which points to an intrinsic value of self-government" (p. 453). In the terms I have been using, the right of national self-expression cannot be used to derive a right of national self-determination without some additional strong assumptions.

Tamir (1991, 587) also concurs with the judgment that there is no widely acceptable way to derive the right to an independent state from the right to national self-expression. She writes that "though the right to national self-determination [the right of national self-expression, in my sense] involves a right of access to the public sphere, it does not necessarily entail a right to an independent state [the right of national self-determination, in my sense]." The reason that this link cannot be forged directly seems also to concern the fact that the right of national self-expression can be realized only if the group has a certain degree of autonomy, which may, however, be attained through a variety of political arrangements that need not involve independent statehood. Tamir's conclusion seems somewhat weaker than that drawn by Margalit and Raz, since she does seem to think that some clearly *political* manifestation of the group is necessary for members to participate fully in its public life. The autonomy that she thinks is required for members to identify with and fulfill their group identities is more purely a political matter for her, as it is not for Margalit and Raz. The alternatives that Tamir (1993, 9) mentions to statehood are all "political setups": "federative and confederative arrangements, local autonomies, or the establishment of national institutions." By contrast, Margalit and Raz (1990, 452) state that national self-expression may be achieved by nonpolitical activity, such as "activity in a social club, interest in the fortunes of the arts in one's region, etc."

Finally, Nielsen (1993) concurs with these other authors in denying that the right to statehood (national self-determination) can be derived from the right of national self-expression, although in his case the denial would also seem to be less than vehement. He begins by saying that national consciousness is extremely important to us given our human nature. Then he goes on to justify the right to form an independent nation-state with reference to the right to identify with a certain national consciousness or the right to identify with some part of an objective social reality. He considers the following objection to this link: "It

might be claimed that for cultural preservation and a national consciousness to flourish there is no need for a nation-state to represent and protect that national consciousness. A nation does not have to have a nation-state of its very own, articulating its interests. All we need for self-definition is a shared culture in a non-hostile environment" (1993, 32). Despite this, Nielsen notes that national consciousness is only *secure* in the modern world "when people with these national identities gain control of the conditions of their existence by having the power that goes with having their own state" (p. 32).

We have now seen that it is at least problematic to derive the right of national self-determination from the right of national self-expression without some additional strong assumptions. The difficulty of trying to derive the right of national self-determination from the right of political participation is, if anything, more easily demonstrable than that of trying to derive it from the right of national self-expression. That is because the right of self-determination concerns the question of which populations in a certain region will constitute separate political entities, a question left unanswered if we merely contrive to give these populations a measure of political participation. In according people a right of political participation we presume that we have *already* settled the question of which political units these people will be allowed to participate in. To put it differently, according the right of political participation to a people in a region is compatible with an indefinite number of different ways of drawing state boundaries in that region.

Grounding the Right of National Self-Determination

Since there seems to be a consensus that the right of national self-determination cannot be justified solely on the basis of something like a right to national self-expression or a right of political participation, the problem remains how the right should be formulated and how it is to be justified. The two questions are obviously linked. The focus of this chapter is on the former question, but in providing a formulation, some attempt is made to justify it on broadly consequentialist grounds.

Margalit and Raz separate the issue of "Who decides?" from that of "What is the best decision?" It is the answer to the first question that they consider to pertain to the right to self-determination. Since the right of national self-determination is effectively the right to determine whether a territory should be an independent state, the crucial question becomes: "Who has the right?" Notice that there are many *possible* answers to this question: an international court, the world community, all the states in the entire region within which the territory lies, all the populations in the entire region within which the territory lies, and so on. The answer that Margalit and Raz give is that members of the "encompassing group" that inhabit the territory in question are to be given the right to decide, where, as already mentioned, "encompassing group" is defined in terms of certain charac-

teristics that would explain why it is beneficial for such a group to be self-governing. They add some qualifications to this answer, however, for the encompassing group only has the right to self-determination provided it "forms a substantial majority in the territory in question . . . is likely to respect the fundamental interests of its inhabitants" and "measures are adopted to prevent its creation from gravely damaging the interests of other countries" (1990, 457). These conditions are supposed to issue in a decision procedure that will help resolve cases of this kind. Margalit and Raz allow that the decision thus taken may not be the morally best choice. There is always a further question about whether the decision is morally best, even if it is taken in accordance with their guidelines: "In exercising the right, the group should act responsibly. . . . It should, in particular, consider not only the interests of its members but those of others who may be affected by its decision. But if it has the right to decide, its decision is binding even if it is wrong, even if the case for self-government is not made" (1990, 454).

Of course, the three provisos listed above do limit the right, but even when these provisos are satisfied, the possibility seems to remain for Margalit and Raz that the decision made might yet be the wrong one. Still, their reasoning is that adoption of such a principle is in keeping with the assumption that "members of a group are best placed to judge whether their group's prosperity will be jeopardized if it does not enjoy political independence" (p. 457). In addition, Margalit and Raz say that their argument for the right of national self-determination "is based on an extension of individual autonomy or of self-expression" (p. 451). But it is not a simple extension of an individualist majoritarian view of these matters, since such a view does not enable us to decide which unit is to be considered in deciding how political boundaries are drawn. Clearly, there are cases in which state A contains a smaller territory B, such that the majority of the population in the whole of A (including B) wants the state to remain whole, yet the majority of the population in B wishes the territory to secede. In such cases, the principle of individual autonomy does not help us decide the moral issue. Margalit and Raz supply a way of deciding by proposing that the wishes of the population in B should be followed *provided* they comprise an encompassing group that constitutes a substantial majority in the region and that they satisfy the other provisos. Their argument is analogous to one about individual autonomy, rather than being a direct extension of such an argument.

Kapitan argues that Margalit and Raz's condition that the group demanding self-determination be an *encompassing group* be dropped and that the right accrue generally to whichever group happens to inhabit a certain territory, no matter its ethnic or national makeup. He gives two main reasons for this view. The first is that states that have a particular national or ethnic character frequently threaten the interests and rights of minorities in those states (since most states are not entirely culturally homogeneous). Moreover, "even if assurances are given to protect the human rights of these minorities, international law has not evolved to the point where there are reliable mechanisms to ensure such

protection" (1995, 231–32). Second, Kapitan states that encouragement of calls for national self-determination based on encompassing groups is a threat to world peace because these calls have "often been coupled with nationalistic chauvinism, persecution of minorities, and interstate belligerency" (p. 232). Not only does Kapitan think that the implicit national component in the Margalit-Raz specification of the right to self-determination has negative effects on world peace and order, he also thinks that little is lost if this component is eliminated. For he states that when the encompassing group seeking self-determination forms a substantial majority in the territory (as Margalit and Raz require), then "the principle of regional-democratic self-determination . . . is itself sufficient to secure the same ends of self-government" (p. 232). Notice that these criticisms are particularly telling against Margalit and Raz because they take the right to self-determination to be thoroughly instrumental rather than fundamental. Since they justify it on grounds of human flourishing, if it is found that granting it in the form they advocate is liable to lead to greater human misery than happiness, this criticism is damaging.

Margalit and Raz might challenge this last claim of Kapitan's, for one can imagine possible cases in which the regional-democratic principle is insufficient to decide, and in which the national principle can be used to adjudicate the rival claims. They might point to cases that are quite common in the real world in which a regional-democratic principle underdetermines the outcome, and in which their principle can be invoked to settle the issue of the right to self-determination. The clearest examples of this kind involve a territory that has hitherto been a part of a larger state and now wishes to secede. Consider state A and region B within this larger state. Let us say that the total population of A is 10 million and that of B is 2 million and that a substantial majority of the total population of A (7 million, or 70 percent) would like A to remain a single state, while a substantial majority of the population of B (1.4 million, or 70 percent) would like B to secede from A. The question is, which population should be given the right to self-determination: the total population of A, or the population of B on its own and the population of A minus B? Presumably, Margalit and Raz reason that in many real cases of this kind, most of the population of B will constitute an encompassing group or part of an encompassing group. For them, this would constitute good grounds for granting the right of self-determination to the population of B (thereby relegating the population of A minus B to a separate state by default) rather than to the population of A as a whole. Therefore, the requirement that the group be an encompassing group helps resolve many realistic conflicts of this type (e.g., Canada and Quebec, or some of the former Soviet Republics). Of course, there may be situations in which the Margalit-Raz principle also underdetermines the outcome—if no encompassing group forms a substantial majority in either A minus B or B, or if different encompassing groups constitute substantial majorities in both A and B. In such instances, the Margalit-Raz principle is of no help. But given recent history and certain reasonable assump-

tions about the future, it is clear that the encompassing group principle will at least be of some help in resolving some of these thorny cases.

Margalit and Raz might argue that a regional-democratic principle of self-determination would not provide us with a way of deciding between these rival claims. Nevertheless, the regional-democratic principle could be made to deal with such cases if one paid attention to the *regional* component of the right. As formulated, it seems to involve identifying *regions that are suitable for political independence* and then saying that the majority of the residents of every such region has the right to decide whether that region should be self-governing or not. This seems to depend on an assumption to the effect that certain regions form natural autonomous units and should be treated as such, irrespective of the cultural or ethnic homogeneity of their populations. But there is a difficulty in specifying "natural" regions and in justifying their suitability for forming political units, as opposed to the suitability of competing, partially overlapping regions. Unless one could argue that it was more "natural" either to consider A as a region on its own or to consider the two regions, A minus B and B, as being distinct units, the principle could not be used to adjudicate between the rival claims in the hypothetical example. Since there will be little consensus in many of these cases which territorial units are the natural ones, and at any rate, less consensus than there is about which populations constitute encompassing groups, Margalit and Raz might say that their principle is superior to Kapitan's, for they have provided us with a way of deciding many real-life claims to self-determination. This is especially true in the modern world, where economic viability is no longer widely considered an important requirement for statehood, and so there are few regions that seem more naturally suited for economic independence than others.

But there is a simple way in which the regional-democratic principle of self-determination could be modified in order to resolve claims of secession in situations such as the hypothetical one described without resorting to invoking encompassing groups. A possible solution would be to say that every region should be independent in which the majority of the population so desire, and in case of dispute, the group inhabiting the smallest such geographical region is the one that is given priority. So, for example, in the hypothetical case above, if the majority of the residents of A want the whole of A to be a single independent state and the majority of the residents of B want independence for the state of B, the solution would be to give independence to B and to A minus B, assuming that there is no other region of the remainder of the A and no region of B in which a substantial majority want independent statehood. Therefore, the population of a region R_1 has the right to self-determination if (*a*) a substantial majority of the population of R_1 desire self-determination, and (*b*) there is no smaller subregion R_2 which lies wholly or partially within R_1, a substantial majority of whose population desires to exercise self-determination independently of the rest of R_1.[2]

What would be the moral advantage of the smallest-region principle? It en-

sures that no demands for self-determination are completely passed over, while at least partially satisfying rival demands. It therefore cleaves more closely to the voluntaristic principle of autonomy and does not make reference to ethnic or national groups, whether explicitly or implicitly. In our hypothetical example, more harm would be done by ignoring B's demand altogether and giving the right exclusively to A, than by granting it to B, as well as to A minus B (thus at least partially satisfying the demand for self-determination by the population of A). The arbitrariness that seems to be involved in giving priority to the inhabitants of the smallest region in matters of self-determination is only apparent; for it is the only way to ensure that no group's right is completely ignored, while at least partially satisfying the right of every other group. In addition, this principle gives us a simple decision procedure that issues in a determinate and uncontentious answer in each situation, unlike both of its rivals. This is a natural advantage in the international arena and in the domain of conflict resolution. Still, one might object to the smallest-region principle on two counts. It might be said to encourage gerrymandering regions in such a way as to come up with majorities that would favor independence. If these regions are too gerrymandered, however, then the appeal of independence decreases somewhat for the populations that inhabit them. Any referendum or plebiscite would both specify and target the precise area slated for independence. It may also be criticized on the grounds that it would encourage a never-ending series of secessions of ever-smaller states, in Russian-doll fashion. But this criticism may be countered by observing that, in an international state system, states generally become less and less attractive to their citizens as their size decreases. So there is no real danger that it would lead to an endless sequence of fissions. In addition, the groups inhabiting such subregions are likely to be irredentist rather than independence minded, so secessions need not always result in the formation of brand new states.

In advocating this simple modification of the regional-democratic principle of self-determination, it is important to note that other objections to a principle of self-determination favor encompassing groups. Consideration of the hypothetical case described above helps show how the principle of national self-determination advocated by Margalit and Raz would be prone to abuse. First, the numbers chosen were such that there was no real question as to whether the relevant groups did or did not constitute substantial majorities. In many instances, the numbers may not be as decisive and, given the indeterminacy inherent in Margalit and Raz's idea of a "substantial majority," the presence of an encompassing group may prove decisive in these cases. The world being less than clear-cut, we may end up giving more weight to the presence of an encompassing group than the presence of a majority in favor of one option or the other. If this is so, Kapitan's warnings against chauvinism and exclusive nationalism gain in urgency, for they serve to remind us that the vagueness of "substantial majority" is too fragile to be paired with the potency of "encompassing group."

A second consideration suggested by the hypothetical example of A and B

points to a greater danger behind adverting explicitly to the idea of an encompassing group in grounding the right of self-determination and has broader implications. Although related to Kapitan's points, this would seem to be a separate consideration. The requirement that the group demanding self-determination be an encompassing group inhabiting a certain territory provides a certain temptation for those so disposed to change the demographic facts in such a way that a group that does not currently qualify for the right in a certain territory comes to qualify for that right. Imagine in the example above that the population of B was initially composed predominantly of Ruritanians who were in favor of secession from A. Suppose that the leaders of A reasoned that if a large number of ethnic Lusitanians from A came somehow to settle in territory B in such a way that they were evenly intermingled with the Ruritanians in B, while many of the Ruritanians in B were dispersed throughout the rest of the territory of A, this would weaken the case for self-determination for the population of B and therefore strengthen it for the population of the whole of A, at least if the right of self-determination is as specified by Margalit and Raz. That is just because one encompassing group is now dominant in the whole of A and there is no such group that is dominant in B (since it is now composed of a large number of Lusitanians in addition to the Ruritanians). The leaders of A might accomplish this transformation by a combination of policies, such as settlement of Lusitanians from A in the territory of B, the deportation of Ruritanians from B to other regions of A, or even "ethnic cleansing" of Ruritanians from B.

In reply, it might be said that for a ruthless political regime, such policies will always seem attractive, even if the formulation of the right to self-determination does not include any reference to encompassing groups. Thus, even if one adopts the smallest-region principle, the regime in A might be tempted to change the facts so that the majority of the population of B comes to advocate union with their state. Since, in the real world, political preferences are often indexed to ethnicity, alteration of the ethnic facts usually also achieves alteration of political preferences. Policies designed to change the ethnic makeup of a large population often go hand in hand with those designed to alter the political opinions of such a population.

What these objections show is that any formulation of the right to self-determination will need to be modified to take into account the question of territorial rights, since no attempt to justify the right of self-determination can afford to ignore the question whether the group in question has a right to the territory where self-determination is supposed to be exercised. Some discussion of territoriality is in order because attention must be paid to the situation that gave rise to the status quo in the first place. Otherwise, all these formulations will be prone to abuse and to be exploited as justifications for all manner of violence and oppression, in the manners suggested above: ethnic cleansing, mass deportation, settlement and resettlement campaigns, colonization, and so on. The most effective way of ruling out such practices is to pay attention to territorial rights. In order to

answer such objections fully, and to see how the formulation of the right to self-determination may be modified to deal with such problems, it is worth examining Buchanan's account, for it focuses precisely on the issue of territory.

Before moving on to discuss the issue of territory, it should be pointed out that by formulating the right of self-determination without bringing in encompassing groups, ethnic groups, or national groups, the importance of recognizing these groups is not being denied. What is being denied is whether according them the right of self-determination is always the best way of recognizing them and whether it is not often outweighed by more pernicious effects of recognizing this right as pertaining primarily to such groups. In practice, the smallest-region version of the right of self-determination will accord the right to many of the same groups as a national (or encompassing group) formulation. But, as we have seen, there are good grounds for not adverting expressly to such groups in justifying and formulating the right.

Territory and Secession

Buchanan's concern is primarily with the issue of secession. The right to secession can be seen as a special case of the right to national self-determination, namely, as applied to an initial situation of a territory wholly contained within an independent state. Most of his remarks on secession can be applied without modification to the more general issue of self-determination. Buchanan's account of the right to secession of a certain region reveals a somewhat different approach from the ones already pursued, since he frames the question in terms of the right of a territory to secede, rather than that of a people to gain independence. He discusses the question of the existence of the right of secession by assuming a situation in which there is a population that participates to some degree in the normal political life of an existing state, that is, a population whose political and civil liberties are more or less intact, but that nevertheless wishes to secede and set up a separate state. He considers several arguments that might be used to justify such an action (and therefore the right of secession) as well as several objections to it.

For Buchanan, a territory has a (limited) right to secede from a larger state in two basic situations: (1) if it was unjustly incorporated into the larger unit from which its members wish to secede ("rectificatory justice") (1991b, 329–30); or (2) if it has been discriminated against by the government of that state, for example, using taxation schemes or regulatory policies or economic programs that systematically work to the disadvantage of the group inhabiting the territory ("discriminatory redistribution") (1991b, 330). In more recent writings, Buchanan has added a third justification for the right of secession, which resolves itself into two subcases: (3) (*a*) a group may secede from a state in order to protect its members from extermination by that state itself; and (*b*) a group may secede to defend itself from a lethal aggressor that is not itself that aggressor

("self-defense") (1993, 590).[3] For our purposes, what is important is that, in *all* cases, a sound justification for secession must include a valid claim to territory (1991b, 330). The purpose of this section is to see whether any of the conditions appearing in Buchanan's theory can be used to supplement the formulation of national self-determination given in the previous section in order to avoid the objections raised at the end of that section.

Buchanan's discussion couches the issue primarily in terms of territories, rather than in terms of groups. Is he therefore just assuming that the groups at stake constitute the majority of the population of the territories in question? At one point, he asks: "Should a two-thirds majority in favor of secession suffice? Or is three-quarters necessary?" (1991a, 142). He refrains from taking an unequivocal stand on this issue, although he would seem to concur with the "substantial majority" formula encountered (and endorsed) in the previous section. At one point, Buchanan considers a minority group within a state that uses the right of secession as a kind of sword of Damocles with which to threaten the majority, in trying to avert certain democratically approved decisions. As a safeguard against such maneuvers, he says that "the constitution might recognize a right to secede but require a strong majority of those in the area in question to endorse secession by a referendum vote" (1991b, 337). He also considers at least one other way of blocking such threats. So, formation of a strong or substantial majority in the seceding region is not presented as a strict condition on the group that wishes to secede, but Buchanan favors referendums that poll the inhabitants.[4] The reason that Buchanan does not devote much space to what would seem to be a crucial question is that he considers it to drop out, as it were, from his general discussion of the justification of the right of territories to secede. To see why, I now consider each of Buchanan's three instances in turn and see what specific conditions they put on a group of people seeking the right of secession in a particular territory.

The first justification given by Buchanan (rectificatory injustice) may actually come into conflict with the formulation of the right of national self-determination given in the previous section. Under this justification, there is no requirement that the people seeking self-determination in a territory constitute the majority of the inhabitants of that territory, for the people seeking secession (or their forbears) might have been removed from the territory in question at the time that the territory was unjustly incorporated into the larger unit. In such case, the group in question would not be the current inhabitants of the territory that has the right to secede, but the previous inhabitants or their descendants. He writes that this rectificatory argument for secession

> is most plausible in situations in which the people attempting to secede are literally the same people who held legitimate title to the territory at the time of the unjust annexation or at least are indisputable descendants of those people. Matters are more complex if the seceding group is not closely or clearly related

> to the original group from whom the territory was unjustly taken or if the original group that was dispossessed did not have unambiguous title to it. (1991b, 330)

Clearly, the people who have a legitimate territorial claim (and therefore the right to secede) need not currently inhabit the territory in question, let alone constitute the majority in that territory. This therefore reveals a case not covered by the smallest-region formulation, and it would seem from the discussion at the end of the previous section that an account of the right of national self-determination cannot afford entirely to ignore instances of this sort.

Under the second justification for secession (discriminatory redistribution), being a majority in the territory that is discriminated against would seem to be necessary, since the type of discrimination considered applies to the people inhabiting that territory, and if the people thus affected do not constitute a majority in the territory, there would seem to be little grounds for secession of that territory (as opposed to, say, a smaller part of that territory). In these cases, it would seem as if the groups who would be accorded the right would be just those who constitute the current inhabitants of the territory involved.

There is a complication that needs to be brought in here. In some instances, the inhabitants of the territory discriminated against might not realize that they are suffering discrimination. If that is true, the moral right presumably accrues to them even though they are not demanding to exercise that right. If it becomes common knowledge that the territory is being discriminated against, this knowledge is liable to generate such a demand by the inhabitants of the territory. But if these facts are not disseminated and are known only to a ruling elite in the larger state, then on Buchanan's conception they presumably have the duty or obligation to grant them secession (since rights generate corresponding duties). Does this show that the smallest-region formulation needs to be supplemented by something like Buchanan's discriminatory redistribution clause? Not necessarily, for one could argue that, in the circumstances described, the rulers of the state have the obligation to rectify the discrimination rather than to offer secession. If there is no desire on the part of the inhabitants of the region to secede, and they would rather receive more benefits from the current state, then that would be the preferable course. This shows that the voluntaristic formulation of the smallest-region principle is superior to Buchanan's approach. Therefore, Buchanan's second justification for the right of secession need not be incorporated into the formulation of self-determination discussed in the previous section.

When it comes to the third condition that Buchanan puts forward (self-defense), it also seems to grant the right of secession to a group in a territory, even when that group does not constitute the majority of the inhabitants of that territory. Though Buchanan does not say so explicitly, when a group is trying to "organize a defensible territory" in order to protect its members from extermination by a state, it is conceivable that the group under attack does not occupy a geographically contiguous area in which its members are a majority (1993, 590). To

illustrate, Buchanan considers a hypothetical situation in 1939 in which Jews in Europe decided to set up a state in part of Poland. As Nazi Germany pursued its genocide against European Jewry, Jewish leaders in Germany, Eastern Europe, and the Soviet Union might have agreed to create a Jewish state that would serve as the last refuge for European Jews. Buchanan holds that "the logical choice for its location—the only choice with the prospect of any success in saving large numbers of Jews—is a portion of Poland" (p. 591). In such a case, he rules that the Jews have a right to establish an independent state in part of Poland on grounds of self-defense against extermination, since their own state (Poland) is not providing them with protection and a state's authority over territory is based in part in its providing protection to all its citizens. This situation effectively generates a legitimate claim to part of Poland's territory on the part of the threatened population: "In the circumstances described, the Polish state is not providing protection to its Jewish citizens, and this fact voids the state's title to the territory in question. The Jews may rightly claim the territory, if doing so is necessary for their protection against extermination" (p. 591).

In this instance, the people seceding may not constitute a majority in the territory, though if they do not, it seems unlikely that they will have a chance of gaining control of it to protect themselves against genocide. If they do have the power to seize such a territory even when they do not constitute a majority and to defend it against the regime, they would realistically also have the requisite power to defeat or topple the aggressor regime altogether. Moreover, such a solution would seem to be preferable, since it would put genocidal threats to rest once and for all, rather than transform them from a domestic matter into an international one. In addition, the seizing of territory in which the threatened population is not a majority raises questions about the fate of the original inhabitants of that territory. Buchanan assures us that the secessionists "do not expel non-Jewish Poles who already reside in that area but, instead, treat them as equal citizens," however their presence in such a state in such dire circumstances will ordinarily lead to problems (p. 591). Therefore, we need not take Buchanan's third justification into account, since a right to secession seems efficacious only for purposes of self-defense if the threatened population is already a majority in that territory and is able to defend it, a circumstance effectively subsumed under the conditions outlined.

Therefore, only Buchanan's first justification for secession puts forward a case where self-determination may be justified that cannot be accounted for by the smallest-region principle. The principle that self-determination should be granted to the inhabitants of the smallest region that demands it within the territory under consideration cannot be used to restore a territory to those who have a valid territorial claim to it, since the current inhabitants of the region may not be the ones who have a valid territorial claim to it. But should the rightful owners of a particular territory always be given precedence over the current inhabitants of that territory in granting the right of self-determination? This

question can be addressed by comparing Buchanan's position with that of Margalit and Raz on the issue of people who have been removed from a territory they previously inhabited. When it comes to historical territorial claims by a certain group, Margalit and Raz do not automatically favor them over the rights of members of the encompassing group that forms the current majority. For one thing, they think that historical ties do not make a difference if the right was abandoned voluntarily. If the group was unjustly removed from the country, they argue that the group has a right to self-determination in the territory from which it was expelled "subject to the general principle of prescription" (1990, 459). Prescription protects the interests of the current inhabitants and is meant to prevent the revival of abandoned claims and to protect those not personally to blame for the expulsion. In such instance, the expelled group may lose the right to self-determination even though its members continue to suffer the effects of the past wrong; however, they retain the right to restitution (p. 459). Although Margalit and Raz do not deny the right of self-determination in such cases, they differ from Buchanan in putting further conditions on granting the right. While their discussion is sketchy, it would seem as if they hold that the right (1) should not have been voluntarily abandoned, and (2) should not be so ancient that the current inhabitants share no responsibility in the expulsion. Both conditions seem sensible, although they are rather vague. (What is the sign of voluntary abandonment? How recent would the claim have to be?) Still, Margalit and Raz provide some grounds for incorporating them into our final formulation.

In the previous section, we specified two conditions that a group must meet to qualify for the right of self-determination in a certain territory: (1) it must constitute a substantial majority in the territory in which it wishes to exercise the right; (2) there must be no smaller subregion in that territory, a substantial majority of whose population demand to exercise the right in that subregion. These conditions are now supplemented as follows: (3) the group must have a valid territorial claim to the territory in which it intends to exercise the right to self-determination (provided that claim was not voluntarily abandoned and is not an ancient one); and (4) if the group satisfying the first condition is not the same as that satisfying the third, then the latter group will be given precedence over the former. The third condition is clearly more problematic than the first and second, and it gives rise to numerous questions. Individual property rights are notoriously contentious and group property rights to large territories would seem to be even more so. Indeed, Buchanan almost admits as much parenthetically: "the chief difficulty in [the principle's] application is that the history of most existing states is so replete with immoral, coercive, and fraudulent takings that it may be hard for most of them to establish the legitimacy of their current borders" (1991b, 330). This problem may be partly resolved by paying heed only to relatively recent territorial claims as opposed to ancient ones, as suggested. Despite their messiness, however, there does not seem to be an alternative to bringing in territorial claims, as Buchanan does. The discussion in the previous section

and the consideration of situations in which the right of self-determination as formulated by other authors would be prone to be abused should have made clear that we cannot afford to ignore the question of territoriality in trying to justify the right of self-determination.

To these four conditions, we may add a couple of further considerations, also derived from the work of the writers being discussed. Margalit and Raz (1990) believe that the right is conditional on its being exercised "for the right reasons." For example, they say that Katanga cannot claim a right to self-determination as a way of securing its exclusive control over uranium mines within its territory (p. 459). On their theory, the "right reasons" are defined by "conditions necessary for the prosperity and self-respect of the group," but what could be more necessary for the prosperity and self-respect of an encompassing group than the control of valuable natural resources? So, the Katangan move cannot be ruled illegitimately their own lights. Instead, the right way of dealing with such cases would be to institute a system of compensation whereby a neighboring group that is caused demonstrable economic hardship by a group's exercise of the right to self-determination should be compensated (perhaps subject to international arbitration) for its losses. This is similar to what Buchanan calls "exit costs," which are levied in the context of compensation dictated by considerations of distributive justice in a settlement (1991b, 342). Both Margalit and Raz and Buchanan also consider safeguards against harming the interests of the inhabitants of the state or territory which is granted independence or autonomy. For Margalit and Raz, the right of self-determination is only granted provided that the new state is likely to respect the fundamental interests of its inhabitants, as already mentioned. Similarly, Buchanan indicates that secession should not "deprive third parties (in particular the children and later descendants of the secessionists) of their fundamental rights and liberties" (p. 342). These are again difficult conditions to assess in practice, but representatives of the group granted self-determination might be asked by international arbiters to present a constitution with certain safeguards, especially for protecting minority rights.

Before resting with this formulation, it is worth seeing whether the same moral intuitions could be captured by a simpler formulation of the right of self-determination, especially concerning territorial rights. The cases we were concerned to rule out in the previous section all involved policies designed to change the distribution of a population in a territory in such a way as to alter the groups that would qualify for the right. In this section, I have tried to remedy this shortcoming by adverting to territorial rights. But someone might propose ruling these cases out in a less controversial manner by requiring simply that the population be resident in a territory for a considerable time in order to qualify for the right. This would block the attempt to generate the right of self-determination overnight through the use of repugnant policies. Something like this suggestion is to be found in Nielsen's formulation of the right. According to Nielsen, long-time residence in the territory in which self-determination is demanded is usually

a necessary condition for granting the right. Thus, Nielsen (1993, 34) remarks: "When I speak of . . . a group forming a nation, which could also become a state, I am talking about a group living in a distinct territory (having inhabited it for a long time), possessing an extensive majority in that territory, and having as well a distinct culture." At one point, he considers the case of a people who do not possess a majority in a region and who have not inhabited it for a length of time, and pronounces:

> It could be the case that a people, as the people coming to Iceland did, will come to an utterly unoccupied part of the world and form there a state or a nation that answers to their cultural aspirations. But this is plainly not relevant to present day circumstances where all the viable land is occupied. A dispersed people now could only form a nation-state by replacing a people already there and that is always morally problematic. (1990, 43n)

Nielsen does not pronounce this immoral outright, but he seems to take a dim view of such a possibility, and it would presumably be ruled out by requiring that a people be established in a territory for a length of time before qualifying for the right of self-determination.

Although Nielsen's formulation might seem superior on this count because prolonged residence is a less controversial thing to determine than territorial claims, closer inspection reveals that little would be gained by framing it in his terms. In determining the right of a population to a territory, one is not guided solely by title deeds but also by such considerations as prolonged residence of a group in a certain region. In some cultures, property rights are not explicitly recognized; in others, tenants have rights akin to those of owners. These considerations will need to be taken into account in applying the right as currently formulated. Since determination of a legitimate territorial claim can bring in a number of other factors besides prolonged residence, it would seem as if the current formulation is broader than Nielsen's and need not refer explicitly to prolonged residence.[5]

We now have a formulation of the right of self-determination that owes something to a number of existing theories while adding some new elements. The resulting hybrid avoids the difficulties found with the other theories considered and weaves some of their components together to issue in a new formulation of the right of national self-determination. It takes as its starting point the voluntaristic principle that populations should themselves determine the overall political arrangements that govern their lives and that such fateful decisions should be taken only by substantial majorities. In the event of dispute, it gives priority in self-determination to groups inhabiting subregions within larger territories. Finally, it requires any demand for self-determination to be accompanied by a valid territorial claim, while acknowledging that the determination of territorial claims is not a simple or straightforward matter and is often beset with problems. To test this theory, assess its strengths and shortcomings, and to see whether

further modifications need to be made, it can be applied to the Palestinian-Israeli conflict, in keeping with the methodology of "reflective equilibrium" first advocated by John Rawls.

Application to the Palestinian-Israeli Conflict

One reason why the Palestinian-Israeli conflict has theoretical interest is precisely because some of the issues discussed in previous sections come to the fore. In this section, I propose to try out the theory formulated above to see how it fares when applied to the Palestinian-Israeli conflict. The case will actually be resolved into two separate case studies, the situation at the crucial juncture of 1947–48 and the current situation.

When the United Nations drew up a partition plan that proposed dividing British Mandate Palestine into Jewish and Arab states in 1947, the borders of the territory supposed to constitute the Jewish state were drawn in such a way that Jews made up a bare majority of the population (less than 60 percent, if one did not count the Jews of Jerusalem, since the city was to be part of an international zone administered by the United Nations). Although the territory proposed for the Jewish state was contiguous, the remainder of Palestine, slated for the Arab state, was not. Even if the territory allotted to the Jewish population were deemed suitable for the creation of a state, the bare majority that the Jewish population possessed in the allotted area would not have qualified them for the right to self-determination according to the theory of self-determination formulated above. That is because it requires a "substantial" majority in the territory (a condition that is endorsed by practically all the authors discussed).

It might be argued that the Jewish people seeking self-determination in Palestine in 1947 were the direct descendants of the people dispersed after the destruction of the Second Temple by the Roman imperial authorities in the first century A.D. If those people had a valid territorial claim to the land, then it might be transferred to their modern descendants and they might claim a right to self-determination based on condition (4) above, which calls for giving precedence to the legitimate claimants of the territory over those who constitute a substantial majority in the territory. Given that this territorial claim dates back almost two millennia, however, it would be discounted according to Margalit and Raz's proposal that ancient claims should be dealt with according to the principle of prescription. Since the ancient territorial claim is not valid, the only territorial claim that the Jewish people would seem to have had in 1947 would be the contemporaneous one. If that is so, only 7 percent of the total land of Palestine was in Jewish hands, whereas the UN partition plan allotted 55 percent of the land to the Jewish state. Thus there is no territorial claim that would outweigh the substantial majority condition.[6]

Tamir's is the only theory of those considered here that might be used to justify the Jewish right of self-determination in Palestine in 1947–48. Her theory does

not explicitly require that the people demanding the right to self-determination in a territory constitute a substantial majority in that territory or have a valid territorial claim to it. On the other hand, neither does she explicitly deny that these or similar conditions must be satisfied. Recall that she views the right of national self-determination "an expression of the right to culture" (1991, 586). On her way of seeing matters, "though the right to national self-determination [i.e. national self-expression] involves a right of access to the public sphere, it does not necessarily entail a right to an independent state" (1991, 587). It is not clear whether Tamir would endorse the right of a people to self-determination in the absence of a clear majority in the territory or a valid territorial claim. But she does say that the exercise of this right for one people might entail certain sacrifices in another people: "since the burdens and benefits of implementing this right should be balanced before a certain policy is adopted, it is reasonable to assume that the larger the number of individuals who would enjoy this policy, the heavier the burdens it would be justified to impose on others" (1991, 588). Assessing the costs and benefits for the two sides in the Palestinian-Israeli case would be a thorny issue and it is beyond the scope of this paper to pursue it, but such a calculation does not seem to provide a firm moral justification for the right of self-determination for Jews in Palestine in 1947–48.

When it comes to the Palestinian Arab population of Palestine in 1947–48, they seem to qualify straightforwardly for the right as formulated above, since they constituted both the substantial majority and rightful claimants to the territory of Mandate Palestine. No referendum was ever carried out to see whether a substantial majority of the population would have favored independence in Palestine at that historical moment. But the positions of their political leaders and the conclusions of various international fact-finding commissions would lead one to conclude that that was indeed the case. Still, it may be asked whether the Palestinian people were the group inhabiting the smallest region seeking self-determination in the territory of Palestine, or whether there were any smaller regions the majority of whose population sought self-determination. Presumably, there was a Jewish population in the coastal region in the vicinity of the city of Tel Aviv that constituted a majority in that region that would also have expressed a demand for self-determination. That population would have had the right to exercise self-determination in that territory, provided they could lay rightful territorial claim to it.[7] Such a territory might not have been viable as an independent state, but it may have constituted a viable autonomous or self-governing region.

As for the current situation, the natural territories to consider at least at first (this may be modified in light of the discussion), are the West Bank, Gaza Strip, and the state of Israel (within its pre-1967 borders). The populations of the first two territories are obvious candidates for exercising the right of self-determination, since it is fairly uncontroversial that they would seek to do so if polled, constitute a substantial majority, and have a legitimate territorial claim. Whether the two territo-

ries should constitute a single political unit or two separate ones depends on whether either of them would seek to exercise the right of self-determination on its own (or whether any proper part of them would seek to do so). In that event, the smaller population would be given priority. But indications are that the two populations would seek to unite the two noncontiguous territories in a single political unit.

The situation of the Jewish population within the pre-1967 borders of Israel is more problematic. In this instance, it is also clear that the population would seek to exercise self-determination in this territory and that they constitute a substantial majority in it. The sticking point is the matter of the territorial claim. It is doubtful that the juridical claim of the population of Israel to its territory would pass moral muster. The Jewish population of Palestine possessed some 10 percent of the land allotted to it in the UN partition plan; it had a claim to an even smaller portion of the territory, which eventually came to constitute the state of Israel (which was augmented by territory occupied during the war of 1948). In 1950, the Israeli Knesset passed the Absentees' Property Law, which defined "absentee" in such a way that it applied to every Palestinian or resident in Palestine who had left his or her usual place of residence in Palestine for any place inside or outside the country after the adoption of the partition of Palestine resolution by the United Nations in November 1947. Even people who remained within the eventual borders of the Israeli state and eventually became Israeli citizens were classified as "present absentees" (in Hebrew, *nifkadim nochachim*). People in this category made up half of the total non-Jewish population living within the borders of the state of Israel in 1949. The law also appointed a Custodian for Absentee Property. The appropriated property was made his legal holdings, until eventually it was transferred to the Development Authority (Jiryis 1981, 83–87; Lustick 1980, 170ff). State lands and Development Authority lands appropriated in this way were then "sold" (although no money changed hands) to the Jewish National Fund (JNF), an international Jewish organization that has a quasi-official status in Israel. The Development Authority (Transfer of Property) Law of 1950 provided that the Authority could sell lands only to the state, the JNF, or various official or officially sponsored bodies, but that the lands must be offered first to the JNF. The process whereby the land is appropriated by the government and transferred to the JNF is called "redeeming the land." The "redeemed" land, often referred to as "national land," is granted to "the Jewish people" (not to the citizens of Israel) by the provisions of the JNF charter, and non-Jews are unable to own it, lease it, or work on it. In this manner, the JNF managed to acquire the lands of the Palestinian Arab "absentees" (including residents) after they were transferred to it by the state, and the lands are now barred to non-Jews. This legal maneuver fulfilled two functions: it protected the JNF from lawsuits that might be brought by the original owners, and it enabled the implementation of a land policy that discriminated against non-Jews without tainting the Israeli government directly. The land thus acquired eventually con-

stituted about one-quarter of all the land of pre-1967 Israel, nearly 5 million dunams (approximately 1.2 million acres) (Jiryis 1981, 85–86; Chomsky 1982, 248–50).

This complex legal maneuver involved the expropriation of property from thousands of landowners without offering any kind of compensation. Therefore, it cannot be used to generate a legitimate moral claim to the territory that was confiscated, but one can still ask whether prolonged residence has generated a territorial claim on behalf of the Israeli population to the territory of pre-1967 Israel. A substantial segment of the Jewish population of Israel has now been residing in that territory for over four decades, but the merits of the case obviously cannot be specified in terms of a requisite number of years. Rather, in trying to rule on this matter, one needs to weigh the costs incurred by the Israeli Jewish population of sharing this territory or ceding it with its original inhabitants and their descendants, as against the costs incurred to the latter in continuing to live as refugees outside that territory. In so doing, one also needs to take into account the responsibility for the dispossession of the original population by some of the current inhabitants and their political leaders. In ruling out ancient territorial claims, Margalit and Raz (1990, 459) draw attention to the need "to protect those who are not personally to blame from having their life unsettled by claims of ancient wrongs, on the ground that their case now is as good as that of the wronged people or their descendants." But equally, if it turns out that many of those responsible for the original wrong are still enjoying the benefits of self-determination in the contested territory, that should justify asking them to bear greater costs for the original wrong. The calculation of costs and benefits to both sides is not likely to be easy, but it must be carried out in order to determine what combination of repatriation, resettlement, restitution, and compensation will yield the fairest solution.

After this solution has been worked out, there will remain the question whether there is a population of any smaller subregion within the current borders of Israel that would seek the right of self-determination. A case can be made for the population of parts of the Galilee in which Palestinians still constitute a substantial majority of the population. If there are any such regions in which the inhabitants seek autonomy or independent statehood, then they would seem to have the right, given that the territorial claim of people living in their ancestral towns and villages would be a straightforward one.

The formulation of the right of national self-determination arrived at on the basis of theoretical considerations has now been tested by applying it to the Palestinian-Israeli conflict. Although no reason was found to modify its content in the light of this case study, this section has underlined some of the difficulties involved in assessing the moral case for self-determination, particularly concerning territorial claims. The most problematic subcase was clearly the current right of the Israeli Jewish people to self-determination within the pre-1967 borders of Israel. At best, the exercise of this right would have to be tempered by concessions to the right of the original inhabitants and their descendants to exercise the

same right within the same territory. Considerations of fairness suggest a compromise involving some combination of repatriation and restitution for the original inhabitants. It would be naive to imagine that ethical considerations are likely to play a dominant role in international conflicts or that the parties to such conflicts would agree to abide by strict moral principles. That may make an analysis of the ethical dimensions of the Palestinian-Israeli conflict seem like an exercise in idle moralizing. Yet it would be defeatist to assume that moral principles have simply no role to play in the conflict or that they cannot be held up as ideals against which the performance of the parties can be judged. Moreover, philosophical analysis can serve to clarify theoretical issues and make crucial distinctions that may have practical benefits. I end by indicating how the foregoing discussion may help clarify a politically charged issue.

We have seen how the question of self-determination for Israeli Jews in the present can be separated from the right of self-determination for Jewish residents of Palestine in 1948. This can be used to show the equivocality of the politically contentious phrase "Israel's right to exist," which can be taken either to signify the right of the 1948 Jewish Yishuv to establish the state of Israel in the first place or the right of the state of Israel to continue to exist in the present. While the first is roughly equivalent to the right of self-determination in 1948, the second is the right of self-determination in the present. A clear distinction between these two rights seems to be necessary before blindly deploying the phrase "Israel's right to exist." This is not just an issue for pedants and philosophers; it is also of relevance to all the participants in a conflict in which questions of right and principle are always in the foreground. In 1993, Israel made direct negotiations between the Israeli government and the Palestine Liberation Organization conditional upon a letter from the PLO chairman to the Israeli prime minister in which the former affirmed "Israel's right to exist in peace and security." This formulation was presumably satisfactory to both sides, since it suggested at one and the same time the right of Israel to be established (to the Israeli side) and the right of Israel to continued existence within its present borders (to the Palestinian side). But rather than slur over differences with ambiguous formulas, it may be more profitable in the future to enunciate them more clearly. Issues of moral right and wrong are not likely to fade from view in the future course of the conflict and philosophical analysis can sometimes be called on to make them more tractable.

Notes

1. In fact, the same could be said about the right of political participation; there is a prior issue of whether there are political institutions that allow a group of people to participate in its workings in the first place. But I assume that the group rights in both these cases are reducible to the rights of the individuals that constitute that group. As we shall see, the same does not hold for the right of national self-determination, which pertains generally to groups of people or communities, rather than individuals.

2. Notice that a desire for exercising self-determination independently of the rest of R_1 may not entail independent statehood; the population of R_2 may desire to unite with some other region, region R_3. The formulation in this paragraph is based on one suggested to me by Tomis Kapitan.

3. In earlier work, Buchanan also mentioned a different case, but one that seems to be capable of subsumption under (3b). He argued there that in some circumstances, the need to preserve a culture may also justify a group's seceding, even if there is no state-perpetrated injustice (1991b, 332).

4. In some cases, however, Buchanan points out that the people polled should not be *all* the inhabitants who happen to reside currently in the territory, namely, if it contains people who were settled there illegitimately. Such cases are dealt with shortly.

5. Note that the territorial claim central to the present formulation of the right to self-determination does not invoke absolute property rights. Instead, property rights are granted in accordance with the consequentialist premise of grounding ethical considerations in the injunction to maximize human happiness or flourishing.

6. For information on landholdings in Palestine from 1919 to 1946, see Khalidi (1971, 841–43).

7. In 1946, Jews made up 71 percent of the population in the district of Jaffa (which included Tel Aviv), but they owned only 39 percent of the land in 1945. There was no other district in which they made up a majority of the population, or in which they owned a greater portion of the land. By including parts of more than one district, however, a region may have been specified in the vicinity of Tel Aviv in which Jews constituted the majority and had a valid claim to the land. For details of landownership, see maps in Khalidi (1971, 672–73). A complication needs to be introduced here. Jewish immigration was controlled by the British colonial authorities after World War I and was not generally welcomed by the original inhabitants of Palestine. This may cast doubt on the legitimacy of the Jewish majority in some regions of Palestine and needs to be taken into account when assessing the right to self-determination in those regions. The question of the moral justification for Jewish immigration to Palestine has been taken up in Hourani (1969).

3

The Moral Status of Israel

Alan B. Gewirth

I begin with two preliminary remarks. The first is about method. I proceed dialectically. By this I mean that instead of directly giving my own positive views, I first emphasize the negative, that is, I present the various critical objections and problems that have been raised against my position, and only after that do I answer the objections. I think it is important to proceed in this sequence because I want to confront the difficulties and objections head-on, and the best way to do that is to lay out the negative case as directly and explicitly as possible.

My second preliminary remark concerns the vitally important question of moral criteria. I talk about the moral status of Israel. But what criteria of the "moral" am I using? Let me give an example. According to some extremely Orthodox Jews, the whole present state of Israel has no right to exist; it is morally illegitimate in principle because, according to the Bible, the right or justified state of Israel can be established only after the coming of the Messiah. Now this view is indeed based on a certain criterion of moral rightness. But most of us do not accept the criterion.

Just what aspect of the criterion do we reject? Do we reject it because it appeals to the Bible; or do we reject it because it misinterprets the Bible? If the latter, does this mean that we do take from the Bible our moral criterion for evaluating Israel, only it is a different interpretation of the Bible from the extreme Orthodox one? Or is it that we think the Bible as a whole is essentially irrelevant to the criterion for assessing the moral status of Israel?

We could, of course, debate this question of moral criteria for a long time. Some persons may feel that the question of moral criteria is ultimately arbitrary; moreover, that it is pointless. It is pointless because all political questions are ultimately questions of power, and the Israeli Jews now have the power, so let them keep it.

This amoral stance of sheer power, however, is drastically unacceptable. It would, for example, remove any basis for objecting to Hitler's treatment of the Jews, since he, after all, also had superior power. And as for the idea that moral criteria are ultimately arbitrary, this too is a mistake. I cannot show this here. So instead of dealing directly with the problem of moral criteria, I make my own criteriological position clearer as I proceed; I think it is one that is widely shared.

I now come to the main body of my talk. It is divided into two parts. In the

first part, I present and analyze a certain problem, using the dialectical method I mentioned before. In the second part, I try to show how this problem is to be solved.

The problem in question is, of course, the moral status of Israel. Just what do I mean by this, and why is it a problem?

Like other sovereign states, Israel has many different aspects. Some of them, such as the Lebanon War and the West Bank, raise very troubling moral issues. But the aspect I am primarily concerned with here is more fundamental than any of these because it concerns the most basic constitutional structure of the state of Israel. Of course, Israel does not have a formal written constitution. Nevertheless, it does have a general constitutional structure that determines such matters as what sort of government it should have, how the governing officials are to be chosen, what powers they should have, what is the general purpose of the state of Israel, and so forth.

Out of this whole constitutional structure, the main problem arises from the last point: the general purpose of the state of Israel. This general purpose is epitomized in the idea that Israel is and should be a Jewish state. This idea is central, of course, to the whole idea of Israel itself.

Just what does this idea of Israel as a Jewish state mean, and just how does it raise some deep moral problems?

The idea of Israel as a Jewish state means, of course, many things. Among them, I think three are quite central. First, it means that Jews should always be a majority in the state of Israel. From this it follows, of course, that all other groups, including Moslems, Christians, and so forth should collectively always be a minority. As a consequence, Jewish immigration and a high Jewish birthrate should be encouraged, while other immigration and birthrates should be discouraged; by the Law of Return all immigrating Jews automatically become citizens of Israel, while this is not true for any other groups, and so forth.

A second thing that the idea of Israel as a Jewish state means is that Jews should hold the main positions of governmental leadership or authority in the state of Israel. No Arab, for example, should be president or prime minister, and this also holds for other leading officials. It also means that the main political parties should either be composed exclusively of Jews or should have large Jewish majorities, that the armed forces should be composed exclusively of Jews, and so forth.

A third thing that the idea of Israel as a Jewish state means is that certain important types of symbolism and corresponding practice upheld by the state should be exclusively Jewish. These types should include, for example, the national flag, the national anthem, the official observance of Jewish religious holidays, and so forth. The corresponding practices should also include a general consensus that Jewish life and well-being are of enormous and indeed central importance, and perhaps that they count for more than, are more important than, the life and well-being of other groups, at least within the state of Israel; indeed, that the basic purpose of the state is to serve as a haven for Jews and to be primarily concerned with their needs and well-being.

Given these three things as the main components of the idea of Israel as a Jewish state, I now want to indicate what moral problems this idea raises. These problems directly constitute the question of the moral status of Israel, as I am concerned about it here. I present these problems dialectically, as I have said, by means of four progressively more damaging parallels. The first I call the American parallel; the second, the French parallel; the third, the Polish parallel; and the fourth, the South African parallel.

First, then, the American parallel. Keeping in mind the meaning of the idea of Israel as a Jewish state, let us consider the following parallel idea: that the United States should be a Christian state. After all, if the majority of persons in a state should be allowed to determine that state's religious orientation, as in Israel, then why shouldn't this hold also for the United States of America? So, paralleling our previous analysis, this would mean that the United States should be a Christian state, and so it not only does but also should always have a Christian majority. It would also mean that the leading governmental officials, from the president on down, not only are but should be exclusively Christians. Similarly, the flag of the United States should contain a cross; the national anthem should be dedicated to Jesus Christ; clergymen participating in official functions should be exclusively Christian; there should be a broad consensus that the lives and well-being of Christians are more important than those of non-Christians, and so forth, and that the United States primarily or basically exists to serve the needs of Christians.

Now I take it that all of us would indignantly reject this idea of the United States as a Christian state. But this brings me to the crucial question: why do we oppose such Christianizing of the United States, while we support the Judaizing of Israel?

If the answer is that our Bill of Rights prohibits an establishment of religion, this, of course, begs the question. Why do we oppose such an establishment for the United States, while we support it for Israel, in the senses of a Jewish state previously indicated?

One accusation brought against us as Jewish American supporters of Israel is that we are inconsistent, and moreover that this inconsistency is immoral because it involves making exceptions in our own favor. When we are, or were, discriminated against in the United States and elsewhere, we strenuously objected on grounds of universal human rights. We insisted that all persons should have political and civil equality; no one should be discriminated against or be regarded as inferior because of race, religion, nationality, and so on. We are therefore strong supporters of ethical universalism.

When it comes to Israel, however, we revert to an anti-universalist particularism. Israel should be solely or at least mainly for the Jews; the highest governmental offices should be reserved for Jews, and so forth. Hence, we are against discrimination when it harms Jews in the United States and elsewhere, but we are for discrimination when it benefits Jews, at least in Israel. Aren't we, therefore, hypocrites in our professed support for universal human rights?

Another reply that may be made to the accusation of inconsistency is theological: that God promised the Land of Israel to the Jews alone. But here the question arises: how seriously should we take this claim? The Moslems say that God promised the land to them; the Ayatollah Khomeini says that God demands that Iran be exclusively Moslem in the most fundamentalist sense and that this Moslem fundamentalism should ultimately be imposed on all peoples everywhere, and so forth. The religious wars of the fifteenth and sixteenth centuries ended when enlightened people came to see the ultimate folly, sterility, and barbarism of insisting on the political implementation of their respective religious revelations. How, then, can any enlightened persons today strive to repeat the tragedies and fallacies of such religious dogmatism and obscurantism?

I turn now to a second parallel, which I call the French parallel. In reply to the accusations just mentioned, it may be argued that Jews should have a state of their own just as Frenchmen, Dutchmen, Chinese, Indians, and other national groups all have their own states. The purview is now one not of Jews as having a distinct religion but rather of their being a distinct ethnic group. The principle invoked is that each distinct ethnic group should have its own state; the Jews are a distinct ethnic group, just as the French are; therefore, just as the French have their own state, so too should the Jews.

This parallel between French and Jewish ethnicity, however, raises some severe problems, including the following. If the Jews are a distinct ethnic group, then how can the Jews also be a part of the French ethnic group, whereby they claim the rights of French citizenship equal to those of all other Frenchmen? Moreover, if being a distinct ethnic group justifies the Jews in having a distinct state that excludes or subordinates other ethnic groups, then how could the Jews consistently complain if the French, in the name of their own ethnicity, excluded or subordinated the Jews who live in France? Surely we cannot consistently have it both ways; that is, say for Israel that the Jews are a distinct ethnic group and for that reason they should have their own state while also saying about France that the Jews are not a distinct ethnic group that should be excluded from equal French citizenship because they are not part of the dominant French ethnic group.

This brings me to a third parallel, which I call the Polish parallel. It begins from the ethnic nationalist aspect of the French parallel, but carries it much further. Many times in the nineteenth and twentieth centuries Polish nationalists, and indeed the Polish government, denounced the presence of Jews in their midst. They declared that Poland should be exclusively for the Poles and that the Jews were an alien race or ethnic group who diluted the purity of the Polish people. They asserted that the Jews were inimical to the development of a purely Polish culture, with their disproportionate influence in commerce, the arts, the universities, and so forth.

We rightly feel that this anti-Semitic Polish chauvinism and particularism was morally wrong. But how different is it from the exclusivist claim that Israel should be a purely Jewish state and that the presence of Arabs in its midst

derogates from its purely Jewish character and mission? How can we consistently oppose the harsh anti-Semitic discriminations in Poland, based as they were said to be on the idea of keeping Poland a purely Polish state, and at the same time support the Jewish predominance in Israel, with its idea of keeping Israel a purely or primarily Jewish state?

I come now to the fourth and final parallel, the South African parallel. Many enemies of Israel have said that it is a racist nation that is no better than South Africa was. Just as South Africa proclaimed a superior race, the white Afrikaners, and kept its millions of blacks in an inferior status, so, it is maintained, Israel does the same thing with its preferential policies in favor of Jews, including the Law of Return and so forth. It is true that the blacks are an overwhelming majority in South Africa, while the Arabs are a small minority in Israel. But, to begin with, this numerical difference does not affect the issue of moral principle whereby one ethnic group maintains an avowedly dominant position over a different ethnic group. Moreover, if the settlement policy on the West Bank continues, then the domination in question will extend over a much larger group of Arabs, and either Israel will have to give up the idea of being a Jewish state or it will have to give up its democratic political practices.

This, then, completes the indictment that constitutes the moral problem raised by the idea of Israel as a Jewish state, and that I have presented dialectically. It will have been noted that the moral criteria I have used in discussing the moral status of Israel have leaned heavily on the idea of universal human rights—the idea that all human beings have equal moral rights to dignity, to respect, to political participation, to economic opportunity, and so forth. It is because the idea of Israel as a Jewish state is, or seems to be, antithetical to such universalism that its moral status becomes problematic and subject to attack.

I turn now to the second main part of my argument. I now try to show how I think that this problem of the moral status of Israel is to be solved. I proceed by reconsidering each of the parallels I presented in my indictment, and I take them up in reverse order to the order in which I first discussed them. A general point that will emerge from this reconsideration is that the objections I have cited reflect, at the least, an intellectual failure—that is, a failure to take account of real and highly relevant distinctions.

First, then, the South African parallel. It is easy to dispose of this. It is, in fact, an outrageously false analogy to equate the situation of the Arabs in Israel with that of the blacks in South Africa. Israel is a political democracy, with universal adult suffrage. Hence, the Arabs have the vote and all other political and civil rights; they are not segregated by law; they have full civil liberties, including freedom of movement; they are not prohibited from studying at any universities or from practicing any occupations or professions; and so forth. These facts already serve to refute many aspects of the particularism attributed to the idea of Israel as a Jewish state. But, of course, many other aspects remain.

Let us next reconsider the Polish parallel. There are likewise very important

differences between the position of the Jews in Poland between the two world wars and the position of the Arabs in Israel. The Jews were not a danger to Poland; they or their coreligionists or coethnics were not threatening to destroy the Polish state. All they wanted to do was to live peacefully with all the other Poles. Moreover, despite the much greater danger that confronts Israel, the Arabs in Israel are not subjected to governmentally sponsored persecutions and pogroms, as were the Jews in Poland. In addition, the Israeli Arabs and the Palestinian refugees have many other Arab states they could go to if those states were not so hostile to Israel, whereas there were very few opportunities for emigration or resettlement available to the Jews of interwar Poland.

A main conclusion that follows from all this is that Israeli Jews have far more reason to fear the Arabs in their midst than Poles had to fear the Jews in their midst. Nevertheless, Israeli Jews are far more civil toward their Arabs, both officially and unofficially, than the Poles were toward their Jews. Hence, the Polish parallel, with its invidious comparisons between the way the Poles treated the Jews and the way the Israeli Jews treat the Arabs, is also very defective.

There remain, however, some very important problems about Jewish particularism. To get at these, I now return to the much more difficult French and American parallels, and I consider them together. It will be recalled that a main point of these parallels was that there is a contradiction between the universalism that we Jews uphold for the United States and France—equal rights for all persons regardless of ethnicity or religion—and the particularism—special, exclusive rights for Jews as an ethnic group or religion—that we uphold for Israel in the idea of Israel as a Jewish state.

I now want to show that there is not really this contradiction. I make two main, interrelated positive points. The first bears on the nature of being a Jew, and the second bears on how and to what extent this nature justifies the particularistic idea of Israel as a Jewish state.

First, on the nature of being a Jew. I have so far used the words "Jew" and "Jewish" without defining them, although I identified them with a certain religion and with a certain ethnicity in the American and French parallels, respectively. But neither of these identifications is correct as they stand. There are many atheistic Jews, and so having a religion is not essential to being Jewish. And Jews belong to many different ethnic groups—for example, British Jews are ethnically different from Ukrainian Jews, and both are different from Yemeni or Moroccan Jews—so that a single ethnicity is also not essential to being Jewish.

From these points it follows that the American and French parallels that I drew before are mistaken, with their analogizing of Israel as a Jewish state to America as a Christian state or to France as an ethnically French state. The analogies do not fit the Jewishness of the state of Israel, because this Jewishness is neither primarily religious nor primarily ethnic.

Well, then, what is Jewishness and how does it relate to Israel as a Jewish state?

To answer these questions, we must indeed recognize that religion and ethnicity do play a very important part in being Jewish. But this part is not of the static, essentialist sort that was assumed in the American and French parallels, with their direct identifications of being Jewish with having a certain religion or ethnicity. Instead, it is within the contexts of tradition and inheritance, and thus ultimately of history, that we must locate the nature of being Jewish and hence its connection with religion and ethnicity.

What I am referring to is this. To be a Jew is to be the heir of a long tradition. The common religion and ethnicity of the Jews, then, lies in the distant past. It has, of course, taken many different forms in terms of culture and ways of life. But—and this is the crucial point—this common religious and ethnic background has exerted an enormous influence on Jewish life all through history, even among later Jews who did not accept the religion and who belonged to many different ethnic groups. The aspect of this influence that is most central to the question of the moral legitimacy of Israel as a Jewish state is the long history of the persecutions and invidious discriminations and hatreds to which Jews in nearly all eras have been subjected—by ancient Romans, by medieval and modern Christians and Moslems, and so on down to the Nazis, Argentines, Soviets, and so forth of the twentieth century. These persecutions have, of course, varied enormously in degree, and they have been interspersed with periods of acceptance and even of prosperity. Nevertheless, the persecutions have uniformly recurred, and their targets have been one or another aspect of the ethnicity and religion that were common to the earliest Jews and that have continued to exert an influence on the life of Jews down to the present.

This historical and continuing background provides the common element of the Jews in all places and all times. And it is also this background that provides the justification for the idea of Israel as a Jewish state—a state where Jews would be free from persecution as Jews because they would be their own protectors. This, then, is my second main positive point.

Let me develop this justificatory judgment a little further. One way to bring it out is to note that the common historical background of religious and ethnic persecution removes the apparent contradiction I mentioned before between Jewish universalism and Jewish particularism. The point is that the particularism itself rests on a universal principle.

The better to understand this, let us consider the analogy to the family. The right to form families is grounded in a universal principle, namely, that every male and female couple of suitable age has this moral right, as a species, of the moral right to freedom and hence to form voluntary associations. But once the family is formed, it involves particularistic preferential relations whereby one rightly gives to the members of one's own family kinds of love, concern, and support that one does not give to other persons. This particularism does not, as such, violate the moral rights of other persons. Thus, in the family, the claims of universalism are reconciled with the claims of particularism.

Now Israel, as a nation-state, is not bound by the direct biological ties that characterize the family. Nevertheless, its justifying basis is also grounded in a universal principle, namely, the moral right of all persons subjected to a common, destructive fate to band together for mutual protection and support. In the specific case of Israel, the common fate in question derives from the inherited Jewish tradition of a common ethnicity and religion against which concomitant persecution and threats to survival have been directed. Given the universal principle that justifies the state of Israel, it also then justifies the particularism whereby it is especially to Jews that this protection and support are extended. And in view of the religious tradition that is in the background of this history, it is also appropriate that the state of Israel be located in the Land of Israel.

It is very important that this point be correctly understood. I am not saying that whenever a group feels itself aggrieved and bound by a common ethnicity or religion, it has the moral right to form a separate, particularistic nation-state. If this were so, then American Indians and blacks, French Canadians, the Scotch and Welsh in Britain, Bretons in France, Basques in Spain, Sikhs in India, and so forth would be as justified as the Jews of Israel were in forming separate nation-states.

The point is rather that two conditions must be fulfilled if a group of persons is to be justified, at least in the circumstances of the twentieth century, in forming a separate nation-state. The first condition is that of a common historical fate of persecutions directed against the group as a religious or an ethnic group. Here the perceptions of the persecutors, rather than the persecuted, are decisive in determining how the persecuted group is to be viewed or classified—as a religion, an ethnicity, or whatever. The important thing is that they are persecuted under such a description.

The second condition is that the persecuted group has no protective recourse within its present political grouping, and no place else to go. Now the Jews of Europe and other continents before, during, and immediately after World War II were indeed without remedy in the countries they lived in and, in large part, were denied immigration even into the United States, despite the palpable persecutions they were undergoing

Neither of these two conditions applies to the other groups I mentioned, including American blacks and Indians, French Canadians, and Basques. On the one hand, they are not persecuted to anything like the degree that has befallen the Jews in so many eras all through history, and that culminated in the Holocaust. On the other hand, these other groups have had their own protected places to live and their own political remedies, or, as is true of the blacks, who certainly have been persecuted in the past because of their blackness, there are many black states in Africa to which they could emigrate if—as is not the case—they were to regard their status in the United States as irremediable and unendurable because of their blackness.

In this way, then, I have tried to solve the problem I raised about the moral justification of Israel as a Jewish state. The solution does, I think, justify many

aspects of the particularism I noted at the outset, including striving to maintain a Jewish majority and other aspects of the preferential status accorded to Jewishness in Israel,

But the solution does not serve to justify any denials of the human rights of non-Jewish citizens or other residents of Israel. These non-Jews must be guaranteed the same protections of the law, the same civil liberties, the same equalities of dignity and respect, the same economic and educational opportunities that are guaranteed for the Jewish citizens of Israel. And in view of the fact that many of these Jews either have no religion at all or at any rate are not Orthodox, the solution serves to disjustify the efforts of Orthodox Jews to impose their regulations on other Israelis. Thus, the prerogatives that Israel's being a Jewish state accords to Jews as against Arabs and other non-Jews must be strictly limited in scope; they cannot extend to inequalities of human rights.

Insofar as these requirements are fulfilled, I think that the moral status of Israel, including the idea of Israel as a Jewish state, is susceptible of a genuine moral justification. But it must also be recognized that this moral justification is difficult to achieve because it requires combining certain particularistic preferences for Jews over non-Jews with the universalistic human rights of non-Jews as well as Jews. Yet I think that this combination can be and to a large extent has been achieved in Israel.

At the same time, the solution I have presented here serves to justify the universalistic continuation of religious and ethnic pluralism in the United States, France, and other countries. For the Christian Americans in the United States and the ethnic non-Jewish Frenchmen do not have the same background of persecution as Christians and as ethnic Frenchmen that provides the justification for the particularistic, preferential aspects that figure in the Jewishness of the state of Israel.

In conclusion, I want to call attention to two aspects of the above solution. First, while it focuses of course on moral considerations, it is purely secular, naturalistic, and empirical. It recognizes the importance of religious persecution as part of the historical background, but the solution makes no essential appeal to supernatural or religious arguments. This is not to deny that religion has been and continues to be a significant influence in holding Israel together. But it is only one influence, and it does not characterize all Israeli Jews. It may also be that Judaism is needed as a "civil religion" for unifying the state. But such a role for religion must not be confused with its supplying a substantive, constitutive factor in the justificatory argument for Israel as a Jewish state. That argument remains purely secular and naturalistic.

Second, I have here been discussing only the moral problems raised by the basic constitutional structure of Israel as an already established Jewish state. I have not discussed the process by which it came to be established, including the Balfour Declaration, the war of 1948, and so forth. But I think that this process, bloody though it was in part against the Palestinians and other Arabs, can also be given a moral justification, although perhaps with some qualifications. I have

also not discussed the further question of how the specific policies of various Israeli administrations and other groups have applied the basic constitutional structure in particular cases. My point, then, has by no means been to defend all those specific Israeli policies; there are indeed other moral problems about Israel. But the question of the justification of the general idea of Israel as a Jewish state is certainly the most basic problem, and the answer to it should help to clarify and resolve the other problems that may remain.

Note

This paper was presented to the Hillel Faculty Group at the University of Chicago, October 17, 1984.

4

State Terrorism and Its Sponsors

Robert B. Ashmore

For a meeting of his political party on January 11, 1961, Moshe Sharett, the second prime minister of Israel, wrote the following:

> The phenomenon that has prevailed among us for years and years is that of insensitivity to acts of wrong . . . to moral corruption. . . . For us, an act of wrong is in itself nothing serious; we wake up to it only if the threat of a crisis or a grave result—the loss of a position, the loss of power or influence—is involved. We don't have a moral approach to moral problems but a pragmatic approach to moral problems. . . .
> All this must bring about revulsion in the sense of justice and honesty in public opinion; it must make the State appear in the eyes of the world as a savage state that does not recognize the principles of justice as they have been established and accepted by contemporary society. (Rokach 1980, 37)

Moshe Sharett was in a position to know well the things of which he spoke. Between 1933 and 1948 Sharett was head of the Jewish Agency's Political Department, in charge of foreign relations for the Zionist movement. From 1948 to 1956 he served as Israel's first foreign minister. In 1954 Sharett became prime minister, succeeding David Ben Gurion.

This chapter examines morally suspect behavior of Israeli governments, not merely in the first days of nationhood, but throughout its fifty-year history—and especially toward the Palestinians. The scope of the inquiry is much wider, however, considering the policies and actions of nation-states around the world insofar as they bear the marks of illegitimate use of force. As we shall see, the term *terrorism* has been largely restricted to nonstate actors. One issue to be investigated, therefore, is the appropriateness of such selectivity and the possible reasons for it, since it should become apparent that those in power are capable of and manifestly do engage in morally outrageous conduct that arguably ought to qualify as terroristic. Accordingly, conceptual clarifications regarding terrorism are one purpose of this chapter. Having argued for criteria in the use of that term that establish its relevance to conduct of ruling powers, this chapter then considers the correctness of its application to specific governments both past and pres-

ent. Particular attention is given to the state of Israel, commonly considered to be a democracy especially victimized by terrorist action. We question whether Israel is not itself a terrorist state, in view of its human rights record and its nonfulfillment of obligations under international law. Finally, inasmuch as nations can be identified as sponsors of terrorism beyond their own borders, this essay seeks to determine whether the United States qualifies as a state sponsor of international terrorism, not only because of its support for Israel, but also because of evidence concerning a pattern of overt and clandestine actions around the world.

Israel—The Early Years

Israel's Sacred Terrorism is the title of a study based on Moshe Sharett's personal diary and papers that was published by Livia Rokach, daughter of Sharett's minister of the interior. In it are found Sharett's reflections on Israeli actions in the early years of statehood that led Sharett to agonize, "I walk around as a lunatic, horror-stricken and lost, completely helpless . . . what should I do? What should I do?" (Rokach, 41). The immediate cause for that diary entry was the "Lavon Affair," a scheme hatched by Israel Military Intelligence to launch terrorist attacks in Egypt that would undermine British and American cooperation with the Egyptian government. In July, 1954 Israeli agents firebombed U.S. information and cultural centers in Cairo and Alexandria, as well as exploding bombs in Cairo's railroad station and two theaters. The terrorist squad was caught and tried in what the Israeli press called an "anti-Semitic farce." Back in Israel, the minister of defense, Pinhas Lavon, resigned, although an elaborate cover-up made it difficult to determine responsibility for the decisions. Among those ultimately implicated were Moshe Dayan and Shimon Peres, as well as the head of Israel's military intelligence, Benjamin Givli.

The same day that Lavon resigned, Sharett asked Ben Gurion to emerge from retirement and take the vacated post of minister of defense. Within eleven days of resuming a position in the government, Ben Gurion executed yet another covert operation against Egypt, this time a raid conducted by Israeli paratroopers against an Egyptian army camp in the Gaza Strip. Israel's attempt to cover up the attack on the night of February 28, 1955, as simply a response to Arab infiltration into Israel is admitted in Sharett's diary entry for March 1, 1955. The United Nations observer team from Belgium, Denmark, and Sweden was not deceived, instead declaring, "this military warlike planned raid doubtless ordered by the Israel authorities shows Israel's complete disregard of the General Armistice Agreement." General Burns, commander of the multinational unit, concurred, stating that the operation was "a prearranged and planned attack ordered by Israel authorities and committed by Israel Regular Army forces" (Neff 1988, 32).

Ben Gurion was not one to scruple about ordering acts of aggression or even about whether the targets were defenseless civilians. In a January 1, 1948, entry

in his own Independence War Diary, Ben Gurion had this to say: "Blowing up a house is not enough. What is necessary is cruel and strong reactions. We need precision in time, place and casualties. If we know the family—strike mercilessly, women and children included. Otherwise the reaction is inefficient. At the place of action there is no need to distinguish between guilty and innocent."[1]

In character, one of Ben Gurion's last acts before his 1953 retirement was to approve an attack on the Palestinian village of Kibya in the West Bank. The raid was to be conducted by a military force, Unit 101, specifically created months earlier for operations disguised so that the government could deny responsibility. The commando force did not wear uniforms and used weapons that were not army issue. Heading the unit was Ariel Sharon, later to be dubbed the "Butcher of Beirut" for his role in the 1982 invasion of Lebanon. On the night of October 14, 1953, Sharon's commando force struck Kibya. The seven-hour operation killed sixty-nine villagers, the majority of them women and children. Seventy-five other civilians were wounded, and fifty-five homes were demolished.

In its report to the Security Council the UN military observers stated that "bullet-riddled bodies near the doorways and multiple bullet hits on the doors of the demolished homes indicated that the inhabitants had been forced to remain inside until their homes were blown up over them" (Neff 1988, 49). On national radio Ben Gurion lied about the terrorist attack, attributing it to Israeli settlers in the frontier areas, but Moshe Sharett's diary once again reveals the government's planning and subsequent attempts at a cover-up of what Sharett tried to prevent. In a cabinet meeting four days later Sharett "condemned the Kibya affair that exposed us in front of the whole world as a gang of blood-suckers, capable of mass massacres. . . . I warned that this stain will stick to us and will not be washed away for many years to come . . ." (Rokach 1980, 16).

Attacks on civilian populations by Israeli government forces were frequent during the early days of nation building. That this is a pattern of behavior evidenced up to the present was acknowledged by Chief of Staff Mordechai Gur in interviews with Israel's foremost military analyst, Ze'ev Schiff. In 1978 Schiff reported in the Israeli press:

> In South Lebanon we struck the civilian population consciously, because they deserved it . . . the importance of Gur's remarks is the admission that the Israeli Army has always struck civilian populations, purposely and consciously . . . the Army, he said, has never distinguished civilian [from military] targets . . . [but] purposely attacked civilian targets even when Israeli settlements had not been struck. (*Al Hamishmar,* May 10, 1978; *Ha'aretz,* May 15, 1978)

Israeli-occupied territories have included a part of southern Lebanon ever since the 1982 invasion of that country. And, in July 1993, Israel hit civilian populations throughout southern Lebanon in an effort to stop attacks on its occupying forces. A news story headlined "Attacks Empty Lebanese Towns" reported, "The Israeli bombardment of southern Lebanon, in its fourth day

Wednesday, is intended to empty the area of civilians and flood Beirut with refugees, officials acknowledge" (*Milwaukee Journal,* July 28, 1993). The article went on to point out that up to 335,000 people in Lebanese villages had left for safer areas to the north, "packing what belongings they could carry onto pickup trucks, small cars and even mules." Estimated dead were 150 and 403 more were wounded. Bombing raids into Lebanon continued periodically to kill civilians. On August 4, 1994, seven civilians, including two children, were killed by a bomb in the village of Deir Zahrani, home to a population of 9,000. The Israeli attack injured seventeen others (*San Jose Mercury News,* August 6, 1994).

The evidence suggests that targeting civilian populations has always been part of Israel's overall strategy of obtaining and maintaining control over land. In *Israel's Sacred Terrorism* this was one conclusion drawn by Rokach from Sharett's diary: "large and small-scale military operations aimed at civilian populations across the armistice lines. . . . These operations had a double purpose: to terrorize the populations, and to create a permanent destabilization stemming from tensions between the Arab governments and the populations who felt they were not adequately protected against Israeli aggression" (Rokach 1980, 4).

Defining Terrorism

While Rokach is not hesitant to use the word "terrorism" to describe Israeli government behavior and policy, such use of the term is virtually unknown in the United States, especially in the media and in the discourse of politicians. Although Palestinian attacks on Israeli targets are frequently called "terrorist," one would be hard-pressed to provide an example of such labeling for Israeli government action by any news source or public figure in the United States. Before proceeding further, then, it would be helpful to examine usage of that term. What will become apparent is that practice varies, and that presuppositions of different sorts condition the choice of language to describe violent acts, whether of those challenging authority or of those in authority. The meaning of "terrorism" itself becomes problematic, and the need for conceptual clarification arises. Her own investigation has led one philosopher, Virginia Held, to conclude that "an adequate definition has not yet emerged in the philosophical literature" (Held 1991, 60).

"Ideally," states Walter Laqueur, "all discussions of terrorism . . . should start with a clear, exact and comprehensive definition of the subject" (Laqueur 1987, 142). He acknowledges, however, that such a definition does not exist. This should not be surprising, since the term has moral implication, namely, that the behavior is abhorrent and ought to be disapproved. Battles for people's minds oftentimes involve the appropriation of words for partisan causes, and much turns on the meanings that come to be associated with the conscious and systematic application of a term. If, for example, one defines "human life" in such as a way as to exclude or include fetal life, then from the outset a debate on the

morality of abortion may be largely predetermined. The definition of terms has already decided an outcome.

In our time much effort has been expended in trying to invest "terrorism" with a meaning that immediately associates it with revolutionary, outlaw groups. Thus, the U.S. Department of State chooses to say that "the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by *subnational* groups or *clandestine* agents, usually intended to influence an audience" (U.S. Department of State 1993, iv; emphasis added). The definition precludes its application to actions of nations or their military forces. Yet, as Amos Lakos points out, "the term terrorism has its roots in the French Revolution when terror was understood to mean state violence against domestic political opponents" (Lakos 1991, 15). It is in the supplement of the *Dictionnaire* of the Academie Française, published in 1798, that we find the definition: "systeme, regime de la terreur" (Laqueur 1987, 11). During the Reign of Terror under Robespierre, a Law of Suspects was passed that led to the imprisonment of some 400,000 men, women, and children. It is estimated that 40,000 people were executed during 1793–94, as the new government eliminated anyone even remotely suspected of treason (Wardlaw 1982, 15).

One notes, therefore, that a term originating in the context of a ruling authority's mass arrests and killings of its own citizens, and taking its primary meaning from such "official" violence, becomes in the hands of the U.S. government a term reserved for those not in a position of authority. Accordingly, its annual report on terrorism discusses groups such as Abu Nidal, Japanese Red Army, the Liberation Tigers of Tamil, Provisional Irish Republican Army, and Kurdistan Workers Party (U.S. Department of State 1993, 13). However inconsistently, the U.S. State Department does go on to find that terrorism around the globe is sometimes funded and supported by sovereign states. "Seven nations are designated as states that sponsor international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria" (p. 21). Having gone so far as to acknowledge state-sponsored international terrorism, the Department of State appears unwilling to take the next step and identify governments as terrorist.

This reluctance is not shared by the scholarly community. Grant Wardlaw points out that terrorism "is as much a tool of states and governments as of revolutionaries and political extremists. It is all too easy to focus on the outlandish activities of small groups to the exclusion of the institutionalized, 'official' terrorism practiced by a number of readily identifiable regimes" (Wardlaw 1982, 9). For this reason, his own definition of political terrorism is "the use, or threat of use, of violence by an individual or a group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear-inducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators" (p. 16). Wardlaw cites T.P. Thornton's distinction between enforcement terror, used by those in power to suppress challenges to

their authority, and agitational terror, which names the acts of those who disrupt the existing order. "[Thornton's] analysis thus meets the requirements of even-handed application of the concept of terrorism to the activities of both insurgents and incumbents" (p. 11). The same can be said of Paul Wilkinson (1974, 17), who defines political terrorism as "a sustained policy involving the waging of organized terror either on the part of the state, a movement or faction, or by a small group of individuals." F.J. Hacker (1977) distinguishes between terrorism from "above" and terrorism from "below" to make clear that it can be utilized in the exercise of authority as well as in a challenge to authority.

A common reason offered by the preponderance of scholars for defining the term so as to include state terrorism is that, as Jonathan Glover (1991, 273) notes, "even a casual study of state terrorism shows that it totally dwarfs unofficial terrorism in its contribution to human misery." Although they confine themselves mainly to a discussion of insurgent terrorism, Alex Schmid and Janny de Graaf (1982, 2) are likewise prepared to argue that "state terrorism is the main terrorist problem in a world where as many as 117 states violate human rights in one way or another." Harold Vetter and Gary Perlstein (1991, 9) agree: "Government or state terrorism within the domestic political process in some countries has grown to staggering proportions. . . . In Latin America, the high level of insurgent or agitational terrorism, which has concentrated mainly on bombings, kidnappings, and assassinations, has been far exceeded by the level of enforcement terrorism performed by, and on behalf of, ruling governments." In this connection one might note that, after almost two decades of official silence, army and air force officials in Argentina confessed in April, 1995 that the military tortured and often dumped from airplanes into the Atlantic thousands of "the disappeared" who were seized during the 1970s. As many as 30,000 people were victims of atrocities. Brigadier General Juan Paulik, air force chief of staff, said in *La Nation:* "The use of illegal methods by the state is even less justifiable considering that a judicial structure was available for use in eliminating terrorism" (*Milwaukee Journal Sentinel,* April 30, 1995).

Because General Paulik is part of the government, it is perhaps difficult for him to realize that removing the government of Argentina itself would have eliminated the more significant agent of terrorism in that era. This point is brought home in a verse quoted by C.A.J. Coady at the beginning of his important essay on "The Morality of Terrorism."

> Throwing a bomb is bad,
> Dropping a bomb is good;
> Terror, no need to add,
> Depends on who's wearing the hood.
> (Coady 1985, 47)

Coady recognizes a factor we have already noted, namely, that the term "terrorism" is employed in very emotional and partisan contexts, and he finds no

philosophical justification for applying a different moral standard to evaluation of state and nonstate use of violence. Coady argues that "many condemnations of terrorism are subject to the charge of inconsistency, if not hypocrisy, because they insist on applying one kind of morality to the State's use of violence in war (either international or civil or anti-insurgency) and another kind altogether to the use of violence by the non-State agent (e.g. the revolutionary)" (p. 57).

Three ways of assessing the morality of violence when used as a means to an end are analyzed by Coady. The pacifist position is that violence is never morally permissible, even to achieve a good end. The utilitarian, by contrast, evaluates the violence in terms of its effectiveness in realizing a good end. And a third method, called the "internal viewpoint," considers not merely the consequences of violent means but also the nature of the violence itself (e.g., whether it is disproportionate or barbaric or directed to morally inappropriate targets). Only naiveté and prejudice could lead anyone to think that governments do not use terrorist methods for political purposes, Coady observes. When such methods are acknowledged, however, the hypocritical tendency is to justify state terrorism by applying a utilitarian standard and to condemn insurgent terrorism by invoking an internal standard. Thus, to use an example we presented earlier, Israel's bombing and shelling of villages throughout southern Lebanon, despite its heavy toll on noncombatants, is alleged to be justified because it promotes the security of its mercenary forces in the occupied area and deters attacks on Israeli settlements along the northern border with Lebanon. Such utilitarian reasoning is set aside, however, when Palestinians drive an explosive-laden car into an Israeli bus or convoy. Then the internal standard is invoked and killing noncombatants or even Israeli soldiers becomes a terrorist act. The methods of the Palestinian resistance are condemned irrespective of whether the end is just, for example, to prevent expansion of illegal settlements or to break a paralyzing curfew. Even when Israel employs grotesque means, for example, systematic torture of Palestinians detained without charge or trial, for an end that is also unjust (e.g., suppressing opposition to land confiscations), neither American media nor American politicians describe the state actions as terrorist.

The double standard suffers from another bit of illogic. Not all revolutionary violence is condemned. French resistance to the Nazis and Polish opposition to the Communist regime in that country were not referred to as terrorist operations by Western press or political leaders. "The assumption underlying this linguistic habit," says Coady (1985, 63), "is of course that revolutions against us and our allies are unjustified whereas revolutions against our ideological enemies are invariably justified."

State Terrorism and the Media

Inasmuch as there is no rational basis for restricting the term "terrorism" to the nonstate variety and inasmuch as revolutionary violence is also spared the pejo-

rative label if it is directed at our enemies, one may well entertain skepticism about media claims to objectivity in news reporting. In a now classic study of the journalistic business titled *Deciding What's News,* Herbert Gans presented findings gathered from ten years of research that focused on CBS and NBC networks, as well as *Newsweek* and *Time* magazines. Gans found that ethnocentrism is an enduring value in the news business. This meant both that "American news values its own nation above all" and that this ethnocentrism "comes through most explicitly in foreign news, which judges other countries by the extent to which they live up to or imitate American practices and values . . ." (Gans 1980, 42).

Gans argues that enduring values such as ethnocentrism shape the reality judgments of journalists, often doing so unconsciously. As a consequence, journalists operate in the grip of a "paraideology," which Gans defines as an ideology that "is an aggregate of only partially thought-out values which is neither entirely consistent nor well integrated; and since it changes somewhat over time, it is also flexible on some issues" (Gans 1980, 68). Gans maintains that journalists are not aware that they promulgate ideology, since they have largely absorbed in an unconscious way values that are of lay origin, deriving not from their own professional judgments but from the nation and the society to which journalists belong. Hence, journalists tend to think they are objective even though their assumptions about external reality are conditioned by preferences of the larger community.

While Gans points to media coverage of the Vietnam War to illustrate the interdependence of ideology and reality judgments among journalists, we have the more recent experience of the Gulf War to support this same conclusion. Day after day, American news reporters and commentators functioned as virtual cheerleaders for a military campaign that deserved critical moral scrutiny for a host of reasons. Fair coverage of the Gulf War was not helped, of course, by unprecedented efforts of the U.S. government to control the media during that military campaign. Even in the aftermath of the Gulf War, mainstream journalism in America is silent about an economic embargo of Iraq that has had no impact on the lifestyle of Saddam Hussein but has contributed to devastating conditions for 20 million Iraqi civilians who have no power to choose their ruler. President George Bush led the United States to war with the claim that "our quarrel is not with the Iraqi people, but with Saddam Hussein." Since the people of Iraq were nevertheless immediate victims during the war (consider the destruction of infrastructure serving the civilian population) and in succeeding years (economic embargo), one may question the extent to which the United States escapes judgment as state terrorist.

Long after the fact, nations do sometimes come to such judgments about their past actions. Fifty years after the end of World War II, the government of Japan in June 1995 approved the following statement: "While giving thought to the many acts of colonial control and aggression that have occurred in modern world history, we recognize the acts of this kind carried out by our country in the past

and the suffering that we caused the people of other countries, especially those of Asia, and we express our feeling of deep remorse" (*Milwaukee Journal Sentinel,* June 7, 1995).

Two months earlier the mayors of Hiroshima and Nagasaki at a forum for foreign correspondents wondered when the United States would come to terms with its own war guilt (*Washington Post,* March 16, 1995). Atomic bombs dropped on their two cities in 1945 instantly killed more than 70,000 civilians in Nagasaki and 140,000 in Hiroshima. Thousands more died later from radiation sickness. Impartial evaluation, according to universalizable criteria, of atrocities committed by the Japanese and the Nazis in World War II should also consider Allied carpet bombing of German cities and U.S. nuclear attacks on Hiroshima and Nagasaki. As political theorist Alan Ryan has pointed out, " 'total war' is, on the face of it, terrorism under the aspect of war; the British fire bombings of Hamburg and Dresden were deliberate attempts to break civilian morale by killing as many noncombatants as possible" (Ryan 1991, 251).

While the United States is as yet reluctant to reach negative moral judgments about the deliberate targeting of noncombatants who were Japanese, the passage of time has permitted Americans more honestly to confront genocidal policies that wrested their lands from the Indians in the last century. Illustrative of this reappraisal was a six-hour documentary airing on PBS over two nights in May 1995. As stated in a television review in the *New York Times*, May 8, 1995, "'The Way West' is an elegy to a way of life in America that was destroyed in the second half of the 19th century. For the native peoples in the path of the pioneers, the opening of a continent meant disease, destruction and death."

In the course of this documentary, evidence relentlessly develops for what can only qualify as "terrorism from above." General William T. Sherman, of Civil War notoriety for his march to the sea, was later given command of U.S. troops in the West. Policy toward the Indians, in his own words, was unambiguous: "We must act with vindictive earnestness, even to their extermination—men, women and children. Nothing else will do."[2] General John Pope was equally straightforward: "whatever may be the right or wrong of the question, the Indian must be dispossessed." Pope decided to subdue the Lakota Sioux by constructing a fort on the Powder River and then sending two armies deep into Lakota territory with orders to attack and kill every Indian over twelve years old. At one point in the documentary, historian Robert Utley states that "in the span of 25 years after the Civil War, white movement into the West was one of the greatest population movements in world history, one of the great achievements in world history, if you avert your gaze from all that it cost in terms of human misery and environmental degradation."

Despite the fact that Indian policy was overtly racist state terrorism, a newspaper editor in New York could utter in 1845 the famous pronouncement: "it is our Manifest Destiny to overspread the continent Providence has allotted for our yearly multiplying millions." Evidence of what Gans has called journalistic

"paraideology" filled the newspapers of that era. For example, after a massacre of Cheyenne at Sand Creek in Colorado, the *Rocky Mountain News* headlined its story on December 8, 1864: "The Savages Dispersed." Theodore Roosevelt seems to have captured the essence of the American mind, or at least of its dominant group, when he wrote in *The Winning of the West:* "this great continent could not have been kept as nothing but a game preserve for squalid savages."

Frederick Douglass, the black abolitionist leader and former slave, was moved to say about the Indian experience: "the most terrible reproach that can be hurled at the moment at the head of American Christianity and civilization is the fact that there is a general consensus all over this country that the aboriginal inhabitants should die out in the presence of that Christianity and civilization." Of course, Douglass's own struggle points to state terrorism directed against yet another race inhabiting the country at the time.

Once the irrational barrier is overcome to recognizing that exercise of authority as well as opposition to authority can be either just or unjust, the term terrorism becomes readily applicable to state as well as to nonstate violence. Although the Reign of Terror in France gives its name to the "legal" version of such terrorism, the history of our species before and since the French Revolution offers an unending supply of examples of victimization by those in power. From Caligula in ancient Rome to Mobutu in present-day Zaire, the list of those who "terrorize from above" includes every age and every corner of the globe. In recent times the wielders of terrorist power include Idi Amin in Uganda, Anastasio Somoza in Nicaragua, Pol Pot in Cambodia, successive Afrikaner governments in South Africa, Rios Montt in Guatemala, Ayatollah Khomeini (and his predecessor, the shah) in Iran, Saddam Hussein in Iraq, Joseph Stalin in the Soviet Union, Papa Doc Duvalier in Haiti, and countless more.

At the time of this writing the Chinese government continues to utilize terrorist tactics against dissidents; Serb forces kill, maim, and rape civilians—as well as chain UN peacekeepers to bridges as human shields; Russia demolishes village after village in Chechnya; Algeria and Egypt use torture and indiscriminate executions against Islamic opposition; and Turkey is in northern Iraq bombing the Kurds. Particularly illustrative of the partisan use of the term terrorism is this last-named example. To protect Kurds from Iraq's leader, Saddam Hussein, the United States created a "safe zone" in northern Iraq and monitors it to ensure that Hussein does not strike against the Kurdish population there. Nevertheless, when 35,000 Turkish soldiers, warplanes, and armored vehicles invaded the "safe zone" in March 1995 to wipe out Kurds, President Clinton expressed his "understanding for Turkey's need to deal decisively with PKK terrorism" (*Milwaukee Sentinel,* March 21, 1995).

Clinton's reference is to the Kurdistan Workers Party, which is struggling to achieve self-rule for Turkey's 12 million Kurds. Overlooked by Clinton, in his support for an ally's violation of international law, is the fact that Iraqi Kurds have been fighting for decades for precisely the same objective, which accounts

for Saddam's repeated attempts to crush them. In either case, successive U.S. administrations refuse to take into account the historic injustice done to the Kurds, who were denied autonomy in their homeland of Kurdistan after World War I and instead find themselves oppressed by hostile governments in Turkey, Iraq, and Iran.[3] The President Clinton who simultaneously supports Turkish and yet deplores Iraqi suppression of the Kurds is the same Bill Clinton who made a speech on May 1, 1995, in which he said, "We can't be selective. We can't condemn one act of violence and condone another. That'd be like trying to put out a fire by just watering one room and leaving the others to burn" (*Milwaukee Journal Sentinel,* May 2, 1995).

That Clinton employs a double standard on terrorism (or perhaps no standard at all in light of the inconsistencies) is apparent in his handling of Russian efforts to suppress the Chechen people. For months in early 1995 Russian forces pounded tiny Chechnya with air strikes, tank fire, and house-by-house raids conducted by Russian troops. By mid-June the Russians had killed an estimated 20,000 people and had destroyed the capital as well as many villages. While foreign journalists and the Red Cross detailed the indiscriminate toll of civilian lives, "in Washington, the Clinton administration stuck to its policy of cautious, qualified public support for Mr. Yeltsin." State Department spokesman Michael McCurry said, "This is clearly a difficult domestic matter for the Russian government. It has certainly put President Yeltsin in the midst of a controversy, but they are dealing with it as democracy should, by having a full, open debate" (*Dallas Morning News,* January 4, 1995).

In April 1995 the Chechen farming village of Samashki was attacked. The *New York Times* of May 5, 1995, reported, "More than 3,000 Russian soldiers took the town, doused its houses with gasoline, and set them on fire, and opened fire on unarmed women, children and elderly people. . . . For three days the military refused to permit representatives of the Red Cross or any human rights agency into the village. By the fourth day it was too late." When Chechens attacked the Russian city of Budennovsk on June 14 and took hostages, the avowed purpose was to demand an end to Russian massacres of Chechens. Yet the language employed by the *Los Angeles Times,* June 15, 1995, is revealing. "[T]he attack itself was an act of terrorism on a scale thought to be unprecedented in Russia since the 1918–20 Civil War." And the chief of Russian forces in Chechnya demanded that negotiators for the resistance fighters "denounce terrorism" saying, "We cannot sit at the same table as those who patronize terrorists" (*Milwaukee Journal Sentinel,* June 22, 1995).

As the Clinton administration repeatedly defends Russia's asserted right to maintain its territorial integrity, no acknowledgment is made of the 300–year history of Russian attempts to control Chechnya, of the fact that Chechens are ethnically and religiously different from the Russians, or of the near-genocide of Chechens in the nineteenth and twentieth centuries by imperial Russia and then by Joseph Stalin. In a commentary that first appeared in the *Washington Post,*

Zbigniew Brzezinski wrote, "Chechnya could become the graveyard of America's moral reputation" (*Milwaukee Journal,* January 15, 1995). Others are inclined to point out to the former national security adviser that the burial took place much earlier.

However dismally President Clinton and his predecessors may fail in the consistency of their logic and their moral sensitivity, it is clear to many others that the U.S. stance on terrorism is irrational. A letter by Constantine M. Melengoglou to the editor published in *Time* on April 17, 1995, reads:

> The Kurds, a populace of about 25 million people, live under the yoke of Iraq, Turkey and Iran. When they seek autonomy from Tehran or Baghdad, they are called freedom fighters. When they fight for autonomy within Turkey, they are called terrorists; the U.S. seems to approve of the genocide perpetrated by the Turkish army, even within Iraqi territory, and Germany expels Kurdish refugees to Turkish prisons to face certain torture and perhaps death. Americans and Germans should hide their faces in shame.

In a Kafkaesque move by the Turkish government, that country's "preeminent man of letters and a perennial candidate for the Nobel Prize in Literature," Yasar Kemal, was put on trial in May 1995 for violating Turkey's "antiterrorism" laws. Kemal's "terrorist" act was writing an article about Turkish oppression of the Kurds. In the *New York Times,* May 6, 1995, Kemal wrote:

> Our Kurdish brothers are at war to win their rights—to save their language and their culture. . . . The houses of nearly 2,000 [Kurdish] villages have been burned. People and animals have been burned inside them . . . and 2.5 million people have been exiled from their homes in desperate poverty . . . people have rotted away in prisons, been killed and exiled for writing or speaking their minds. . . . The sole reason for this war is that cancer of humanity, racism.

Sponsoring International Terrorism

It was noted earlier that the U.S. Department of State identifies the Kurdish resistance party as terrorist, while conspicuously failing to make any mention of state terrorism exercised by the government of Turkey. In its annual report to Congress issued in April 1994 the State Department said, "the Kurdistan Workers Party (PKK), which continues to lead a growing insurgency, posed the dominant terrorist threat in Turkey" (U.S. Department of State 1993, 9). As noted earlier, the United States does have a category of "states that sponsor international terrorism," that is, terrorism involving citizens or the territory of more than one country. Turkey fails to make that list.

Although one could never expect to find it in a U.S. Department of State report, the extent to which the United States itself has been a sponsor of international terrorism is a matter of record. Support for the *Contras* in Nicaragua is

well known, especially since the illegalities of some U.S. funding efforts threatened to topple the Reagan administration. Less publicity has focused on the hundreds of millions of dollars in military aid given by the United States to a series of rightist governments in El Salvador. A UN-appointed Commission of Truth was established by the peace accords that in 1992 ended a twelve-year war in El Salvador. As reported in the *Milwaukee Journal,* March 15, 1993, the UN commission found that "the army, security forces and death squads linked to them committed massacres, sometimes of hundreds of people at a time." In fact, the Salvadoran military was blamed for most of the atrocities committed during the civil war. Not only did the United States finance these efforts, it also trained Salvadoran soldiers, including a battalion cited for the war's worst civilian massacre. Prominent casualties of the state terrorism were Catholic Archbishop Oscar Romero, assassinated during the celebration of Mass in March 1980, as well as the murder of six Jesuit priests at the Centroamericana University in 1989. The man identified by the UN Commission of Truth as having ordered that massacre was General Rene Ponce, minister of defense in the Salvadoran government.

Benevolent interpretations of U.S. involvement might allege that our government, in assisting the terrorist governments of El Salvador, was unaware of official responsibility for atrocities. What follows is part of a news report from the *Milwaukee Journal,* March 15, 1993, on the UN findings:

> About 75,000 people died during the war, most of them peasants, labor leaders, students and intellectuals suspected of leftist leanings. In the early 1980s, bodies in the streets were so common they sometimes went almost unnoticed. Children would find them and argue over the weapon used. Funeral homes sent vans at dawn to gather bodies, hoping for the business when families located the victims.
>
> The U.S. Embassy monitored it all and reported monthly to Washington in a document known in house as the "grim-gram." At times the deaths exceeded 1,000 a month.

Over the years the Central Intelligence Agency (CIA) has been exposed as an arm of U.S. foreign policy responsible for assassinations, overthrow of democratically elected governments, and support of right-wing despots. Former CIA agents who have written about their experiences include Ralph McGehee, Philip Agee, and John Stockwell. McGehee, in the CIA for twenty-five years, writes, "The CIA is not an intelligence agency. In fact, it acts largely as an anti-intelligence agency, producing only that information wanted by policymakers to support their plans and suppressing information that does not support those plans. As the covert arm of the President, the CIA uses disinformation, much of it aimed at the U.S. public, to mold opinion" (McGehee 1983, xi).

Many former agents and officers of the CIA have formed the Association of National Security Alumni to lobby against subversion. Stockwell is former chief,

CIA Angola Task Force. He says, "I've researched 3,000 major CIA operations over 40 years with tens of thousands killed and come up with a staggering sense of the illegality of our foreign policy" (*Newsday,* March 6, 1989; and see Stockwell 1978). International terrorism sponsored by the CIA has included overthrow of popularly elected Salvador Allende in Chile, overthrow of similarly elected Mohammed Mossadegh in Iran and installation of Shah Reza Pahlavi, as well as overthrow of democratically elected Patrice Lumumba in Zaire and support of his tyrant successor, Mobutu Sese Seko—to name a few. And, as the principal and almost exclusive backer of Israel since its creation, the United States is here argued to be a sponsor of international terrorism, since Israel systematically has engaged in state terrorism for fifty years. Before continuing with evidence for that thesis, some conclusions might be drawn concerning the concepts themselves.

As we saw earlier, while the scholarly community is not entirely of one mind about the definition of "terrorism," there is consensus on some elements to be included in such a definition. Laqueur (1987, 143) states: "most authors agree that terrorism is the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets, that it aims to induce a state of fear in the victim, that it is ruthless and does not conform with humanitarian rules, and that publicity is an essential factor in the terrorist strategy." While accepting this definition, the principal additions I would make to the list of consensus characteristics of terrorism are that (1) it can be either nonstate or state-sponsored and (2) that unarmed civilians are targets. Laqueur himself does go on to define state terrorism and indicates that it can be directed both against the nation's own population and beyond its borders. He adds:

> Acts of terror carried out by police states and tyrannical governments, in general, have been responsible for a thousand times more victims and more misery than all actions of individual terrorism taken together. A good case, no doubt, can be made in favor of the proposition that too little attention has been paid to state terrorism by historians, sociologists and political scientists, and too much to individual terrorism. (Laqueur 1987, 146)

It is the purpose of my essay to help correct that imbalance in the literature. I am unpersuaded by what Grant Wardlaw calls "sensible practical reasons for the reluctance of scholars to study state terrorism." He cites A.J.R. Groom, who claims that "historians find it difficult to think themselves into the mores of a Robespierre's or a Stalin's reign of terror, and it is dangerous to conduct field research in contemporary regimes of terror. It is far easier to conceptualize the use of terror as a weapon to achieve a specific goal rather than as a form of regular and normal government" (Wardlaw 1982, 11).

These reasons are unconvincing. First, it is not necessary for historians to make vast imaginative leaps to grasp the enforcement terrorist's mentality. Terrorism as an exercise of power by those in authority is a universal phenomenon

in our own day, as it has been throughout history. Second, sociologists too timid to do field research of their own in dangerous environments can certainly draw on the data provided by those with stronger commitments to ascertaining the facts, for example, international human rights organizations such as Amnesty International and Human Rights Watch.

Third, I would argue that it is easier to conceptualize the use of terror as a form of regular government for much the same reason that Plato considered first the virtues and vices as found in the state and only subsequently as found in the individual. It is because, as Plato argued, in the state we find these characteristics "writ large." And so it certainly is with terrorism. Philosopher Annette Baier (1991, 36) says that "the forms [terrorism] takes when it is state terrorism are particularly evil, since then the murder of randomly chosen victims can be on a grand scale. . . ." Another philosopher, Loren Lomasky (1991, 88), has observed that "in a century that has witnessed Nazi genocide, Stalin's Gulag, and the immolation of Cambodia under the Khmer Rouge it would hardly need mention that states are unsurpassed wielders of deadly force." Professor of Politics Alan Ryan (1991, 247) is convinced that "no conceptual argument could show that a government cannot maintain itself by terror, or that it would cease to be a government if it did; certainly it sacrifices consent to brute force, but plenty of regimes have been happy enough to do that." Oxford philosopher Jonathan Glover (1991, 274), after a lengthy analysis, concludes that "full-blooded state terrorism is normally a *much* worse evil than unofficial terrorism." One reason is that cases of state terrorism "have in common the use for political causes of what would normally be considered unacceptably deadly, violent or brutal methods. And being used by the authorities, these policies are deprived of one possible defense of terrorist activities by unofficial groups: that they have no other way of furthering their cause" (p. 258).

Unconvincing as are Wardlaw's practical reasons "as to why commentators and scholars tend to focus on the insurgent as opposed to the incumbent variety" of terrorism, he does present another argument that is more compelling. In fact, it is one that we have earlier examined in connection with Gans's critique of the news media. It will be recalled that Gans found in journalists an often unacknowledged and even unconscious ideology that took its character from values (including ethnocentrism) of the larger society. Gans argued that this "paraideology" shaped not only the preferences but also the reality judgments of journalists.

In similar fashion, Wardlaw discusses the "social construction of reality," utilizing the analysis of P.L. Berger and T. Luckman.[4] Meaning is assigned to words like "terrorism" in situationally dependent ways. Moral judgments are affected by perceptions, and perceptions by the manipulation of information. Successful persuasion occurs when the observer identifies with the agent, and this comes about through the agent's ability to create a perception of legitimacy about the agent's actions. Now, it is easier for governments than for nonstate actors to legitimate their activities, since governments have more substantial

resources to allocate for purposes of persuasion, in addition to the benefit they enjoy of well-recognized claims to legitimacy (e.g., official titles, legislative powers, and control of law enforcement instruments). Nation-state actors appear to act for communitywide goals, proceeding with a greater sense of responsibility and self-control than nonstate agents. Also, the government employs vast numbers of citizens in its various branches and institutions, thus creating a bureaucracy that participates to some extent in government-sponsored violence. All these differences have the effect of facilitating identification with the state and distancing from nonstate actors. The media, themselves important instruments of legitimation, contribute to the ultimate result which is moral approval of official terror and condemnation of insurgent acts as "terrorism."[5]

What should be apparent from all that has thus far been argued is that, while explanation can be offered for the selective use of "terrorism" to refer to what is variously called "revolutionary" or "nonstate" violence "from below," there is no philosophical justification for such selectivity. Applying the term evenhandedly to actions of those who enforce and those who oppose authority is part and parcel of the sound moral distinction between just and unjust forms of rule, as well as just and unjust disobedience to rule.

Israel's Human Rights Record

This chapter began with descriptions of actions taken by the government of Israel in the early days of statehood that were terroristic. The same moral judgment applies to much of what occurs today in Israel's ongoing effort to seize and preserve control of land, resources, and populations. Torture is one means used continuously and systematically by Israel, despite the fact that Israel is signatory to conventions and treaties that prohibit it. Article 5 of the UN Universal Declaration of Human Rights states, "No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The same prohibition on torture is contained in the International Covenant on Civil and Political Rights (ICCPR), which adds that it is impermissible even in "time of public emergency which threatens the life of the nation." Article 147 of the Fourth Geneva Convention of 1949 forbids torture, as does a declaration on torture adopted by the United Nations on December 9, 1975, and the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Israel ratified the Geneva Conventions in 1951, and in 1991 Israel ratified the ICCPR and the Convention against Torture. Nevertheless, to this day torture is routinely inflicted on large numbers of Palestinians who are summarily arrested, held incommunicado, and sometimes killed or driven insane under torturous interrogation.

One of the most recent incidents that have come to light concerns the torture and death of Abdel-Samad Harizat in April 1995. Only three feet tall and weighing ninety pounds, Harizat died four days after his arrest by Israel's Shin Bet agents in the West Bank town of Hebron. At the conclusion of an autopsy

performed by two Israeli pathologists and with a Scottish pathologist attending, Israeli media reported that Harizat was beaten, had his head banged against a wall, then was left alone unconscious in a cell. As reported in the *Milwaukee Journal Sentinel,* April 26, 1995, when his family was finally permitted to see the corpse, his legs were still bound. Ironically, in the same issue another news article reported that "taking advantage of its last living links to the Holocaust, Israel is launching a nationwide campaign to collect testimony from aging survivors." From the ethical point of view, one can only wonder at Israeli sensitivity to suffering of Jews coupled with disregard for similar treatment of Palestinians. That news report continued: "In a related development, national leaders in Sweden said Tuesday that neutral Sweden was wrong to keep silent on the Holocaust 50 years ago and vowed 'never again.' " Any moral lesson from a holocaust of Jews applies to human beings universally. Consequently, elementary moral reasoning leads to the conclusion that "never again" applies not just to Jews but to all holders of human rights. "Looking the other way," an accusation directed by Jews against the community of nations for its inaction before World War II, is a charge no less applicable when Israel engages in systematic torture and other barbarities.

Human rights organizations and other international observers who provide impartial analysis are agreed that Israel not only is guilty of torture but that it is official Israeli policy and acknowledged as such. In *The Human Rights Watch Global Report on Prisons,* published in 1993, findings concerning Israel were unambiguous.

> The per capita rate of incarceration for Palestinian residents of the occupied territories is higher than in nearly all countries that release such statistics. . . . The two foremost problems relating to conditions in Israeli prisons are system-wide overcrowding and the physical mistreatment, including torture, of Palestinian security suspects from the occupied territories under interrogation during pretrial incommunicado detention. The mistreatment is inflicted for the most part by interrogators from the IDF and the General Security Service, Israel's internal intelligence-gathering agency. For most Palestinians who have undergone coercive GSS or IDF interrogations, nothing they experience while serving their sentences approaches the mistreatment they suffered during their pre-trial questioning. (Human Rights Watch 1993, 180)

Human Rights Watch, which conducts regular investigations of human rights abuses in sixty countries around the world, went on in this report to state that Israel "violates article 76 of the Fourth Geneva Convention by incarcerating residents of the occupied Gaza Strip and West Bank in IPS and IDF facilities inside Israel" (p. 186). When Human Rights Watch managed to visit one Israeli jail in Jerusalem, noteworthily called the "Russian Compound," it observed that "inmates were living in woefully overcrowded and poorly ventilated dungeon-like cells that stank from the unprotected toilets in the corners of the cells." But Human Rights Watch went on to say:

> Any assessment of IDF camps must give substantial weight to the largest and worst facility, Ketsiot. Located in a remote corner of the Negev desert, Ketsiot is far from both the Gaza Strip and the West Bank and thus highly inconvenient for lawyers and prisoners' families. It is subject to daytime temperatures exceeding 100 degrees fahrenheit in the summer and freezing nighttime temperatures in the winter. (p. 185)

In its condemnation of Israeli abuses, Human Rights Watch is joined by the International Committee of the Red Cross (ICRC), by Amnesty International, by a West Bank affiliate of the International Commission of Jurists called Al-Haq, and by the Israeli Information Center for Human Rights in the Occupied Territories, otherwise known as B'Tselem. From among these various reports, each one reinforcing the other, it is perhaps sufficient to quote a portion of Amnesty International's detailed study that was published in 1991 concerning Israel's abuse of Palestinians.

> Amnesty International believes that the substantial evidence available indicates the existence of a clear pattern of systematic psychological and physical ill-treatment, constituting torture or other forms of cruel, inhuman or degrading treatment, which is being inflicted on detainees during the course of interrogation.
>
> Methods used on a systematic scale include hooding . . . sleep and food deprivation while held in solitary confinement . . . prolonged bondage in plastic or metal handcuffs, usually in painful positions . . . and being confined in very small and darkened cells . . . as well as in small cold cells called "refrigerators." Beatings all over the body, often severe . . . are also inflicted with relative frequency. Other methods include burning with cigarettes; prolonged denial of access to toilets; verbal abuse and threats of various kinds; and forms of sexual harassment, particularly with regard to women. (Amnesty International 1991, 58)

Up until 1987 successive Israeli governments responded with flat denials to accusations and evidence of official complicity in such terrorist acts. In May 1987, however, the Landau Commission, named for its chairman, who was a former Supreme Court Justice, was created in the wake of two scandals. One concerned the beating death of two Palestinians in the custody of GSS agents after a bus hijacking. The other resulted from the Supreme Court's decision to release from prison a Circassian officer convicted on the basis of a false confession obtained through torture, with GSS agents later lying in court about the terrorist tactics they had employed.

When the report of the Landau Commission was released in November 1987 and then endorsed by the Israeli cabinet, parts of it were censored. But the remainder that was made public confirmed long-standing claims of Palestinians and human rights organizations, namely, that agents of the Israeli government engaged in systematic torture and subsequent perjury. The commission stated: "in regard to the acts of physical pressure or psychological pressure that they

employed: in retrospect, there were cases of criminal assault, blackmail, and threats." However, its report went on to say, inasmuch as "these practices did not deviate from the guidelines that existed in the service at the time . . . the interrogator who employed such measures can justly claim . . . that he was obeying the orders of his superiors, and that these orders were not clearly illegal . . ." (para. 4.20). This "Nuremberg" defense was coupled in the report with criticism of the regular practice of government agents lying in court when Palestinians alleged that confessions had been extracted from them under torture. The commission found that perjury "became an unchallenged norm which was to be the rule for sixteen years" (para. 2.30). Rather than call for the elimination of torture, the Landau Commission chose instead to say that sometimes "the exertion of a moderate measure of physical pressure cannot be avoided" and, therefore, it should be done within clear boundaries so as not to become "inordinate" (para. 4.7). Now, at least, hypocrisy was eschewed; state terrorism was acknowledged and given a commission's limited stamp of approval. That torture is not a rogue operation but rather the expression of political will that resides ultimately with the highest authority in the Israeli government is affirmed by the Landau Commission. "Since the GSS was made subordinate to the Prime Minister in 1963, a constitutional custom prevails according to which the Prime Minister bears direct responsibility for GSS activities, within the framework of the joint responsibility of the entire Government before the Knesset . . ." (para. 3.2).

In June 1994 Human Rights Watch reported it found that "extraction of confessions under duress, and the acceptance into evidence of such confessions by the military courts, form the backbone of Israel's military justice system. . . . Israel's ill-treatment of Palestinians under interrogation is distinguished not only by its conveyor-belt quality but also by the huge number of persons who experience it . . . more the rule than the exception. . . . [Abuses] are practiced with a considerable degree of consistency system-wide, and with virtual impunity for the practitioners. The abuses are clearly being carried out with the knowledge of the government . . ." (Human Rights Watch 1994, 2–6).

That torture is demonstrably official policy in Israel brings this practice within the definitional framework of state terrorism that I have earlier established to be the scholarly consensus regarding that concept. Nor is torture the only manifestation of Israeli state terrorist methodology.[6] *A License to Kill* is the title of a 264–page report published by Human Rights Watch in July 1993. Undercover units of the Israeli army routinely search for and kill on the spot Palestinians, many of whom pose no threat to soldiers or others. The introductory paragraph of this report states:

> Since 1988, a pattern of unjustified killings by Israeli undercover security forces has emerged in the occupied West Bank and Gaza Strip . . . responsible for most of these killings are special units from the Israel Defense Forces (IDF) and the Border Police operating under IDF command. Many of these

> killings, for which the Israel military command openly acknowledges responsibility, constitute violations both of international law and of the law that Israel professes to apply in the occupied territories; yet there has been no credible effort to deter the practice. Not only are the members of undercover units encouraged to think of the victims as legitimate targets for lethal force, but the use of force in violation of the regulations routinely goes unpunished, with cover-ups extending from the rank-and-file to the senior military establishment, and relying on the acquiescence of the government of Israel. (Human Rights Watch 1993, 1)

Although they have been insufficient to change government policy, a significant number of Israelis also protest terrorist methods employed by their government. For example, on October 20, 1994, six Israeli human rights organizations including B'Tselem sent a letter to the Israeli government, in which they cited and deplored a number of abusive practices.

> We call upon the Israeli government to refrain from implementing any measures which bring harm to innocent persons, such as house demolition and sealing, curfew, unacceptable treatment of the families of wanted persons, closing of educational institutions, limiting freedom of movement of medical personnel, family separation (as a result of preventing entry into East Jerusalem), and depriving persons of their livelihood . . . firing without warning in a situation that does not involve danger to life, deportation, and torture. (*Jerusalem Times,* October 28, 1994)

Pointedly, the letter concluded that "experience shows that collective punishments, as well as cruel treatment of individuals, do not detract from the power of terror, and are even liable to increase support for its perpetrators." What remained to be acknowledged was that "terrorism from above" was itself the cause of Palestinian insurgency. It has been noted, for example, that the spiritual leader of Hamas "found fertile ground for his militant ideology amid the poverty and hopelessness of Gaza's squalid slums and refugee camps" (*Milwaukee Journal,* October 19, 1994). In December 1992 Prime Minister Yitzhak Rabin violated international law by deporting to Lebanon 400 Muslims from Gaza, summarily rounded up and without benefit of trial or even presentation of any charges. As this news article continued, "The last exiles returned a year later, their hearts filled with more hatred against Israel. Some deportees reportedly trained in south Lebanon with the Iran-backed Hezbollah in using weapons and preparing car bombs."

Blaming the victims is a standard practice of terrorist states. Security, enforcement of law and order, counterterrorism, and the like are familiar rationalizations for suppression of human rights among subjugated populations. A powerful example of punishing Palestinian victims is Israeli government response to the massacre of Palestinians praying in the Mosque of Abraham in Hebron on February 25, 1994. At the same time that the murderer's gravesite has become a place of pilgrimage for Jewish settlers, the Israeli government has

made life even more unbearable for the Palestinian residents of Hebron. According to B'Tselem, the Israeli human rights organization, Israeli authorities have divided the city into sectors by installing thirteen checkpoints, isolating neighborhoods and closing down markets. Residents are not allowed to park their cars in their neighborhood and hundreds of them must stand in line every day to seek permits for mundane activities. "Most of them wait in vain as officials routinely tell them at the end of the day that the computers did not work or the officer in charge was not available" (*Jerusalem Times,* June 2, 1995). B'Tselem also documented hundreds of cases of Palestinians who have been severely beaten since Israeli authorities changed their shoot-to-kill policy in Hebron.

Media in the United States would never consider describing the Hebron mass murderer, Dr. Baruch Goldstein, as a "Judaic terrorist." But violent acts are frequently attributed to "Islamic terrorists." Yet, Goldstein and many other Jewish settlers illegally occupying the West Bank, Gaza, East Jerusalem, and the Golan Heights envelop their expansionist agenda in religious language, suggesting that the Torah provides license and mandate for wholesale deprivation of another people. In any event, Jewish settlers do correctly claim that their behavior has been supported by Israeli government policy. For decades Jews have been encouraged to encroach on Palestinians with promises of subsidized housing, preferential allocation of resources such as water, and virtual impunity when they attacked Palestinians. Even the so-called Peace Process has done little to stanch Israeli government violation of international law, Article 49 of the Fourth Geneva Convention: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." On January 26, 1995, the *New York Times* reported that "even though the Prime Minister [Rabin] promised the United States soon after taking office in 1992 that he would rein in settlements, and despite a widely help perception overseas that he had frozen them, the Jewish settler population has grown by about 17 percent during his time in office." Patent discrimination against Palestinians is evidenced in the fact that land confiscations invariably serve Jews, to the exclusion of Arabs from whom the land is seized. For example, the *New York Times* of May 15, 1995, stated that B'Tselem, "with a record of statistical accuracy," had just issued a study showing that

> since 1967 Israel had seized one-third of the 17,500 acres that used to be under Jordan's control and that are now part of Jerusalem's [illegal] municipal boundaries. About 38,500 housing units were built on those lands, B'Tselem said. Other reports have cited a figure of 35,000. Whatever the precise number, the studies agree on how many of these publicly supported apartments went to Arab families: zero.

Israeli government support for illegal encroachment extends to double-standard treatment of the two populations. At the same time that Israel orders "more efficient interrogations" of Palestinian suspects, Israeli military units in the occu-

pied territories are oftentimes bystanders and even participants in Jewish settler rampages (*Milwaukee Sentinel,* October 21, 1994). One recent example was a May 18, 1995, attack on Palestinian residents of Hebron by rioting settlers from Kiryat Arba who were "celebrating" the Jewish holiday of Lag Ba'omer.

> The settlers began rampaging through the city's streets shortly before midnight and continued until dawn, vandalizing Palestinian property and terrorizing Hebron residents. . . . "They were behaving like wild beasts," said Muhammed Al-Ja'abari, who witnessed settlers slashing tires in the vicinity of the Ibrahimi Mosque. "I thought of doing something, but they were armed and I noticed Israeli soldiers were doing nothing to stop them." (*Jerusalem Times,* May 26, 1995)

American Complicity

Complicity in the violations of international law that both create and sustain Jewish settlements can be attributed both to the U.S. government and to many American Jewish organizations. Over the years, U.S. aid to Israel has far exceeded that to any other country, despite Israel's human rights record and despite its continued confiscation of Palestinian land. The *New York Times* of September 23, 1991, reported that government aid to Israel "since 1967 has totaled at least $77 billion—$16,000 for each Israeli citizen—when adjusted for inflation." The words "at least" are used to indicate that in addition to the well-known grants that prop up the Israeli economy and bolster its military, there are other forms of assistance, such as huge transfers of surplus military equipment, subsidies for Israel's foreign aid program, loan guarantees, joint defense development programs, and the like. Moreover, U.S. treatment of Israel is unique in that, as that same issue of the *New York Times* noted, "Israel alone among recipients of American aid receives its money at the beginning of each fiscal year, allowing it to invest in U.S. Treasury securities and collect interest on the money until it is actually spent."

One published estimate concludes that in fiscal year 1993 the cost of U.S. aid to Israel, combining grants, interest, loan guarantees and compound interest on previous grants totaled $11.321 billion. This one-year cost to the American taxpayer continues a pattern that in all likelihood will be perpetuated in years ahead (Collins 1993, 15).

In the United Nations the exercise of its veto by the United States repeatedly has pitted the United States against the rest of the Security Council in lone support for Israel. Most recently, the United States cast its veto on May 17, 1995, to block an otherwise unanimous Security Council resolution condemning Israel's announced plan to confiscate for Jewish housing 131 more acres from Palestinians in East Jerusalem.

Subsequent delay in seizure of the land was caused, not by worldwide condemnation of Israel, but by political exigencies back home in Israel. The opposi-

tion Likud Party announced its readiness to support motions by the tiny five-vote Arab faction in the Knesset that would have brought down Rabin's slim-margined Labor government. Otherwise, as Prime Minister Rabin stated, "We were prepared to stand up to the entire world. . . . We were prepared to stand up to the U.N. Security Council with the help of our friend, the United States" (*USA Today,* May 23, 1995). A history of voting against the international community in support of illegal Israeli actions has seriously compromised U.S. efforts to appear committed to a consistent human rights policy. As Lebanon said of the latest U.S. veto, "The United States spontaneously adopts the Israeli stands whether they are right or wrong" (*Baltimore Sun,* May 19, 1995). With repeated votes of 14–1 in the Security Council and 151–2 or 154–2 in the General Assembly (only Israel voting with the United States), the United States sends a disheartening message to those emerging nations and struggling peoples who might look to the United States as a champion of human rights.

Many American Jewish organizations, as well as non-Jewish supporters of the Zionist project, share responsibility for Israel's dismal human rights record and for U.S. compromises on its own professed principles. With half of the world's Jewish population living in the United States and many of them in concentrated voting blocks in key states, with single-issue lobbying by the Jewish lobby called American Israel Public Affairs Committee (AIPAC), with selective biblical interpretations by fundamentalist Christian organizations, and with millions of dollars flowing annually to presidential candidates and members of Congress who support Israel, harsh political realities prevail over philosophical disquisitions on the ethical life. As John Dewey (1920, 192) lamented, "While saints are engaged in introspection, burly sinners run the world."[7]

That Israel continues to be the number-one recipient of U.S. foreign aid, even though it has so patently violated the human rights of Palestinians, is morally indefensible. In its report of June 1994, Human Rights Watch argued that such aid is also illegal.

> Israel's systematic torture and ill-treatment of Palestinians under interrogation is an issue that the U.S. administration should urgently confront, not only because torture has not disappeared with the signing of the Declaration of Principles [in September 1993], but also because it calls into question the very legality of American military and economic aid to Israel, which, at over $3 billion per year, makes Israel the largest recipient by far of U.S. bilateral assistance.
>
> U.S. law prohibits the government from providing military or economic aid to any government that engages in systematic torture. Section 502(B) of the Foreign Assistance Act covers security aid, and a parallel provision in Section 116 covers economic aid. (Human Rights Watch 1994, xv)

Current discounting of ethical values in service to pro-Israeli interests has historical precedents that trace to the very beginnings of U.S. involvement. In

1947 President Harry Truman exerted such pressure on allies to vote for partition of Palestine in the UN General Assembly that his secretary of defense, James Forrestal, characterized it as "coercion and duress on other nations which bordered on scandal" (Millis 1952, 363). Truman was pandering to pro-Israel voters. As he told his ambassadors to Arab countries, "I am sorry, gentlemen, but I have to answer to hundreds of thousands who are anxious for the success of Zionism; I do not have hundreds of thousands of Arabs among my constituents" (Eddy 1954, 36).

Important as it is to recognize the efforts of Jews both in Israel and abroad who resist that country's violations of morality and international law, their relative ineffectiveness is apparent. Writing to the *New York Times* on February 28, 1994, shortly after the mass murders committed by Baruch Goldstein in Hebron, Jacob Bender, an American Jew who labored for years at the Yad Vashem Holocaust Memorial in Jerusalem, found "condemnations of the Hebron massacre by American Jewish organizations hollow in the extreme." Bender explained:

> It was these same organizations and Jewish leaders who, over the last two and a half decades, consistently defended the immoral and self-destructive Israeli policy in the occupied territories and kept the funds flowing that enabled the illegal Jewish settlements to flourish. And continuing the Israeli policy of unequal justice for Arabs and Jews in the territories, we surely will not see the family home of Dr. Baruch Goldstein demolished, nor his fellow Jewish extremists expelled to Brooklyn.

The impunity with which Jewish settlers terrorize Palestinians came through when an Israeli commission created after the massacre heard from police and military commanders in the West Bank. Reported Joel Greenberg in the *New York Times,* March 11, 1994:

> The border police commander in Hebron told an Israeli inquiry commission today that all Israeli forces in the area have standing orders never to fire at Jewish settlers, even if the Jews are shooting at people. . . . The commander, Chief Inspector Meir Tayer, said the orders were in force on Feb. 25, when a Jewish settler walked into a Hebron mosque and massacred Palestinians at prayer. . . . "Even if I had been there," he said, "I would not have been able to do anything because there were special instructions regarding this."

Although Major General Shaul Mofaz, commander of Israeli forces in the West Bank, tried to deny Tayar's testimony, Mofaz himself conceded under questioning that "the army saw its chief task in the occupied territories as protecting Jews, not Arabs." And Mofaz admitted that another general, Nehemia Tamari, who was chief of the army's central command, had told the military commander of Hebron, "We don't shoot at Jews; they are not the enemy" (*New York Times,* March 11, 1994).

Years before this incident, on May 25, 1982, the chairperson of another investigative commission had submitted her report to the attorney general of

Israel and to the ministers of Justice, Interior, Defense and Police. In it Deputy Attorney General Yehudit Karp argued that systematic miscarriages of justice in treatment of Palestinians demanded fundamental changes. The commission had been created in response to a petition in 1980 from fourteen Israeli law professors alarmed about irregularities in law enforcement in the Occupied Territories. Following detailed inquiry into cases of Jewish settler violence improperly investigated by police, the Karp Commission concluded that "the key lies not in the technical monitoring of the investigations, not in criteria for investigative techniques, nor in the legal angle—but rather in a radical reform of the basic concept of the rule of law in its broadest and most profound sense" (Karp 1984, 49).

Given the mentality of Israeli General Mofaz testifying in the Baruch Goldstein inquiry of 1994, "An Arab who is carrying a weapon is a terrorist. A Jew with a weapon is defending himself and is allowed to shoot" (*Ha'aretz,* March 11, 1994), nothing had changed in twelve years since the Karp Report. Indeed, Yehudit Karp resigned from her post in frustration at governmental failure to act on the findings of the 1982 commission.

In April 1995 Human Rights Watch published a report on communal violence that contained a chapter on the Israeli-occupied territories. In fifteen pages this human rights organization succinctly established what I characterize as the institutionalized discrimination of Israeli occupation. The section opened with this statement: "Through land confiscations, subsidies, low-interest mortgages, generous infrastructural spending and other measures, the government of Israel has since 1967 actively facilitated and promoted the transfer of Jews from Israel (and Jewish immigrants arriving from abroad) into the West Bank and Gaza Strip" (Human Rights Watch 1995, 30). And the section concluded:

> As stated at the outset of this chapter, the government of Israel is in violation of international law by having facilitated the implantation and expansion of settlements in the West Bank and Gaza. It is also guilty of condoning settler attacks on the persons and property of Palestinians by employing a double standard of justice. In contrast to its response to Palestinian violence against Jews, Israel fails to vigorously protect Palestinians from settler violence, and when illegal acts occur, they rarely receive vigorous investigations and even more rarely result in punishments commensurate with the crime. (pp. 43–44)

The perception in the United States that Israel is a democratic society, despite its consistent record of state terrorism toward Palestinians and neighboring Arab peoples, suggests the effectiveness of image makers acting on Israel's behalf over the years.[8] It is well to recall that ancient Athens, commonly characterized as the "cradle of democracy," was a society in which the majority of the population was slave. Apartheid South Africa also was a democracy—for those whose skin happened to be white. And, of course, it was an oxymoronic "racist democracy"—one-sixth being black slaves—that initiated war with Mexico and virtually exterminated the American Indians to seize lands that became the United States. Several years ago, retired Israeli General Meir Pa'il spoke at the Jewish

Community Center in Milwaukee and warned, "If Israel continues on its present course, it will become a cross between Northern Ireland and South Africa." Ironically, recent events make the comparison unfair to the latter two countries. Protestants and Catholics in Northern Ireland have declared an end to their armed conflict, and in South Africa "terrorist" Nelson Mandela is president, with the "terrorist" African National Congress as majority party in the new national government. Today only Israel suffers in the comparison.

Inside the "Green Line"

This chapter began with evidence of official terrorism in the earliest days of Israel's existence, and as this writing nears its conclusion, what must be reiterated is that reliance on terrorism sustains Israel to the present moment. Racist and religiously discriminatory legislation has ensured for Jews a monopoly over the government and the economy of the nation. A frequent counterclaim alleges that, although apartheid conditions do unfortunately exist in the Occupied Territories, such is not the case inside the "Green Line," meaning the pre-1967 borders of Israel. There, the apologist for Israel contends, Arabs enjoy full rights as citizens. The absurdity of this defense is plain to anyone who studies the history and the present circumstances of Palestinian interaction with the Jews.

What in professional literature is defined as "internal colonialism" characterizes the entire Palestinian-Israeli impasse from the turn of this century to the present (see Zureik 1979; Lustick 1980; Jiryis 1976; Tessler 1980). Palpable realities prevent all but the most biased to recognize in declared intention, in consistent policy, and in uniform outcome a long-term strategy to ensure, in the words of Chaim Weizmann, Israel's first president, that Zionists would "finally establish such a society in Palestine that Palestine shall be as Jewish as England is English" (Weizmann 1952, 48). This despite the fact that at the time Palestinian Arabs constituted 92 percent of the population and Jews owned only 2 percent of the land. By 1947 Jews still had managed to acquire only 6 percent of the land. Nevertheless, the exclusivity of Zionist intentions was once more made plain when David Ben Gurion testified before the Anglo-American Committee of Inquiry on Palestine in 1947. "When we say a 'Jewish State' we mean Jewish country, Jewish soil, we mean Jewish labor, we mean Jewish economy, Jewish agriculture, Jewish industry, Jewish sea" (Lustick 1980, 88). In 1948, on the eve of declaring themselves a "Jewish state in the Land of Israel," the Arab population was 1.3 million of Palestine's total 1.9 million.

Israel is officially the "sovereign state of the *Jewish* people," not of its citizens. More than 90 percent of the land is owned by the state, which, by transferring resources to the Jewish National Fund and the Jewish Agency, segregates land and subsidies for the exclusive benefit of Jews. Its charter restricts the Jewish National Fund to actions that are "beneficial to persons of Jewish religion, race, or origin." On November 29, 1947, a majority in the UN General

Assembly yielded to intense U.S. lobbying and recommended that Jews be given 57 percent of the land, even though Palestinians were still two-thirds of the population. By early 1949 Zionists occupied another 20 percent of the land, with the remaining 23 percent to be seized in 1967.

Enabling legislation provided a veneer of legality to the government's confiscation of land from 750,000 Palestinians who fled or were expelled in the early days of the "Jewish State." A 1948 law authorized seizure of "uncultivated" land; a 1949 law permitted expropriation of land for "security" reasons; a 1950 law transferred property from "absentees" to the state, with "absentee" so cleverly defined that it was applicable to half the Palestinians remaining in Israel; a 1953 law legitimized all previous confiscations of land, whether or not occurring by due process. Confiscated land was transferred to the Jewish National Fund as the "irrevocable patrimony of the Jewish people," eliminating the possibility of sales to Palestinians, and mandating its use exclusively for Jews.

An "emergency situation" was declared in Israel immediately after the state was created, and that emergency declaration remains in force to this day, allowing the government to act when it sees fit against Palestinians. From 1948 until 1966 the Palestinians who remained inside the "Green Line" were subjected to a military administration, not the civil administration for other Israeli citizens who were Jews. Segregation of Palestinians from each other and from Jewish society was a primary function of the military administration during the eighteen years of its operation. Military permits were required for Palestinians to travel beyond their village, and these permits specified the date, the destination, the route to be traveled, and the time of return. Palestinian attempts to organize politically were suppressed by direct action: expulsion orders, closure of roads, arrests, and declaring closed areas.

The comprehensive nature of apartheid Israeli policies toward even those Palestinians who were allowed to become Israeli citizens cannot be detailed here. Nevertheless, the record is clear: the Israeli government consistently allocates substantially less money for Palestinian education, housing, and municipal services. Preferential treatment of Jews is *de jure* as well as *de facto.* For example, the Law of Return passed in 1950 offers automatic Israeli citizenship upon entrance into the country to any Jew, from anywhere in the world and solely by virtue of Jewishness. By tying many benefits to military service, from which Palestinians are excluded, the government is able legally to discriminate in favor of Jews. Thus, large families are entitled to receive allowances that are 40 percent higher if a member of the family has served in the Israel Defense Forces, and mortgage money available for young couples is three times higher for veterans than for others.

When Archbishop Desmond Tutu of South Africa, winner of the Nobel Peace Prize, made a visit to Israel in December 1989, he remarked, "I cannot myself understand people who have suffered as the Jews have suffered inflicting the suffering of the kind I have seen on the Palestinians" (*New York Times,* December 27, 1989). A few days earlier in his visit, he said of Israeli tactics in suppressing the Intifada, "If I were to change the names, a description of what is

happening in the Gaza Strip and the West Bank could describe events in South Africa" (*New York Times,* December 24, 1989).

U.S. support for this country engaged in state terrorism is regrettably not an isolated phenomenon, as I have earlier shown. Indeed, as this chapter was being completed, the *Baltimore Sun* reported results of a fourteen-month investigation showing that the CIA and State Department collaborated with a secret Honduran military unit known as Battalion 316 in the 1980s, even though U.S. officials knew the battalion was kidnapping, torturing, and executing its own people. The newspaper also found that in order to keep up public support for the Reagan administration's wars in Central America, U.S. officials deliberately misled Congress and the public about Honduran military abuses. Battalion 316 members were flown to a secret U.S. location for training in surveillance and interrogation, and a CIA officer based at the U.S. Embassy in Honduras frequently visited a secret jail where torture was conducted (*Baltimore Sun,* June 12, 1995).

It has been an objective of this chapter to demonstrate that a compelling philosophical argument exists for bringing various morally grotesque acts of governments as well as of subnational groups under the concept of terrorism. It has also been my purpose to establish that Israel, in its treatment of Palestinians, is a terrorist state. That Palestinian insurgents employ violent means of resistance to systematic governmental abuse of their human rights is also argued here to be, within limits of justifiable disobedience to oppressive rule, a moral right of those insurgents. It is not inappropriate here to recall the words of General Philip Sheridan concerning U.S. campaigns against the American Indians. "We took away their country; broke up their mode of living, their habits of life; introduced disease and decay among them; and it was for this and against this that they make war. Could anyone expect less?"[9]

Notes

1. This excerpt from Ben Gurion's diary appeared in *Yediot Ahronot,* April 17, 1983.
2. This and succeeding quotations are taken from the documentary "The Way West," written and directed by Ric Burns; a Steeplechase Films production for *The American Experience* on PBS, May 1995.
3. For extensive analysis of the history and current condition of the Kurds, see *Middle East Report,* no. 189 (July–August 1994).
4. What follows is a summation of what can be found in Wardlaw (1982, 5–11).
5. Further discussion of the state's power to intimidate or coerce both domestic and foreign opponents and to do so efficiently is found in Perdue (1989).
6. Abusive interference with Palestinian educational efforts is detailed in Ashmore (1986).
7. Dewey is here arguing, in chapter 8, for abolishing the separation between politics and morals.
8. Even though the vast majority of Palestinian acts of resistance during the Intifada were nonviolent, the media focused almost entirely on violent incidents. See Ashmore (1990).
9. See note 2.

5

Jus in Bello and the Intifada

Daniel Statman

In this chapter I seek to use some distinctions and arguments developed in the field of military ethics in order to shed light on the moral status of the Palestinian Intifada and on the Israeli reaction to it. Such a discussion is warranted only if we start with a nonpacifist view, namely, if we assume that fighting is not always, and unconditionally, morally wrong. From a pacifist point of view, both the Intifada and Israel's response would be *a priori* immoral, *tout court.* Such a discussion would also be useless from a realist point of view, according to which *inter arma silent legas,* or, in the time of war the law is silent. If there are no limits to the use of violence in conflict, there is no room left for moral distinctions in the Intifada. Thus, while in pacifism the moral status of the Intifada is determined *a priori* because nothing goes, in realism it is similarly determined *a priori* because anything goes. In contrast to the pacifist view, I assume here that it is sometimes morally justified to use violence or to go to war against other human beings. In contrast to the realist view, I assume that the use of violence and the conduct of war are subject to significant moral constraints.

I thus am approaching the topic from the "just war" tradition. This tradition presupposes a strong presumption that it is wrong to kill human beings, a presumption that only powerful considerations can override. The presumption grows stronger when the victims of war are noncombatants, that is to say, an attack on civilians imposes a much heavier burden of justification than an attack on combatants. Notwithstanding this presumption, just-war theory argues that there are circumstances in which it is justified to go to war. I cannot defend these general claims here and have to rely on the work of others in this area, in particular, Walzer (1977) and, more recently, Norman (1995).[1]

What is unique about the Intifada from the point of view of military ethics? The following features come immediately to the fore: First, it was[2] a genuine mass resistance, initiated and carried out by the people. (The PLO was surprised by the breakout of the Intifada no less than the government of Israel and the IDF were—Schiff and Ya'ari 1989, 21–22). In this respect the Intifada differed from the rebellion in Algeria, for instance, which was planned well ahead and started with a coordinated attack by the FLN on the night of October 31, 1954. Second, unlike the Algerian case and most other instances of resistance against occupation,[3] in the Intifada—especially in its early years—there was hardly any use of

guns and explosives. The main weapons used by the Palestinians were stones, which were thrown and slung at IDF soldiers and at passing Israeli vehicles. Thus the arms used in this struggle were rather unusual[4] and relatively nonlethal. Third, the resistance not only arose from a civilian population but was also directed against another civilian population (in addition to soldiers), in particular against Israeli settlers.

Whether, and in what way, these factors are relevant to the moral understanding of the Intifada will become clearer, I hope, in the course of the discussion. In the first section, I seek to explore the moral status of Israeli civilians. I argue that the attacks on them were unjustified. In the second section I proceed to examine the charge that Israel's reaction to the Intifada was indiscriminate and too harsh and thus a violation of *jus in bello*.[5] I mean to show that this charge is misplaced. In the third section, I reject the "no-choice" argument, which tries to justify terror on the grounds that freedom fighters have no other weapon. Finally, in the fourth, I discuss the question whether considerations of *jus in bello* play any role in an unjust war or an unjust occupation. I argue that they do and suggest therefore that even if the Israeli occupation was unjust, this does not put an end to questions concerning *jus in bello*.

Attacks on Israeli Civilians

The use of stones as the main weapon to fight against a perceived enemy would seem to be a way of avoiding the difficulties of *jus in bello* altogether. As the damage, suffering and killing caused by throwing stones is so slight in comparison to the destruction caused by tanks, artillery, and aircraft, it is hard to think of a more moral way to conduct a war. In one sense, this observation is no doubt true; if all modern weapons were replaced by stones, the amount of suffering and killing in wars would be very much less. In a different sense, however, this observation is certainly false. In just-war theory, to fight a war in a morally acceptable manner means primarily to adhere to the distinction between combatants and noncombatants (Walzer 1977, ch. 9; Norman 1995, ch. 5), and in this respect it makes no difference what sort of weapon one is using; one can ignore this distinction by using an atomic bomb (as in Hiroshima), by conventional bombing (as in the bombing of Dresden during World War II), by directly shooting innocent people (as in Vietnam), or, finally, by using stones. Hence, though there is a *huge* moral difference between bombing people and stoning them, this difference does not put an end to the moral discussion and leaves open the question whether the objects of the attack are legitimate objects.

The expression "throwing stones" is misleading. It may evoke images of childhood violence in individual rivalry or fights between gangs, a practice that rarely causes serious harm. Yet in the current case we are speaking of throwing heavy stones ("rocks" would often be a more suitable description), often from high positions such as rooftops, on the faces and heads of people passing below

and at the windscreens of passing cars. These practices could be, and actually often were, very harmful. It is thus odd to find that such attacks, whether justified or not, were so often described as "demonstrations" or "protests." These attacks certainly *did* demonstrate and protest, but the violent nature of their protest is altogether disguised by the use of these expressions. Moreover, the stoning was not merely a violent way of protest; it was deliberately intended to injure or kill its victims. Finally, we must remember that although stones were, so to say, the "personal weapon" of the Palestinian fighter, many utilized other weapons too, for example, Molotov cocktails,[6] knives, hand grenades, and explosive charges.[7] These facts do not of course entail that the Intifada was morally wrong or that it was morally justified. But they do help us to understand what it was: a series of thousands of violent actions that, as in all wars, aimed at realizing a political goal by causing damage, suffering, and death to the perceived enemy.[8]

Was this violence directed only toward combatants? The answer is a clear no. From the beginning of the Intifada, not only was the IDF under attack, but all Israelis within the territories were designated legitimate targets, especially those living in the settlements. Stoning Israeli cars and buses was the most popular activity within the Intifada and was expressly directed at all Israeli vehicles, military and civilian alike. The Israeli civilians who suffered especially from these attacks were, of course, the settlers, but they were not the only victims. Any Israeli travelling through the West Bank or the Gaza Strip was at risk. The moral outrage of such stoning can be overlooked only if one refuses to apprehend what such stoning meant by describing the situation as "a protest of kids against the occupation." That stoning passing cars is wrong in a specially strong sense has been argued in passing by Judith Lichtenberg in a recent article on moral certainty. The opening lines of her article run as follows:

> A man has sexual intercourse with his three-year-old niece. *Teenagers standing beside a highway throw large rocks through the windshields of passing cars.* A woman intentionally drives her car into a child on a bicycle. . . . Are these actions wrong? If we hesitate to say yes, that is because the word "wrong" is too mild to express our responses to such acts. (Lichtenberg 1994, 181; emphasis added)

Yet this was precisely the situation during the Intifada: Palestinian teenagers standing beside the roads and throwing rocks through the windshields of passing cars. Sometimes Molotov cocktails were added to the stones, with terrible results.[9]

These indiscriminate attacks on civilians, among them many children and women, were not, of course, a merely incidental corollary to the attacks on the army. In most cases they had nothing to do with military targets. According to the IDF spokesman, from the beginning of the Intifada until April 1989, there were *more* violent attacks in the West Bank against civilians than against soldiers, resulting in the death of 9 civilians (compared to 6 soldiers) and the injury of 584 civilians (compared to 748 soldiers) (Shalev 1990, 80). Statistics are

always debatable (though I don't know of other recorded numbers of Israeli casualties), but the general picture is not; any Israeli in the territories was regarded as an appropriate target for attack, soldier or civilian, man or woman, child or adult. A double-effect kind of doctrine would therefore not be of much help here. We must conclude that these attacks on civilians, which were encouraged and praised by all the Palestinian organizations, were a clear violation of *jus in bello.*[10]

Or were they? After all, those civilians were driving in a land where—from the Palestinian point of view—they had no rightful business. That is particularly true with regard to the settlers, who were regarded by the Palestinians as thieves who were stealing their land and water, and as part and parcel of the occupying policy of Israel. So if one is justified in fighting against a colonialist army, why should not one be equally justified in fighting against colonialist settlers?

Our question, then, concerns the moral status of civilians settled by an occupying state in the occupied lands; should these civilians be regarded as "innocent" and hence not a legitimate object of attack, or should they be considered as part of the military framework and hence not be entitled to any special moral immunity? This question provides a good opportunity to revisit a central idea of *jus in bello,* namely, the moral immunity of civilians.

Why is it morally acceptable to kill the nineteen-year-old soldiers of the enemy but morally wrong to kill their parents and families? A common way of answering this question is by saying that civilians are "innocent," while soldiers, presumably, are not. Yet, as Norman persuasively shows, this line of reasoning (I shall call it "the innocence theory") is not very persuasive. If civilians, or noncombatants, are innocent, then soldiers must be "guilty." But guilty of what? Presumably of fighting the war. As they are responsible for the war and the killing, they are a legitimate object for attack. But, Norman argues,

> combatants, whether they are conscripts or professional soldiers, are acting under orders. They did not decide that the war should be fought, or how it should be fought. . . . Many people in the civilian population are likely to carry a much greater burden of guilt for an unjust war. . . . Above all, of course, the burden of guilt must lie with the politicians. They are the people who must be held primary responsible for the decision to go to war in an unjust war. (1995, 167)

The distinction between innocent and guilty, therefore, falls short of justifying the required distinction between combatants and noncombatants. When we consider the moral status of combatants in a *just* war, the notion of innocence is even less helpful; what sort of guilt would be carried by anybody involved in a just war that might make him or her a legitimate object for attack? Thus, with regard to just wars, the notion of innocence fails to distinguish between combatants and noncombatants because all the people on the just side are equally innocent. And with regard to unjust wars it fails because the distinction it yields is not the one we are looking for; the distinction between combatants and noncombatants does not correspond to that between (respectively) the guilty and the innocent.[11]

These objections are quite useful when we return to the status of the settlers. Let us assume that the occupation was unjust and that the war it involved was an unjust one on the part of Israel. Thus, on just-war theory, the army was definitely a legitimate object for attack. Now to say that the settlers were also such an object would mean—on the above account—that they were guilty. Of what? The answer would seem to be, for the occupation and its unjust results. But surely they were no more guilty than the many politicians who supported and assisted the settlements and who encouraged the army to take stronger measures to control the Intifada. And there were many others who were responsible for the above policies; the right-wing parties, the people who gave money to the settlements, and the many thousands of Israelis who were active in one way or another in supporting and enhancing the policy of occupation and settlement. But to say that all these people were legitimate objects for attack is plainly to reject the central idea of *jus in bello.*

Norman's point about the assumed guilt of soldiers is also relevant here. It is common knowledge that the IDF is based on conscripts, who cannot choose whether to serve in the army or not, nor can they choose the location of their service.[12] In this respect, their responsibility *qua* soldiers to the large political and military decisions is rather low. Moreover, with regard to these larger issues, we know as a matter of fact that approximately 50 percent of the soldiers voted in the 1992 elections for parties such as the Labor Party and the more extreme left-wing liberal parties, all of which were quite opposed to the policy of settlement. So if responsibility is the central notion governing the ethics of fighting, the distinction between legitimate and illegitimate objects of attack will be rather different than the common *jus in bello* one, that is, the distinction between combatants and noncombatants.

One might argue that because the settlers carried weapons, and at times used them against Palestinians, they were rightly considered as combatants and deserved no immunity. But this argument flies against the fact that in most cases the use of weapons by the settlers was in self-defense, usually when their cars were being stoned. With a few exceptions, outrageous as they indeed were,[13] the settlers did not use their weapons to initiate attacks on Palestinian cars or villages. Needless to say, the fact that the settlers were willing to use their weapons in self-defense does not justify viewing them as combatants, thereby allegedly justifying attacks on them. By stretching the notion of combatants one might be able to justify attacks on some kind of militia of settlers organized to help the army in keeping order. But the day-to-day Intifada was not directed against such militia but against thousands of Israeli children, women, and men, who were on their way to school or to work, with no aggressive intentions whatsoever.

One might suggest a different use of the notion of responsibility here, namely, that by moving to live on Palestinian land, the settlers "took the risk" of being attacked and getting themselves and their families hurt, and thus it is they who bear responsibility for such results. This line or argument is very dangerous.

Suppose an African American young man decides to fight racism by demonstrating in front of the offices of the Ku Klux Klan in some small white town in the South. His presence and posters make the local residents furious, and they stone him to death. This young man certainly "took a risk," but his doing so hardly justifies lynching him. Similarly, think of a Palestinian entering into some radical right-wing settlement with posters calling for a *jihad* against Israel. Would this taking of a risk justify lethal attacks on him? Clearly not, and the same argument applies to the risks taken by Jewish settlers. The taking-of-risk argument could work only if supplemented by a different and an independent claim to the effect that the settlers "had no business" being in the territories and hence carry responsibility to the results for this unjust act of colonialization. The right analogy is not that of the African American, but of people who invade my land, thereby taking responsibility for getting hurt by my legitimate acts of defense. Thieves have no immunity.

The example of stealing land, however, is misleading in the current context. Note, first, that it is only an analogy; many of the lands on which the settlements were built had been legitimately bought from their owners, and, in any event, the attackers made no distinction between settlers who were living on land purchased legally and those living on land illegitimately taken from their owners. The assumed thief was not some particular settler living on the land of some particular Palestinian, but the state of Israel, which, on this account, had stolen the lands of the Palestinians by occupation and colonialization. In other words, at stake was a struggle for independence and for the ending of the occupation, and not a policelike operation against land robbers. Yet, as I argued earlier, the settlers were no more responsible for the policy of occupation than many other Israeli civilians, who would not count as legitimate objects of attack by any sane notion of *jus in bello*. Thus, if the notion of responsibility is supposed to do most of the work in identifying legitimate targets for attack, it either does not support regarding the settlers as such targets or entails an unacceptable widening of the category of legitimate targets.

I started by pointing out the weaknesses of the suggestion that the notions of innocence and responsibility can ground the distinction between soldiers and civilians. I then sought to show that the Intifada provides us with a good manifestation of these weaknesses. The above notions are insufficient to pile the IDF and the settlers on one side, as morally proper targets, and the rest of Israeli civilians on the other side, as illegitimate objects for attack.

One might object to my argument as follows. Though many people in Israel supported the policy of settlement and occupation in various ways, the settlers had a different status in this respect, as they were the actual executors of this policy. As such, the status of the settlers was similar to that of soldiers. Just as soldiers are those who execute the policy of their government and therefore are legitimate targets for attack, the settlers were those who actually carried out the policy of occupation and thus were not entitled to the same immunity as that

enjoyed by ordinary civilians. Note that the objection is not based on the actual intentions of the settlers (many moved to live in the territories merely to improve their quality of life, not to make a political statement), but on their role as executors of government policy.

Though this argument does not justify attacks on Israeli children, it does make some sense with regard to adults. I believe, however, that if we accept it we open the door to dangerous implications that, if followed through, would justify almost any attack on civilians. Consider, for example, the suicidal attack on an Israeli bus in Jerusalem on August 22, 1995, which caused the deaths of five civilians and the injury of a few dozens. The attack took place in Ramot Eshkol, an area of Jerusalem annexed by Israel in 1967 and settled as part of a deliberate government policy to expand the territory of Jerusalem in order to make sure that the occupied sections of Jerusalem would remain forever part of (Israeli) Jerusalem. Thus, according to the logic of the above argument, the Palestinians would be justified in regarding the Israelis in Ramot Eshkol as the main agents of the occupation and colonialization and hence legitimate targets for lethal. Yet such a conclusion is surely repugnant and would be denied by anyone with even the slightest commitment to the idea of *jus in bello.* Moreover, why, on the above argument, should Israelis lose their immunity as civilians only in territories gained by Israel in 1967? Prior to 1967 many Israelis lived in territories that were not under Israeli jurisdiction according to the 1947 UN original plan. They lived in Jerusalem, in Galilee and in other areas, often in settlements established precisely with the aim of securing Israeli sovereignty in disputed ares. Would these facts justify lethal attacks on peaceful civilians living in (or passing through) these areas? Would Syria be justified in mounting an attack on the Israeli farmers of the Golan Heights because these farmers are the main agents of (what Syria sees as) Israeli imperialism? Any positive reply to these questions would lead to the justification of almost every attack on civilians and to the practical abandonment of the idea of *jus in bello.*

Further support for my position will emerge from looking at Norman's thesis on the distinction between combatants and noncombatants, which runs as follows: As the innocence account fails, we must acknowledge that the difference between killing combatants and noncombatants is a difference in degree, not a difference in kind. All (or almost all) killing in wars is wrong, as it reduces people to the status of things and does not genuinely respect them as human beings. Individuals are depersonalized by being looked at as "the enemy," rather than as autonomous individuals. Yet some forms of killing are even worse than others:

> Some forms of war are indiscriminate and totally dehumanizing. Others may at least pay some minimal respect to the humanity of the enemy, if only by directing the war against those on the other side who are themselves doing the fighting. The principle of noncombatant immunity does, albeit imperfectly, reflect relevant moral distinctions, even if it cannot furnish the conception of moral responsibility which 'just war' theory needs. (Norman 1995, 206)

This approach seems to me very helpful. It manages to ground three basic intuitions we hold with regard to justice in war. First, the distinction between combatants and noncombatants makes some moral sense; second, in spite of this distinction there is something morally wrong and regrettable even in (most cases of) killing combatants; and third, these two points apply to both just and unjust wars. On the innocence theory, it is hard to see why soldiers fighting a just war should be less morally immune than civilians, in a way that makes the attacks of the enemy on them morally acceptable. This makes more sense on Norman's view, because in any war, just or unjust, there are better or worse ways of fighting, that is, ways that express some respect for the humanity of the enemy and ways that are totally dehumanizing and depersonalizing. I come back to this point later in the chapter.

The application of these ideas to the present discussion is clear. The attacks of the Palestinians during the Intifada were an example of a dehumanizing attitude that assumed no distinction between combatants and civilians and viewed any Israeli passing in the territories as an "enemy," irrespective of his or her actions, beliefs, or political views.

At this stage I should note that my description of the Palestinian attitude to Israeli civilians during the Intifada was really rather inaccurate, that is, my presupposition that the Palestinians regarded the Israelis in the territories and the IDF as legitimate targets while granting immunity to other Israeli civilians. I did so in order to highlight a general philosophical problem regarding the status of settlers in occupied territories. The above distinction, however, was not sustained and was denied by most Palestinian organizations. That most of the activity during the Intifada was directed at Israeli soldiers and settlers was less a matter of principle than of opportunity, and whenever possible, attacks were carried out within the international borders of Israel too. The attacks on Israeli civilians were thus seriously indiscriminate and dehumanizing.[14]

In closing this section, I would like to make a general claim about the attempts by the Palestinian side to widen the category of legitimate targets in wartime; if successful, these attempts immediately backfire. The Palestinians not only wanted to show that their attacks on Israeli civilians were morally justified but also that Israeli attacks on Palestinian civilians were *not.* These two positions are simply incompatible because the arguments that are supposed to prove the moral rightness of indiscriminate attacks on civilian buses and cars would certainly justify attacks on Palestinians who take part in stoning and other forms of violence. Therefore, from the point of view of the Palestinians, the best option would be to concede the immoral nature of the attacks on Israeli civilians, thereby making it at least apparently possible to demonstrate the immorality and the injustice in the ways Israel fought against the Intifada.

Terrorism and the "No Choice" Argument

As the word *terrorism* is so loaded, I have refrained from using it until now. The reason I am introducing it now is that it can help us identify one last argument

that might be used to justify indiscriminate attacks against Israeli civilians. Though philosophers disagree about the exact definition of terrorism,[15] they agree that indiscriminate attacks on civilians are an essential part of any such definition.[16] If my argument above is sound, then many of the actions carried out by Palestinians in the Intifada were terrorist actions.

But, and here I present the "standard" last resort of the terrorist, no other means were available to the Palestinians. As a famous slogan puts it, "Terrorism is the poor man's atom bomb," and to take this "bomb" from him would mean depriving him of his last means to fight for liberty. Teichman (1989, 515) nicely explains this argument: "Struggles of national liberation are struggles of the poor against the rich, the weak against the strong. As such they cannot succeed unless inexpensive methods are used. Terrorist techniques are relatively inexpensive. Hence it is said that they are either the *only* techniques available, or the *only effective* techniques available." In other words, freedom fighters turn to terrorism, not because they like it, but because they have no other choice. Assuming that their cause is just and that they cannot achieve their goals by conventional methods of fighting, isn't it reasonable to conclude that they are entitled to use whatever other means they may have at their disposal?

Applying the no-choice argument to the Palestinian case would lead to something like the following position: "You are right that hurting children and women is morally repugnant and in normal circumstances we certainly would not use such violence. Unfortunately, however, in the present circumstances these attacks are the only available way to get our freedom. Therefore, these actions are justified (or excused)."[17]

The no-choice argument invites two kinds of response. According to the first, the argument is simply invalid because the fact that I have no other option to achieve my goal but to use means M does not entail that means M is morally justified. Some actions, such as killing innocent people, are unconditionally prohibited, even if they are crucial to my survival. To recycle an old example: if I can survive only by killing some young person and having his heart and liver implanted in my dying body, such an action would still be intolerable. If one's only choice is to kill an innocent third party, then, morally speaking, one has no choice, period.[18]

The second response to the no-choice argument concedes that the argument might, in principle, apply to some extreme cases, what Winston Churchill called "supreme emergency," but, as a matter of fact, it almost always fails. The argument assumes that, roughly speaking, there are two main ways to achieve some political aim, the conventional way of fighting and that of the terrorist. As the aim is a just one and as the option of conventional war is unavailable to freedom fighters, a plain disjunctive syllogism leads us to the conclusion that they must take the route of terror. Yet, as many writers have argued, the causal connection between terrorism and the accomplishment of a political aim is very hard to establish (especially Graham 1985, 43–53). Because the moral stakes here are

very high—the killing of innocent people—the burden of justification is heavy, and it is very rarely met. Even from a utilitarian point of view, most terrorist acts would be unjustified in practice; they cause death and suffering yet do not accomplish the desired goal (Graham 1985, 49). Think how many people were killed and injured by the IRA and by the Basques, without any serious progress being achieved by this violence (Teichman 1989, 516).

Moreover, not only is terrorism unnecessary and insufficient to accomplish political aims, it more often stands in the way of political accomplishment. The use of violence as a means of national liberation is supposed to achieve two main goals: (1) to attract international attention and support, and (2) to bring pressure to bear on the population in the occupying (democratic) state to encourage their governments to "get out of there." With regard to both goals, the use of terror is often counterproductive. Public opinion in the free world is not sympathetic to the indiscriminate killing of civilians, so such killing gains only negative points in the battle for international public opinion. And the same holds true for the effects on the morale and the determination of the occupying state, and for the chances of initiating a significant change in its policy.[19] Occupying states present freedom fighters as criminals and fight against them as such. The interest of any national liberation organization is to convince the population of these states, as well as to influence the international community, that this description is false. The way to do so is by avoiding terror altogether.

These considerations apply to the Palestinian case. The great political progress that the Palestinians achieved by the Intifada was not the result of the terrorist aspects of the Intifada but the struggle with the army and the various forms of nonviolent resistance and protest. The attacks on Israeli women and children were damaging for the Palestinian interests, both with regard to the attempt to change commonly held views and stereotypes within Israel and on the international level. In fact, only when the PLO officially and unequivocally declared its objection to terror in December 1988 was it possible to make real progress on the political level.

The terrorist aspects of the Intifada thus provide a further example for the failure of the "no-choice" argument and, more generally, for the failure to justify broadening the category of combatants. Once one starts to broaden the circle of legitimate targets beyond soldiers, the descent down a very slippery slope begins. A recent policy statement of the IRA illustrates this point well. The IRA announced that construction workers doing repair work on bomb-damaged bases will be considered "collaborators" and, as such, legitimate targets for attack. At least twenty people were killed by the IRA on this charge. Then the category of targets was widened even more, to include those who work in the kitchens of British military bases or those who rent a car to British soldiers (according to Reuters, February 11, 1991). These moves always have some logic, but if the argument of this section is sound, they are almost always unjustified.

Israel's Reaction

While in terms of *jus in bello* the Palestinian attacks on Israeli civilians were unjustified, nothing of the like can be said about the attacks on military targets. Irrespective of questions concerning *jus ad bellum,* one can hardly think of a more decent way of fighting than throwing stones and Molotov cocktails at the soldiers of the enemy. In this section, I wish to make some comments about Israel's reaction to this violence and see whether there is any general conclusion we can draw from it.

A common complaint against Israel is that it violated the rules of war during the Intifada by taking indiscriminate measures against the Palestinian population, including, in particular, young children. The pictures of wounded and dead Palestinian children played a major role in the Palestinian campaign and generated a lot of sympathy with the Palestinian struggle around the world. Were these attacks a plain violation of *jus in bello* by the IDF, or was the situation rather more complex?

The intuition underlying the distinction between *jus ad bellum* and *jus in bello* is that one can fight a war in a decent or in an indecent way, irrespective of the larger question about the justice of the war; one can fight a just war in a barbaric and inhumane manner, and one can fight an unjust war in a morally clean way (Rommel is probably a good example of this last possibility) (Walzer 1977, 37–38). If Israel's struggle against the Intifada was *un*just, then probably there was a better way to conduct the struggle, one that did not violate the moral rules of fighting. What was this other way?

We saw earlier that the central point of *jus in bello* is the immunity of noncombatants, an immunity that Israel allegedly brutally violated. So we must conclude that Israel should have limited its attacks only to combatants. But of course no such distinction existed in the Intifada because almost *everybody* on the Palestinian side took part in the violence. The Intifada was a true mass movement of resistance that included all sections of the population. Most of the violent incidents, especially in the first few months, were a result of local initiation and not of orders from above. Thus, in a sense, the "combatants" on the Palestinian side bore more responsibility for their attacks than ordinary soldiers in fighting armies, whose responsibility is curtailed by the fact that they fulfill orders. Hence, if the criterion for immunity is innocence, the youngsters who threw stones and Molotov cocktails at IDF soldiers were definitely not innocent; in fact, they were more "guilty" than ordinary soldiers. And if indiscriminatory attacks against civilians are wrong because they express a lack of respect for human life, then no such lack of respect is expressed when civilians themselves are the main perpetrators of these acts.

My argument here reflects in a particularly powerful way a standard dilemma for guerrilla warfare. Guerrilla warfare appears to be far more effective when the fighters can hide within the civilian population and enjoy its support. By pretend-

ing to be "only civilians," the guerrilla fighters seek to enjoy the privileged status of civilians in wartime. Yet if the guerrilla fighters and the population that supports them do not keep the distinction between combatants and noncombatants, why should the enemy be committed to this distinction? Walzer quotes the British *Manual of Military Law,* which states that "an individual [shall] not be allowed to kill or wound members of the army of the opposed nation and subsequently, if captured or in danger of life, pretend to be a peaceful citizen" (Walzer 1977, 179). Such a pretense was, however, typical of the Intifada; thousands of civilians would throw stones and initiate other forms of violence against the IDF and then complain about the injustice of IDF's reaction, which did not distinguish between combatants and civilians. These complaints just cannot be made *bona fide.*

The issue of Palestinian children deserves special attention in this context. That children are among the victims of all modern wars is a well-known and tragic fact. Given this fact, one can either opt for a pacifist position or try to defend some sort of justification for the inevitable killing of children. One common way of doing so is by using the doctrine of double-effect in the following way: killing children is morally acceptable when the war is justified, the killing of children is not a direct end, and the good of crushing the enemy compensates for the evil of killing the children.[20] A different argument is based on an attempt to shift responsibility; as the enemy is blameworthy for the war, the enemy is also responsible for its inevitable results, such as the killing of children. To elaborate on these arguments would deflect from my main argument. All I want to say is that *some* version of them is necessary if one refuses to opt for pacifism. There is simply no way of fighting nowadays without hurting children, even when the war is totally just and conducted by the most moral of nations.

The Gulf War provides further support for this tragic fact. I assume that the war was fought for a just cause, which was also how the matter was seen by most of the international community led by the United States Yet the war did not spare the lives of Iraqi children. The numbers are really shocking; thousands of children were killed in the war itself and tens of thousands died in subsequent years as an indirect result of the war (i.e., disease, lack of food and supplies, and the collapse of the medical system).[21] This death toll might lead some people to have second thoughts about the justification for the Gulf War,[22] but I guess most of them would still support the war had the death toll been much lower, let's say "only" a few thousand. The unintentional killing of children is thus not considered as necessarily violating the *jus in bello.*[23] All the more so, I would argue, when children are not merely "innocent bystanders," as in the Iraqi case, but when they play an active role in the violence, as in the Intifada. Let us remind ourselves of this role.

Don Peretz, relying on the Palestinian journalist Daoud Kuttab, says the following about the participation of children in the Intifada:

> The stone throwers, the foot soldiers, as it were, of the uprising, were described . . . as children who had learned the language of resistance early in life. . . . Whereas parents used to be protective of school-age youths and apprehensive about their participation in political demonstrations and activity, many now support and even encourage their children to become involved. To be the parent of a young man or woman who has become a martyr in the struggle against the occupation, though tragic, is a source of pride. (Peretz 1990, 84)

Peretz goes on to describe a consistent pattern in organizing youthful participation in demonstrations:

> The youngest group was between ages 7 and 10 [!], entrusted with the task of rolling tires into roads, pouring gasoline on them, and setting them afire. Those under 10 are usually not arrested if caught, but, rather, are beaten and let go. The 11 to 14 year olds place large rocks in the roads to block traffic. . . . The 15 to 19 year olds are "the veteran stone throwers" who inflict the most damage on passing cars. (Peretz 1990, 84)

The Palestinians learned very fast that young children, even if caught, "are usually not arrested," and certainly are not shot at by the IDF, for very good tactical and moral reasons. Therefore, they wisely concluded that the more young children they placed in the front lines of the riots, the harder it would be for the army to control the situation. Whether or not it is morally right for parents to send their second graders to participate in such violence is a question I shall not discuss here. One thing, however, is quite clear: in almost all cases where children were hurt during the Intifada, they were not sitting peacefully at home playing dominoes when suddenly Israeli soldiers came in and shot at them, but either actively participating in violence or, at any rate, not being kept far away from the fighting zone by their parents or patrons.

One could, of course, say that children, as such, lack the personal autonomy that is necessary to make them responsible for what they do. Hence, even when children do take part in violent acts, they do not thereby lose their inherent innocence. Children, as it were, can never be really guilty. I find this a romantic and a simplistic view of children, but for the present argument I need only a rather weak thesis, namely, that children aged 7–19 bear some responsibility for what they do, though maybe (on the average) not the same responsibility as adults (cf. Zohar 1993, 610). If this is granted, I can now reiterate the argument I made earlier: if the Allies were justified in (unintentionally) causing the deaths of thousands of Iraqi children, though these children did absolutely nothing to descrve such fate, how much more so were Israelis justified with regard to their (unintentionally) causing the deaths of Palestinian children who played an active role in the violence against the IDF? Taking into consideration this role of children and their parents' encouragement, it is again hard to see how Israel could be blamed *bona fide* for "fighting against children." The same applies—in

a stronger sense—to the alleged injustice of the fighting against Palestinian women,[24] and there is no need to recapitulate the arguments.

A similar conclusion will emerge if we consider the matter from the point of view of self-defense. Though self-defense is usually regarded as the only justification for going to war, its application to both *jus ad bellum* and *jus in bello* is, as Norman shows, highly problematic. The primary problem is that most wars and most forms of fighting are not, strictly speaking, cases of self-defense. Except under threat of genocide, nations cannot be said to fight in self-defense in the ordinary sense, and similarly, when a pilot drops bombs in the course of a war, he cannot be said to acting out of *self*-defense (Norman 1995, 132–39, 169–73). In the present context, however, and with regard to *jus in bello,* the idea of self-defense seems more applicable. If soldiers are walking in the streets of Gaza and are ambushed by dozens of youngsters who block the road and attack them with stones, Molotov cocktails, or whatever, then these soldiers have a right to defend themselves. And in this respect, the fact that many of the attackers are children does not make a significant difference. If I am attacked by a lunatic who has just escaped from a mental hospital and the only way I can protect myself is by shooting him, then, according to most accounts of self-defense,[25] I have a right to do so. Children whose violence poses a similar threat to me certainly enjoy no greater immunity.

Let us pause to see where the argument stands. I started this section with the claim that Palestinian attacks on the army were legitimate by any notion of *jus in bello.* I then set myself to examine the charge that Israel's way of fighting back was unjust. I explored one version of this charge, the one arguing that Israel was immoral because of her failure to distinguish between combatants and noncombatants. I argued that as the Palestinians did not maintain this distinction and deliberately encouraged women and children to take part in the violence, Israel had no obligation to stick to it either. I also argued that the tragic killing and injuring of Palestinian children during the Intifada poses less difficulties, in terms of *jus in bello,* than in conventional wars, because of the active participation of children in the Intifada, encouraged by their parents, in comparison to the absolute innocence of children in conventional wars. I now turn to a different version of the above charge against Israel, one based on the alleged moral inadequacy of the measures Israel used.

According to this version, though Israel might have been justified in not granting immunity to the civilian population, it still violated *jus in bello* in its use of unfair and harsh measures against an uprising in which mainly cold weapons, stones and knives, were used. Long curfews, plastic bullets, the violent beating of stone throwers, mass arrests without trial—all these and other measures ought not to have been used. If Israel wanted to fight the war decently, the argument goes, it should have fought it differently.

But how? To help us think about this question, let us imagine the following situation. Imagine that we look around the world for people who are both well-

trained combatants and moral saints, people who always do the morally right thing (I assume that moral sainthood does not imply pacifism). We then form a small unit of these saints and provide it with any available weapons or equipment they request (they are not allowed to ask for imaginary weapons). We then send them on a routine patrol in al-Bourej refugee camp in the Gaza Strip. Their mission is plain: to show an example of how the *jus in bello* principles can be kept in this sort of fighting. When they start the patrol, at 6 A.M., the camp seems peaceful and unthreatening. But then, around 7 A.M., while walking through one of the narrow streets of the camp, they are ambushed by at least 200 Palestinians, who throw stones and rocks at the saints. Three Molotov cocktails are thrown too, without causing any damage. The saints shoot in the air, but this has absolutely no effect on the attackers, because they know that these shots will not be followed by directed fire. Meanwhile, two saints are wounded by rocks thrown down from a nearby roof. One soldier suggests that they try to catch the stone throwers, who are getting closer and closer. But they notice that most of them are children and thus ought not to be beaten or arrested (it is their parents who should be punished, but they are not in the area). Another suggests breaking into the house whose roof is a major source of trouble. But when the door is opened, the saints see a room with a big crowd of women and frightened children, not the sort of place they would break into without permission. They think of using gas grenades, but immediately reject the idea because of the inevitable damage to civilians. The same consideration rules out some other ideas, such as asking the army to impose an immediate curfew all over the camp; why punish an entire camp for the behavior of 200 people? The only morally acceptable route is a fast escape, which is indeed ordered by the saints' commander. The saints return to their headquarters with clean hands, three wounded (one of whom has lost his eye after a stone was fired at him from a thirteen-year-old child's homemade slingshot), and an unequivocal military failure.

"You have disappointed me," says their spiritual leader, "you were supposed to show how soldiers can keep their hands clean while *fighting,* not by *refraining* from fighting. You have forgotten that we are not pacifist-saints but just-war-theory saints. And certainly you have a right to defend your own lives in the face of violence directed at you. Let's hope that tomorrow you will do better."

So the day afterward the saints return to the camp. This time they use most of the tactics that were rejected on the first day. They use gas, which appears to be less effective than they thought, they break into houses to catch stone throwers, and in the next few weeks they make an extensive use of curfews, which seem to be a good way of minimizing violence. During the time of curfews, they try to put their hands on the people who are especially active in the riots, and very soon the number of the people arrested exceeds many hundreds. At this stage the saints end their mission and move to places where they are far more needed.

The lesson from this imaginary story is not that the IDF soldiers were saints. They were not. Instead, the lesson is that the general tactics that the IDF used to

fight the Intifada were of the same kind that even a moral saint who was not a pacifist would recommend. The guiding line was to control the situation with minimum casualties on all sides, and this goal determined the means: curfews, economic pressure, deportations, tear gas, arrests and so forth.[26] The high number of Israeli soldiers who were hurt during the Intifada[27] was a direct result of this policy. They were hurt not only because of the daring of Palestinian youth but because of the severe restrictions placed on the IDF in the use of conventional weapons.

Maybe, however, a different lesson should be drawn from this story, namely, that when fighting a war means fighting against women and children, the war—morally speaking—simply cannot be fought. Hence, the right way to tell the above story is to say that the spiritual leader does not send the saints back to the refugee camp but praises them for realizing that in such circumstances no respectable way of fighting exists.

Yet this move would lead immediately to the collapse of the position of just-theory saints to that of pacifist-saints. *No* modern war can be conducted without causing significant harm to women and children, harm that is definitely no less destructive and painful than that caused in fighting against mass riots like the Intifada. Think, again, of the poor Iraqi children trapped under bombed houses in Baghdad or dying from cholera. Moreover, I argued above that if there is any justification for (unintentionally) hurting children in wartime, such justification would be particularly strong when the children play an active role in the fighting. As I said earlier, one standard response to accusations of injuries suffered by civilians is to shift the responsibility to the enemy.[28] This is not an unproblematic move. If it could be defended, however, it would apply to cases like the Intifada in a much stronger way than to conventional wars. Unlike the situation in conventional wars, in the Intifada children were explicitly encouraged by their parents and by the political leaders to participate in the violence. Hence, the claim that the Palestinians are responsible for the fact that the war was directed "against women and children" makes good sense; had the Intifada been conducted by adults, with the children kept far away, the number of casualties among children would no doubt have significantly diminished.

The objector might still not be convinced by this comparison of fighting against a rebelling civil population and fighting a conventional war. I suspect that what fuels this objection is a strong feeling that in the former case the army just "has no business" to be there. I soon return to this point. But first let us look at an imaginary case of mass revolt where the use of force against civilians might sound more plausible. Imagine this big city, let's call it "Los Angeles," in which the great majority of people, let's call them "blacks," feel that they are exploited and discriminated against by the minority, let's call them "whites." One day, as a result of a trial in which a "white" policeman is found not guilty in abusing a "black" suspect, violent riots break out all over the city. "White" people are beaten and shot in the streets, shops are set on fire, and cars are stoned all around

and within the "white" neighborhoods. The police try to stop the riots using ordinary means but fail and finally have to retreat from downtown. Many people are injured and killed and the situation gets out of control. The "black" neighborhoods are completely inaccessible to the police, and "black" leaders declare they will go on until they are fully compensated for years of discrimination and exploitation. On the second day, the situation gets even worse. The riots spread to other "black" population areas and the clashes between the "black" community and the police get more and more violent. I assume that in this imaginary scenario, most people would agree that the police, or the army, is allowed to—indeed is *obliged* to—take harsh measures to control the situation, including curfews, mass arrests of "black" leaders, and all possible ways to stop the riots, even if children and women might be hurt. (Of course, the police are not allowed to use all means, but only those that are reasonable and necessary in these very difficult circumstances.)

The objector might concede that in "Los Angeles" violence against women and children would be justified, but still insist that the Intifada is different, precisely because it is a national liberation movement. Putting down such a revolt amounts to "punishing a nation"[29] and is therefore morally unjustified; not because of the fact that it involves violence against children, but because it is an immoral attempt to violate a nation's right to self-determination. *That* is why the Israeli army "had no business" in walking around the streets of Gaza and Nablus, and that is why the objector would argue Israel bears all the responsibility for the results of this walking around. According to this objection, a unit of moral saints of the sort mentioned above would never march into the refugee camp in the first place. No person with any moral commitment would take part in the crushing of a legitimate national uprising, and when we understand this truism, all the previous discussion is beside the point. To speculate about the means that Israeli soldiers could use once trapped in the narrow alleys of Gaza misses the central issue—they should never have been there in the first place.

This is a powerful argument. On a more general level, it amounts to saying that when a war is fought for an unjust cause, then, necessarily, any way of fighting it is morally wrong. In more technical terms, the argument seeks to blur the traditional distinction between *jus ad bellum* and *jus in bello,* at least with regard to armies fighting for unjust causes. An evaluation of this argument is the subject of the next section.

Fighting Justly in Unjust Wars?

The current charge against Israel can now be formulated as follows: The fundamental problem with Israel's military reaction to the Intifada was not that Israel used measures that were too harsh or that directed its attacks at the wrong objects (at civilians rather than at combatants), but rather that the political aim of these military activities was unjust and inhumane. To assess this charge, we must

elaborate on some points I mentioned earlier concerning the relation between *jus ad bellum* and *jus in bello*.

The common distinction between these two levels of judgment assumes that when you kill enemy soldiers on the battlefield, your behavior is morally acceptable even if it was your state that initiated the war with no justification; whereas if you intentionally direct your fire at noncombatants, you are a war criminal. Thus, there is a moral equality of soldiers, whether they are fighting just wars or unjust ones. Yet this sounds highly implausible. Shooting and killing human beings in an illegitimate attempt to take their land is murder, and the fact that these human beings wear uniforms and try to defend themselves does not make it any less so. Murder is murder is murder. True, the soldiers who fight an unjust war might be unaware of its injustice because of the powerful propaganda of their government, which hides crucial facts, distorts others, and causes the soldiers to construct a wrong picture of what is really going on. (For these reasons, soldiers might bear a diminished responsibility for killing noncombatants too). But these considerations concerning the blameworthiness of soldiers do not touch on the moral status of the fighting itself, which, so the argument goes, is plain murder.[30]

Well, maybe not "plain" murder, since in most cases the killing is not a direct goal of the unjust army but a means to achieve some political goal, such as annexing a bordering state. The killing of soldiers in an unjust war would be like the killing of the guards of a house I break into. The fact that these guards wear uniform and carry guns does not make them a legitimate target, either morally or legally.

I find this argument quite persuasive. Among other things, it provokes fresh thoughts about the blameworthiness—indeed, the criminality—of those responsible for initiating and conducting unjust wars, irrespective of how the war is actually fought. I shall not pursue these matters here. What I do want to show is that even given this argument, the distinction between *jus ad bellum* and *jus in bello*, is not significantly undermined and still plays an important moral role.

As I mentioned earlier, following Norman, all acts of unjustly killing human beings are wrong, as they express a lack of respect for human life. Yet some forms of killing are worse than others; they reflect a deeper lack of such respect. By the same token, forms of warfare that do not discriminate between combatants and noncombatants are much more dehumanizing than forms of warfare that take such a discrimination as a guiding principle—and this applies to both the just and the unjust aspects of the war. Varying degrees of moral wrongness also exist in the example I used above: breaking into a house to steal its goods is no doubt bad; doing so with arms and shooting the guards when discovered is worse; killing the guards at the beginning of the operation, just to make sure they don't interfere is even worse; and killing the guards and everybody inside the house so that the burglary goes really smoothly, is far, far worse.[31] Thus understood, keeping the rules of *jus in bello* cannot ensure that one is behaving

correctly from a moral point of view, especially if the war itself is unjust. It can, however, ensure that one is behaving in the *less evil* way.[32]

That the evils involved in fighting a war can be reduced, as well as increased, needs no argument. For the present inquiry, however, it is worthwhile to recall that this truism applies equally to conventional wars and to wars against guerrilla fighters and national resistance movements. The Nazi way of dealing with such resistance was especially indiscriminate and cruel. So was the Chinese tactic in Tiananmen Square in 1989 and the Syrian reaction to the 1982 riots in Hama. By contrast, the British tactic, for example, toward the Jewish resistance in Palestine in the 1940s was more moderate. To be sure, the British made extensive use of mass arrests, mass deportation, curfews, executions, and other problematic measures. But evil as these measures might have been, they were far kinder than those taken by the Nazi, Chinese, and Syrian regimes in similar circumstances.

Let's return to our unit of saints. Their mission should not have been to show how to fight while keeping their hands clean but to fight while keeping their hands *as clean as possible.* Assuming that they had no business being in Gaza, any force they would have used would have been morally problematic. But they ought to have shown how, given these problematic circumstances, one could choose the lesser evil and not behave as if anything goes. This, I contend, was precisely the policy of the IDF during the Intifada; trying to control the situation while minimizing casualties, even at a risk to its soldiers. The past and present reactions to mass revolts and riots in other corners of the world provide one with no better example for dealing with such situations (and with many worse examples).[33]

I conclude, then, that the distinction between *jus ad bellum* and *jus in bello* is a valid one, which applies to all wars, just or unjust. The fact that Israel had no right to defend its control of the territories, if indeed this were the fact, does not by itself entail that the tactics it used during the Intifada were a violation of *jus in bello.* Unfortunately, there was no significantly better way the army could have used to defend itself, control the situation, and prevent casualties among the Palestinian population.

Summary

The case of the Intifada raises two interesting questions for military ethics: the status of civilians of an occupying state in the occupied area, and the validity of the distinction between *jus ad bellum* and *jus in bello.* Regarding the first question, I argued that such civilians should be kept out of the battleground, and I pointed to the danger of extending the circle of those defined as combatants and hence as legitimate targets for attack. Regarding the second question, I argued that the separation between *jus ad bellum* and *jus in bello* is well established and that giving it up would result in the loss of a crucial moral distinction.[34]

The application of these general philosophical lessons to the Intifada shows (1) that the Palestinians were unjustified in attacking Israeli civilians and should

have limited their attacks to military targets, and (2) that even if Israel "had no business" being in the territories, this fact is insufficient to show that Israel's reaction to the Intifada was a violation of *jus in bello*.

Throughout the chapter, I assumed a similarity between the main problems concerning conventional wars and those concerning wars against guerrilla fighters and against mass resistance. If we start with a strong presumption against violence, then both conventional wars and guerrilla warfare become hard to justify. The killing of noncombatants is a serious moral problem in any modern war, and Intifada-like situations are no different in this respect. It is often argued, and rightly so, that modern wars cannot be fought without hurting noncombatants. The "cannot" here should not be taken literally but should be understood to stand for "cannot effectively" be fought. In principle, it is possible for a nation to avoid killing noncombatants, but such a policy would seriously weaken its military position, not to mention the advantage it would give to a less morally scrupulous adversary. The same is true of situations like the Intifada: one could, in principle, avoid causing hurt and damage to civilians, but, practically speaking, that would mean losing the battle, as happened to our imaginary saints unit. Moreover, such situations are in a better position from a moral point of view because of the active role of civilians in the struggle and the intended absence of distinction between combatants and noncombatants. Whatever doctrine one might use to justify the killing of noncombatants in conventional wars would apply equally to less conventional ones of the sort discussed here. If one thinks that no such doctrine exists, then pacifism is the only remaining option.

The similarity in the philosophical problems pertaining to all wars is admittedly not reflected in common emotional reactions. A picture of Palestinian teenagers being beaten up by IDF soldiers to stop their violence arouses more bad feelings and moral protest than an item about the high death rate of Iraqi children killed by the allies' bombing or dying from starvation and disease as an indirect result of the war and the international boycott. That our emotions are discriminate, however, is not news (Ben Ze'ev 1992, 214–29), and the above examples simply provide further support for this fact.

I have said nothing here about the large issues of *jus ad bellum* in this conflict, which deserve a separate and lengthy discussion. I would only note that the Palestinian position has become morally more problematic recently as a result of two factors. The first is the growth in the influence of the Hamas and other organizations whose aim is not merely national self-determination, but, very explicitly, the destruction of the state of Israel. According to polls conducted in 1994, 39 percent of the Palestinian population in the West Bank and Gaza support what the poll questionnaire termed "The Islamic Solution (calling for the liberation of Palestine from the sea to the river)."[35] For Hamas, this political solution is not the end of the story because the killing of Jews is a central religious value,[36] a step necessary in preparing the way for the Last Hour, as stated in the *hadith*, which the Hamas Charter explicitly quotes:

> The Last Hour would not come until the Muslims fight against the Jews and the Muslims would kill the Jews, and until the Jews would hide themselves behind a stone or a tree and a stone or a tree would say: Muslim or Servant of Allah, there is a Jew behind me; come and kill him; but the tree of Gharqad would not say it, for it is the tree of the Jews.[37]

Any armed struggle against people who support such ideas and who encourage their practical implementation seems to be a paradigm of a just war based on self-defense.

The second factor is the current peace process. Israel's withdrawal from the Gaza Strip and from the central cities in the West Bank, and its ongoing involvement in negotiations about the future of the territories make the use of violence on the Palestinian side[38] less and less justified. This should be a period of healing old wounds and seeking reconciliation, not of opening new wounds and spreading more hostility.[39]

Notes

1. In spite of important differences between these two thinkers and the fact that Norman often seems to be an opponent of the just-war tradition, in the end their practical conclusions, as Norman himself mentions (1995, 156), are quite similar.

2. I refer to the Intifada in the past tense because the forms of violence that characterized its first years—mass riots and violent demonstrations—hardly occur any more. The use of the past tense also reflects the hope that by the time this article is published, the peace process will have succeeded in bringing most forms of violence in the region to an end.

3. I use the term "occupation" as a purely technical term with no connotations or implications as to the justice or injustice of the occupation. The same goes for the expression "Occupied Territories," which I use to refer to those territories captured by Israel in the 1967 war.

4. Both sides in the conflict have made some original contributions to the world inventory of weapons. The Palestinians achieved impressive results in the improvement of homemade slingshots used to sling small metal balls at IDF soldiers, among other innovations. The most original invention on the Israeli side was the "gravel-car" *(hazazit),* a large truck with a special mechanism mounted on it designed to fight the Intifada with its own weapons, by "shooting" back dozens of small stones.

5. I use *jus ad bellum* and *jus in bello* in a moral sense and not in the more strictly legal sense. Needless to say, the overlap between the moral and the legal domains is not perfect.

6. According to the IDF spokesman, 1,760 Molotov cocktails were thrown between December 1987 and June 1989 (Shalev 1990; Hebrew, 210).

7. According to the IDF spokesman, there were 321 cases of shooting, the use of hand grenades and explosive charges from December 1987 to June 1989 (Shalev 1990, 216).

8. I am rather puzzled by Ibrahim Abu-Lughod's claim that the Intifada "expressed itself in extremely militant but not violent means" (Nassar and Heacock 1990, 7). If stoning passing cars, throwing Molotov cocktails, and attacking civilians and soldiers with knives and axes are "nonviolent means," then what would violent means be? In any case, these and other "nonviolent" means caused the death of 15 Israelis and the injury of approximately 2,000 from December 1987 to June 1989 (Shalev 1990, 211–12). By the

end of 1994 the number of Israelis killed by Palestinians reached a total of 251 (*B'Tselem Human Rights Report* 3 (Spring 1995): 1). Abu-Lughod continues to argue that referring to stones thrown by kids as "violent" (his quote marks) is ludicrous. I urge Professor Abu-Lughod to imagine himself driving home with his family and finding his car blocked by heavy rocks put on the road, and then, while trying to maneuver between the rocks, having his car stoned by dozens of these kids standing on a hill nearby. Wouldn't "violent" be an appropriate term to use here? If it is not, that is only because it is too mild to describe the situation. To be sure, all the attacks on Israelis might be thought to be justified, and I trust that Abu-Lughod believes they are; but that does not make them less violent. Finally, I should note that while the option of nonviolent resistance was indeed ventured at some stage, it did not prove very successful (Schiff and Ya'ari 1989, ch. 9; Peretz 1990, 52–55).

9. Cf. the attack on a bus traveling from Tiberias to Jerusalem on November 30, 1988, that resulted in the burning to death of Rachel Weiss and her three little children and in the death of a soldier who tried to rescue them. The throwing of Molotov cocktails decreased when the IDF issued instructions to shoot Palestinians trying to throw them (Shalev 1990, 125).

10. It is interesting to note that the Islamic tradition does not support attacks on noncombatants. See Harbour (1995, 74), especially the quotations she cites from al-Shaybani's "Allah's Apostle forbade the killing of women and children." See also Sonn (1990, 145), who concludes by saying that "it is difficult to find support for the use of irregular or terrorist tactics in Islamic tradition."

11. For criticism of the innocence theory, see also Zohar (1993, 607).

12. A few dozen soldiers who refused to serve in the Occupied Territories were sentenced to varying periods of imprisonment in military jails.

13. I refer mainly to the "Jewish underground" in the 1980s, and to the massacre in Hebron in 1994 carried out by one person.

14. These conclusions apply, of course, to other struggles for independence. For instance, I agree with Coady (1985, 62) that even if we suppose that the IRA's activity in Northern Ireland is justified, "its use of bombs on railways and in pubs would clearly be illegitimate and a case of terrorism since such attacks necessarily fail to discriminate between combatants and noncombatants."

15. For some recent discussions, see Coady (1985); Walzer (1977, ch. 12); Hare (1979, 241–49); Wellman (1979, 250–58); Primoraz (1990, 129–38); Dardis (1992, 93–97); Teichman (1989, 505–17).

16. See, for example, Coady (1985, 52); Dardis (1992, 97); Walzer (1977, 241–42); Teichman (1989, 513).

17. It is not clear whether the no-choice argument seeks to establish an all-things-considered justification for terrorist actions or merely an excuse, but this has no bearing on the objection I present.

18. According to the Talmud (Sanhedrin 74:1), if A says to B: "Kill C, or else I shall kill you," B ought not to kill C even at the price of his/her death.

19. It is often argued that the bombing of German cities in World War II was not only morally wrong but also counterproductive to Britain's goals. Instead of breaking the spirit of the Germans, the bombing made them more determined and more united.

20. For a defense of this doctrine, see Walzer (1977, 151–54). That acts are justified on the basis of this doctrine means, of course, that they justified *all things considered,* and not that there is nothing (morally) regrettable about them. For this distinction in general, see Statman (1995).

21. The first estimates of children killed in the war were no doubt exaggerated; see, for example, the estimate of 30,000 dead in *USA Today,* September 24, 1992. Yet that a

few thousands were killed in the war itself strikes me as quite possible. For the estimate of the number of children who died from diseases etc., see the report of the Harvard team as reported by *New Scientist,* November 9, 1991. According to this report, the death rate of children has increased almost fourfold since the war. The report estimated that 170,000 children would die by the end of that year due to the shortage of food and medicine. The situation has not changed much since. A recent report by the UN World Program estimated recently that mortality rates in many parts of Iraq were *five* times higher than before the Gulf War, with children under the age of five accounting for 39 percent of all deaths (World Food Program News Update, May 5, 1995).

22. See McMahan and Mckim (1993, 501–42). See also Hoskins, *New Statesman,* January 17, 1992, 13: "So we have succeeded in liberating Kuwait. And we will never know whether we could have accomplished the same result without the use of force. But we do know, with great certainty, that, had we not resorted to violence, there would not have been 50,000 dead Iraqi children."

23. I suspect that the information about the Iraqi children is unknown to many readers. This information was indeed underreported. In fact, Mike Royko, a columnist at the *Chicago Tribune,* won honors for picking on this story as it was one of the ten most underreported U.S. news stories of 1992 (*Toronto Star,* July 11, 1993, B5).

24. For the role of Palestinian women in the Intifada, see Jad (1991) and Hilterman (1991, ch. 5). I should say that though I refer in the text to the category of "women and children" in line with common usage, I do find the inclusion of women in this category rather anachronistic. In our day and age, with its emphasis on equal rights, there is no justification for seeing women as more morally immune than men; female soldiers should have the status of combatants, and males should be able to enjoy the status of noncombatants.

25. The case of the lunatic is an example of what is called in philosophical literature "an innocent aggressor." For the right to kill such an aggressor in self-defense, see, for example, Thomson (1991, 283–10). For an opposing view, see Otsuka (1994, 74–94). When applied to the ethics of war, Otsuka's view seems to lead to a pacifist position, at least for those who assume that self-defense is the only acceptable justification for war.

26. It is somewhat ironic that the method that raised the strongest protests against Israel (i.e. the use of clubs), was introduced as an alternative to shooting, with the purpose of reducing the number of casualties on the Palestinian side for both moral and pragmatic reasons (Schiff and Ya'ari 1989, 149–53). Needless to say, I do not argue that all the methods that Israel used were morally acceptable or that the behavior of individual soldiers was always morally right.

27. According to the IDF spokesman, 1,220 soldiers were wounded in the period from December 1987 until June 1989 (Shalev 1990, 211–12).

28. See, for instance, the response of White House Spokesman Marvon Fitzwater after the bombing of a bunker in Baghdad that killed approximately 400 people, most of them women and children: "We don't know why civilians were at this location, but we do know that Saddam Hussein does not share our value in the sanctity of life. Indeed, he has time after the other shown a willingness to sacrifice civilian lives and property that further his war aims" (*Jerusalem Post,* February 14, 1991).

29. See *Punishing a Nation: Human Rights Violations during the Palestinian Uprising December 1987–December 1988.* A report by Al-Haq, Law in the Service of Man. Boston: South End Press.

30. For further opposition to the equality of soldiers, see Coady (1980, esp. 278–84), who argues that the responsibility of soldiers fighting an unjust war is much larger than that assumed by Walzer.

31. For a similar line of reasoning and rather similar illustrations, see Coady (1980, 284–85).

32. Cf. Norman (1995, 198–200). A similar conclusion emerges from Noam Zohar's insightful discussion of just war in his "Collective War and Individualistic Ethics." According to Zohar, all, or most, killing in war is morally problematic, as it neglects what he calls the individualistic perspective. The killing of noncombatants, however, is even worse, as it amounts to a total abandonment of this perspective.

33. Unfortunately the Palestinians themselves are not setting a better example (to say the least) for dealing with violent demonstrations. On November 18, 1994, the Palestinian police opened fire on a Hamas demonstration in Gaza, resulting in the deaths of at least thirteen people and the injury of more than a hundred. The number of Palestinians killed by Palestinians during the Intifada in the charge of "collaboration" is hard to compute. According to the IDF spokesman, by July 1995, 997 were killed in these circumstances (compared to a total of 1,075 Palestinians killed by the Israeli security services).

34. That these two issues are logically separate helps us to understand a seemingly surprising fact about the shift in Israeli public opinion following the Intifada. According to surveys carried out by Arian (1991, 269–92), the shift consists of two apparently conflicting tendencies: (1) a short-term *hardening* of positions, (2) a steady and increasing *moderation* of Israeli public opinion on certain issues of security policy (p. 280). But these tendencies are fully compatible and their combination makes good sense. A readiness for compromise with regard to the large issues of the conflict is compatible with maintaining the right for self-defense with regard to the lives of Israelis (soldiers or civilians) in the territories and with regard to the need to keep a minimal level of order in them.

35. Ross and Sa'id (1995, 19). Support for the one-state option is more prevalent among younger Palestinians, aged eighteen to thirty, than among those thirty-one years or older, and the same holds true for support for Hamas; Hamas is more popular among Palestinian youth at all educational levels, especially those with high school and two-year-college degrees (p. 17). At the time of submitting this essay it is hard to know whether Hamas will participate in the elections for the Palestinian Authority and, it does so, whether it will win or lose. There is basis for concern about the results of such elections. In what may be considered the first open election under the Palestinian Authority, the elections for the nurses' union governing board, Hamas candidates who ran against PLO and PFLP won all eleven seats (p. 21). More recently, Hamas won the student union elections in three colleges in the territories (BBC World Broadcasts, May 25, 1995).

36. The anti-Semitic character of the Hamas ideology, which draws on both Muslim and Christian traditions, is overwhelming and profoundly disturbing. The notorious "Protocols of the Learned Elders of Zion," for example, is explicitly referred to in the Hamas Charter (ch. 3, art. 32).

37. Ibid., ch. 1, art. 7.

38. From the signing of the Oslo Accord to the end of 1994, ninety-one Israelis were killed by Palestinians, a figure that represents 36 percent of the Israelis killed from the beginning of the Intifada (see *B'Tselem,* 1). That violent attacks on Israelis continue after the Declaration of Principles is not surprising when we look at further results of Ross and Sa'id's research "Palestinians: Yes to Negotiations, Yes to Violence." According to these results, 46 percent of the Palestinians in the territories support armed operations against Israel, with only 34 percent opposing (and 20 percent with "no opinion"). It is frustrating to find that among those affiliated to Fatah—the organization that leads the peace process on the Palestinian side—40 percent still support such armed operations.

39. For helpful comments and discussions on earlier versions I am greatly indebted to Saul Smilansky, Michael Walzer, and Noam Zohar.

6

Targeting Children

Rights versus *Realpolitik*

James A. Graff

For many, images of Palestinian youngsters throwing stones and Israeli soldiers responding with tear gas and bullets became the symbols and even the meaning of the Intifada. Some may remember a news clip in January 1988 showing an Israeli soldier smashing the hand of a young boy. Others may recall the image of a youth strapped to the hood of an Israeli jeep, used as a human shield against Palestinian stones. But few who followed the Intifada on television or in the mainstream press would have any sense of the scale and nature of Israeli state, and state-condoned, violence against Palestinian children.

Palestinian youngsters participated actively in their community's struggle to end twenty years of Israeli military occupation and a decade of colonization of the West Bank, East Jerusalem, and the Gaza Strip. Palestinian youngsters resisted by stoning Israeli patrols, military and civilian vehicles marked with their distinctive yellow license plates, erecting roadblocks, burning tires, marching in demonstrations, serving as lookouts, writing political slogans on walls, displaying the Palestinian flag and other nationalist symbols, and confronting Israeli soldiers and settlers during raids on refugee camps, villages, and entire neighborhoods. If it was to crush the Intifada, the Israeli state had to target Palestinian youngsters—and it did. Between December 9, 1987, when the Intifada began, and December 31, 1993, minors sixteen years or under constituted between 35 percent and 40 percent of an estimated 130,000 Palestinians seriously injured by Israeli soldiers, roughly one out of every twenty Palestinian children.[1] Of medically treated injuries to Palestinian children fifteen years old or younger, approximately 34 percent were caused by Israeli gunfire, 50 percent by beatings administered by Israeli soldiers, and 14.5 percent by tear gas.[2]

The stakes were very high for the Israeli government: control of West Bank water, most of which was consumed by Israelis inside Israel proper and in Israeli settlements. Occupation ensured access to cheap Palestinian labor and guaranteed control over Israel's second-largest external market for its goods. By 1987, more than 60 percent of West Bank land and almost 35 percent of Gaza had been seized by the occupying power, and much of it had been handed over for settle-

ment by Jewish Israeli colonists. The Intifada threatened both the economic advantages of occupation and colonization, and the dream of the Israeli right and its Diaspora supporters to "reclaim the Land of Israel" for the Jewish people. The goal of the Intifada was to force Israeli withdrawal from the West Bank, including East Jerusalem, and from Gaza, and to establish there an independent Palestinian state under the leadership of the Palestine Liberation Organization.

Israeli strategic and security interests were also jeopardized by the Intifada. The uprising not only threatened guerrilla and terrorist attacks on Israeli military and civilian targets, inside Israel as well as in the Occupied Territories, but raised the specter of a Soviet-backed PLO-dominated state on its borders and inside its capital city. Israel could also rely on political and massive financial support from the U.S. government in its efforts to thwart the objectives of the Intifada by suppressing it. Finally, the Israeli government had overwhelming military, technical, and economic resources in relation to the resisting Palestinian population, which it could employ to reassert its unchallenged control over them. Given the stakes and the imbalance of powers, *realpolitik* dictated that the Israeli government defeat the Intifada, and to do so, it would have to crush the will and ability of Palestinian youngsters and adults alike to resist Israeli power.

Respect for human rights and international law would have dictated quite a different policy. Conquest gives no right to the territory seized by war, or denial to the conquered of their rights to participate in their own governance. It gives no right to colonize conquered territory or to control its natural resources. According to the First Geneva Convention, Israel had no right to monopolize West Bank water resources, to arrogate for itself West Bank and Gaza land, to establish settlements and exploit Palestinian labor, to establish a captive market for its goods in occupied territory, and to implement policies aimed at the stifling of the economies of the occupied territories. From a broad human rights perspective, the economic and ideological interests Israel sought to protect by suppressing the Intifada were illegitimate as were its methods. Palestinians in East Jerusalem, the rest of the West Bank, and the Gaza strip are "Protected Persons" under the First Geneva Convention: "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threat thereof and against insults and public curiosity."[3] According to Principle 2 of the 1959 *Declaration of the Rights of the Child:* "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially, in a healthy and normal manner, and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount considerations."[4] Israel was bound by this convention and had Palestinian children in the Occupied Territories under its control. Its massive assault on those children during the Intifada (and its treatment of them before) violated those obligations.

There are two radically opposed normative perspectives here: *realpolitik*—moralized by the obligations of government officials to promote and protect the interests of the citizens of their state—and a human rights perspective, which limits the extent and manner in which those interests may be permissibly promoted. In the circumstances, could one really expect the Israeli government to abandon *realpolitik* in favor of respecting human rights and international humanitarian law? Indeed, is it reasonable to insist on respect for human rights when *realpolitik* does not itself require it?

A Human Rights Ethic

Officially, all member states of the United Nations must accept the Universal Declaration of Human Rights as a condition of admission to that body. Most of the world's states are also signatories to various instruments of human rights and humanitarian law and are therefore bound by their provisions. At the level of public commitments, a human rights perspective enjoys the official support of most of the world's governments. At the level of real commitment, however, it does not, but serves as the core of what Richard Rorty (1993, 116–17, 132–34) rightly calls "a human rights culture." That culture finds expression in the visual arts, in drama, poetry, music, in forms of protest, in journals, magazines, fax and Internet networks, and internationally coordinated protest rallies. It is an international culture spanning all others, and those who identify with it come from every major religious tradition. Its adherents range from legislators and government officials who seek to temper *realpolitik* by injecting human rights concerns when opportunities present themselves, to those who risk their persons and their liberty to monitor, report, and protest human rights violations, and to those who are not so courageous but are supportive and sympathetic. They are bound not so much by a theoretical commitment to the Kantian conception of the equal worth and dignity of persons but by a commitment to the range of rights that justifies and to the image of a humane world order that respecting those rights would promote.

International human rights law is explicitly grounded in the ideals of the equal worth and dignity of persons. Some of their articles can be understood as elucidations of those ideals. Most of their rights-ascribing principles, however, must be viewed as applications of those ideals and therefore of the cluster of rights that explain them, to various types of situations involving the use of organized violence, or to the situations of persons disadvantaged by, or vulnerable to existing, unequal power relations.

The following rights articulated in the Universal Declaration of Human Rights seem to me to be of the first type: the rights to life, liberty and security of person (article 3), the right to freedom of opinion and expression (article 19), and the right to a standard of living adequate for the health and well-being of oneself and one's family (article 25). If one were to explain what it means to view a

person as possessing worth and dignity, one would, I think, have to explain that one must view him or her as having those rights. They can be summed up as rights to well-being and freedom(s). In the case of children, rights to well-being and to freedom(s) include rights to the socially providable means by which children can develop into adults able to pursue their well-being and capable of exercising freedom(s) in personally and socially meaningful ways. This means that governments have obligations to provide for the special protection and care children need, and to provide or ensure the education and physical and mental health services required for the nurturing and maturing of children within the territories they control. Children, too, are persons, and their well-being counts for as much as any adult's. On this view, their healthy development is conceived in part in terms of achieving that measure of autonomy respect for which is expressed by various democratic rights. Explaining what it means to view persons as equal in dignity and worth requires emphasizing that each person has the same broad rights to the socially providable means of well-being and to freedoms as each and every other person, that the violations of those rights are of equal negative weight, and the enjoyment of them are of equal positive weight. The right to an education (article 26), to equal protection of the law (article 7), to a fair and public hearing by an independent and impartial tribunal (article 10) and the right not to be subjected to torture, to cruel, inhuman or degrading treatment or punishment (article 5), instead of being central to explaining the ideal, spell out what the ideal requires in various conditions of vulnerability. Children are vulnerable in relation to the power of adults and therefore easy prey for those who would be advantaged by exploiting them. If they have a right to have their well-being counted, and counted equally with the well-being of anyone else, then they have rights to the education, special care, and protective nurturing environment that are both elements of their well-being as children and means to their future well-being as adults. Individuals in the hands of the agents of a state are vulnerable both to the power of organized groups of individuals constituting the state authorities and to the power of other individuals within those organized groups. If any person's well-being and freedom counts for as much as anyone else's, then she or he must have certain protections against exploitation, injury, and death at the hands of state authorities or at the hands of individuals armed with state power.

The discourse of human rights is situated against a background of actual violence, exploitation, and manipulation of the vulnerable by the more powerful, and especially, but not exclusively, by those who enjoy the advantages of state power. It is designed, in part, to set limits to what the more powerful may permissibly do to the less powerful and vulnerable in pursuing individual or collective interests. Moreover, it is designed to set the permissible limits on how individuals may treat each other in pursuing their own, conflicting interests, or the real or imagined interests of some group with which and in terms of which they identify themselves (e.g., the rights of individuals not to be subjected to

discrimination on the basis of ethnicity, religion, race, national origin, or sex; the rights of women to equal pay for equal work; the rights of children not to be forced into employment).

The discourse assumes that however Hobbesian the actual condition of human societies is, that condition is neither necessary nor desirable. Another crucial assumption is that it is possible to organize human societies in such ways that intra- and intersocietal competition and the uses of inequalities of powers (in the Hobbesian sense), and therefore of competitive advantages, can be effectively regulated by an ethic of respect for persons or, at least, by the norms such an ethic would require. The operative image of such a world order is Kantian both with respect to the underlying ethic and the proposed mechanism by which that ethic can be made effective. A world order of basically democratic sovereign states cooperating within the framework established by the UN Charter is presented as the world order within which respect for human rights law would become a reality within and among states. For reasons I sketch below, even if this image could somehow become a reality, it would not yield a world order in which a human rights ethic would be generally operative.

It is important, I think, to distinguish between conditions required for such an ethic's being generally operative and the status of that ethic as setting a moral standard by which the behavior and structures of states should be judged. The actual condition of human societies is to a considerable extent Hobbesian, as are relations among states. One response to that reality is to adhere to a human rights ethic and to urge and work for changes that will restructure the major institutions that sustain the Hobbesian character of our social reality. In adopting it, one adheres to the standard as the standard by which the moral quality of institutions, practices, and human interactions generally should be assessed.

There are two different approaches to a human rights ethic: (1) one can embrace the ideals of the equal worth and dignity of persons as starting points, fundamental ideals to be used in arguing broader and more specific policies, and judging specific actions; (2) one can accept an egalitarian ethic—everyone counts and counts equally—and the principles that a conception of the equal worth and dignity of persons would require, using them to judge practices and particular actions. It is at least conceivable that a given set of principles and policies for their application can be adequately supported from differing and mutually incompatible, more fundamental moral stances. Although I personally believe that an adequate justification of the most central and important principles of human rights law cannot dispense with a commitment to the equal worth and dignity of persons, I am reluctant to rule out the possibility that this commitment can be adequately supported from a stance that does not already presuppose such an ideal.[5]

I am not concerned about what may amount to à nonsubstantive rejection of the language of human rights, worth and dignity. For special theological or other theory-laden reasons, some may reject the language of the equal worth and

dignity of persons and of human rights but accept a reformulation of the relevant principles and policies of their application in terms of "ought's" and "ought not's." At one level, such positions constitute a rejection of a human rights ethic, but at another, they would embrace commitments to the substance of the practices such an ethic would require. Again, what seems to me to be of the utmost importance is whether or not people adopt humane moral perspectives that are fundamentally inclusive in terms of whose well-being counts and that would support the same assessments, condemnations, and recommendations for practice as the relevant human rights principles would require. This also means that whatever the theory-laden foundations for accepting core human rights principles, advocates of a human rights ethic, broadly understood, would accept an egalitarian stance in practice and one that assigns the same relative weight to securing the well-being and freedom of individuals as those core principles do. They must, for example, reject the propriety of sacrificing the freedoms, opportunities, and living standards of one ethnocultural group to protect and enhance the freedoms, opportunities, and living standards of another, more numerous ethnocultural group. They must also reject the propriety of sacrificing the freedoms, opportunities, or standard of living of some individual to secure greater freedoms, opportunities, or a higher standard of living for some others. Most important, they must view practices that violate the core provisions of international human rights law to be abhorrent, intolerable, or both, not as "regrettable" or as "unavoidable" evils or simply as "necessities" that only the sentimentalists, "bleeding hearts," or naive would find troubling. What concerns me are perspectives that reject the full and core substance of a human rights ethic either because they do not really view everyone's well-being and suffering as equally important or, what comes to the same thing, because they view such an ethic as inoperative, unrealistic, and impracticable, or limited in its scope of application to some favored "us."

These perspectives represent a second response to our Hobbesian-like reality. Viewing a human rights ethic as limited in its scope of application to one's fellow citizens, to one's people, to those who share a culture incorporating respect for human rights, and so forth, constitutes a rejection of the ethic. Any such view legitimates treating some as unequal in worth and dignity, as really not counting. One cannot consistently adopt a human rights ethic and limit the scope of its applicability. To say that there is a human right not to be tortured but that it is all right to torture someone because she or he is not one of our citizens is a kind of nonsense that follows from limiting the scope of a human rights ethic to certain persons. To exclude some from the ethic while granting the full range to others amounts to denying the equal worth and dignity of persons—to rejecting the ethic. A third response is to try to hold a human rights ethic as an ideal for purposes of moral assessment but not give it much weight in collective or individual decision making. That response also rejects the ethic because it presupposes another standard according to which persons need not be treated in

accordance with principles justified by that ideal. So it seems that in face of a Hobbesian-type reality, one must either accept a human rights ethic as the standard of moral assessment, decision, and change or reject both the ideal of the equal worth and dignity of persons and the principles of action that ideal justifies. Any systematic, selective application of a "human rights ethic" constitutes a rejection of a human rights ethic.

The ethic of *realpolitik* places priority on the pursuit of power interests. It is necessary to identify the party(ies) whose power interests are to be pursued. The dynamic of such an ethic within settler states, for example, requires the subjugation and subordination of the indigenous population the settlers displace, dispossess, or come to control by establishing their own state in the territories of the indigenous population. The very nature of settler states, their establishment, consolidation, and driving ideology, requires a *realpolitik* approach to the indigenous population(s) because the state itself can be established only at their expense and the expense of their descendants. It implies subordinating the well-being and freedoms of those individuals and their descendants to the well-being and interests of members of the settler group, and subordinating the well-being of the indigenous people to the people(s) that the settlers identify themselves as belonging. When the differences are, as they have almost invariably been, identified culturally and ethnically, this means that settler states are inherently racist or driven and infused with a racist perspective.

From a human rights moral perspective, and from any egalitarian moral perspective, the practices inherent in the establishment, consolidation, and maintenance of settler states are morally repugnant. Israel is a settler state. So are the states of the Americas established through the displacement, dispossession, subjugation, and, in most cases, genocide of the indigenous populations. Indeed, the conquest of the First Nations of the Americas by Europeans used to serve as part of the justification for the ethnic cleansing and subjugation of Palestinians by which Israel was created. Indeed, one reason that Canadian officials used to cite for Canada's refusal to recognize the right of the Palestinians to self-determination was that such a recognition would require recognition of the right of Canada's indigenous peoples to self-determination.[6]

According to a *realpolitik* perspective, the preeminent goods are powers such as economic advantage, political control, strategic advantage, and influence over the decisions of powerful others. There are two types of *realpolitik* determined by the weight given to concerns for the well-being or suffering of persons not intended to be the beneficiaries of power-directed decisions: (1) *hard-ball realpolitik,* according to which the well-being or suffering of such persons should be given positive or negative weight only if it promotes or diminishes the relevant power interests of the intended beneficiary(ies); and (2) *soft-ball realpolitik,* according to which it is appropriate to promote the well-being, diminish or prevent the suffering of such persons provided that doing so does not involve too heavy a cost for the intended beneficiary(ies) of the relevant power(s). Together,

they form the dominant effective ethic operating within our Hobbesian-style world—a world of enormous inequalities in powers, of competition for powers, of a plethora of collectivities whose leaders, and often members as well, view those collective entities as the proper beneficiaries of successful competition. Both perspectives are incompatible with a human rights ethic whose point is to limit what competitors may legitimately do in the pursuit of power interests themselves.

In the absence of enforcement mechanisms, *realpolitik* will continue to be the dominant, operative ethic of states, national liberation organizations, private enterprise, political parties, indeed, of those collective entities and many individuals competing for powers. This does not mean that competitors could not abandon a *realpolitik* ethic in favor of an ethic in which the ideal of respecting the equal worth and dignity of persons is the dominant value to which powers and their pursuit are subordinated. It means that this will not happen, perhaps could not happen without revolutionary institutional changes that would effectively constrain the pursuit of powers within limits required by respect for the equal worth and dignity of persons.

Three contemporary institutions both require and sustain a *realpolitik* ethic in their operations: nationalism, the sovereign state system that nationalism sustains, and the market system. The operative ethic of the latter is a *realpolitik* aimed at economic power as the good to which other powers and goods are to be subordinated. The major players within the world market system are confronted by decisions that affect the well-being of millions of people and influence the foreign and domestic policies of states, including the United States. This ethic requires that respect for human rights be subordinated to profit, profitability, and the economic health of the corporation.

Sovereign states should be viewed as corporations competing with one another for a full range of powers whose intended beneficiaries are, as a rule, those segments within their citizen bodies with sufficient powers to influence state decision making. As such, it should be clear why democratic political structures are essential mechanisms for protecting the human rights of the citizens of any given state against violations by state authorities or other citizens or organized collectivities within that state. A world of democratic states would be a world in which each state would generally respect and protect the human rights of its citizens, assuming, of course, that each had the resources required for the task. It seems that the consequences of a sovereign state system within a world market economy are to lock into place existing gross inequalities of wealth and power and to enrich fewer and fewer while impoverishing more and more people. If this is true, the present world order precludes a world of democratic states and guarantees unending conflict. It precludes conditions that would make a human rights ethic generally operative.

The contemporary sovereign state system is the product and purveyor of those sets of interrelated beliefs, values, and emotions that constitute nationalism. But

while nationalism helps sustain many sovereign states, it is a driving force dismantling and fragmenting others. Nationalist loyalties have contributed to the disintegration of the former Soviet Union and the appalling ethnic violence that has accompanied it, and has driven the butchery in the former Yugoslavia. Quebec nationalism threatens the unity of Canada, and nationalism has spawned the horrors of Rwanda, among many others in Africa. Nationalism has also been a driving force for liberation and decolonization, on the one hand, and for conquest, subjugation, ethnic cleansing, genocide, and internal repression of minorities, on the other.

A central element of all forms of nationalism is the concept of a people as entitled to the exercise of political sovereignty within what is understood as its territory. There are two quite different concepts of peoplehood: as the citizen body of an already established sovereign or subnational state or as an ethnocultural unit. The state of a people understood ethnoculturally is the state of and for persons of the ethnoculturally defined collectivity. Ethnocultural nationalism identifies the favored ethnoculturally defined collectivity as the intended beneficiary of its state's domestic and foreign policy.

Nationalist attitudes affect *realpolitik* perspectives regulating state decision making in two ways. First, they can color, even distort, calculations of power interests by shifting the intended benefits of collective decisions to the people rather than to those of its members with political clout. Second, nationalist attitudes can incorporate a concept of the equal worth and dignity of each member of the people in ways that require respect for their human rights and, therefore, for democratic political structures and practices for *them*. When the dominant ideology within a state conceives its people in terms of citizenship, the view that its members are equal in worth and dignity legitimates democratic, antiracist, and polyethnic/multicultural practices within that state. When peoplehood is conceived ethnoculturally, however, a commitment to the equal worth and dignity of those who constitute the people secures at best democratic and rights-respecting practices for the favored ethnocultural group. Israel, for example, is a democracy of and *for* its Jewish citizens, to whose interests the individual and collective interests of its Christian and Muslim Palestinian minority are effectively subordinated. Ethnoculturally based nationalists, both in theory and in practice, are incompatible with a human rights ethic. The ethnocultural nationalist cannot consistently view persons within the state who are not fellow members of his or her favored people as having equally strong claims to socially providable elements of well-being, to relevant freedoms, to protections and rights, and to political participation. They are to be marginalized, at the least, tolerated as a permanent minority. If someone did say that they are equal in worth and dignity to members of the "favored" people, one would have to conceive the peoplehood that really counts in terms of non-ethnoculturally defined citizenship.

Up to a point, a polity whose dominant ideology emphasizes an accessible,

purely culturally defined nationalism may avoid the more gross forms of discrimination and oppression against ethnocultural minorities within its borders. Some progressive elements within the Quebec Nationalist movement, for example, are primarily cultural nationalists rather than ethnically grounded cultural nationalists, demanding fluency in French as the price for full inclusion within their vision of Quebec society. One must wonder, however, whether this perspective animates the separatist movement and would dominate if its secessionist objectives were realized. The defining criteria of membership in the Jewish people, however, are not so accessible; they are rooted in a faith-defined matriarchal lineage, on the one hand, and, exceptionally, on a profession of faith by converts. A consistent advocate of a standard, exclusionary form of ethnocultural nationalism must reject a human rights ethic, and there are a variety of philosophical and theological perspectives that can be drawn upon to "dress up" what is essentially a form of racism in seemingly intellectually attractive garb. This is also evident in the subordination of the interests of "others" living beyond the borders of the people's state to the interests of the favored people.

The state of Israel's ideology is explicitly an exclusionary ethnoculturally based nationalism. Furthermore, Israel is, like the states of the Americas and South Africa, a settler state established through the forceable dispossession, displacement, and subjugation of the indigenous population.[7] The ideologies that rationalized the establishment of settler states in the Americas have either lost their appeal or their currency, although it is clear enough that they have found substitutes to "legitimate" the continuing practices of dispossessing, butchering, and permanently subjugating the remnants of the indigenous populations in Central and South America. The salvation of souls, the spread of inherently superior European culture, Manifest Destiny, the spread of civilization—all were used to rationalize colonization, and all "legitimated" systematic violent assaults on resisting "natives," on their persons, their cultures, the fabric and often existence of their communities. In one way or another, settler states must target the children of the indigenous populations because they are a threat to the future of the settlers. This task can only be accomplished at the expense of the posterity of the indigenous population. Since the latter are ethnically and culturally distinct from the settler population, both the ideology and the practices of the settlers must treat them as inferior in worth and dignity or as utterly lacking in both. This explains, I think, the inherently racist character of settler states and of the mentality typical of their advocates.

It should come as no surprise that the indigenous remnant will resist, distrust, and hate their oppressors. Settler states that do not move ideologically and practically to incorporate the remnant within their citizen body or to grant them a meaningfully equal status will always be able to "justify" assaulting and suppressing the children of the dispossessed by appealing to the security needs of the settler population and to whatever "moralizing" ideology is used to justify their existence as a state of and for the settler community.

Peoples, like gods, or particular concepts of God, are creations of the human imagination with enormous emotional power at this point in our cultural history. There are "objective" ways of cutting humanity into different ethnoculturally defined collectivities. There are as well emotionally and politically powerful concepts of ethnoculturally defined collectivities that may or may not correspond neatly with a sociologically or anthropologically useful way of categorizing ethnoculturally identified collectivities. Notions of race, ethnicity, culture, and subculture are notoriously elastic. The emotionally powerful and therefore politically significant concepts of ethnocultural peoplehood may demarcate a collectivity whose members are ethnically and cultural diverse in terms of useful sociological or anthropological ways of identifying ethnicity and culture. They may also be the subjective counterparts to more objectively identified ethnocultural collectivities. The ethnoculturally defined "peoples" that are politically significant are those by reference to which a critical mass of individuals identify themselves, those who are "us" and those who are "them," to which they are loyal and which they invest with rights to sovereignty and territory.

From a human rights perspective, there are strong reasons for eschewing and condemning ethnocultural peoplehood. No ideology that rationalizes the establishment and consolidation of a settler state could be compatible with a human rights ethic. There is no "natural necessity" driving people to embrace an ideology of ethnocultural peoplehood if one takes human rights seriously and encourages a cosmopolitan mode of self-identification. Within a particular context of oppression by an ethnoculturally defined state driven by its own *realpolitik,* a commitment to human rights may argue the creation of yet another ethnoculturally-based sovereign state. When the oppressed are also the victims of a settler state driven by a standard exclusionary ethnocultural nationalism, the only available remedy to secure some of the basic rights of the subjugated indigenous population would appear to be political and economic independence from the oppressing state. Whether such a strategy is preferable to an anti-apartheid, anti-segregationist strategy aimed at undermining the ethnocultural ideology of the oppressing state depends in part on what would be more likely to bring immediate remedy to the oppressed and on what is politically manageable. Within a *realpolitik* perspective, the indefinite subjugation of an ethnoculturally defined group and assaults on its resisting children may make sense.

One should therefore expect that the Israeli state would target Palestinian children. As a settler state, driven by a *realpolitik* infused by ethnocultural nationalism, its practices toward the dispossessed and subjugated indigenous population were inevitably racist in character, dehumanizing, and therefore brutal. The only question would be that of the extent and depth of brutality. Without access to cabinet discussions and discussions among military and political leaders outside formal meetings, whose minutes may someday be in the public domain, it is impossible to determine whether and to what extent Israel's practices in targeting Palestinian youngsters were modified by some humane concerns for

life or by concerns of a *realpolitik* nature. What is clear, as the next section demonstrates, is that those practices were brutal indeed, and "restrained" only when it came to targeting to kill.

Palestinian Children and Israeli State Violence

Children can be targets of state violence in at least four senses:

1. They can be known to comprise a significant segment of the population targeted (a crowd of demonstrators into which soldiers are firing, inhabitants of houses demolished by military order, inhabitants of refugee camps subjected to massive tear gas attacks).
2. They can be deliberately included within a category of persons subjected to a mode of violence from which they are normally exempted (as subjected to the same rules of fire as adults, to torture during interrogation of security suspects, to the conditions of detention and imprisonment).
3. They can be singled out as a group (for beatings, for exposure to traumatizing violence aimed at undermining respect for paternal authority, for deprivation of education to impede cognitive development).
4. They can be the targets of state-condoned violence by agents or citizens of that state (random or wanton shootings, beatings, tear gassing by soldiers, or assaults by settlers).

A Policy of Shooting Children

In dispersing Palestinian demonstrators, the Israeli Defense Forces (IDF) did not limit their weapons to what they use against stone-throwing Israeli demonstrators—tear gas, water cannon, batons, and, occasionally, rubber coated bullets (RCBs). They also used high-velocity bullets, plastic-covered metal bullets (PCMBs), and plastic bullets.[8] A few months after the Intifada began, the IDF added specially designed gravel-throwing machines to its arsenal. That weaponry was not restricted, or even primarily used, to suppress tire-burning, stone-throwing demonstrations. On the contrary, the IDF routinely used tear gas, live ammunition, PCMBs, plastic bullets, and/or RCBs, which they followed up with beatings when they attacked peaceful protest marches; raided refugee camps, villages, and towns; attacked funerals of people they had killed; or assaulted worshipers emerging from mosques and churches. They conducted thousands of raids, often at night. They frequently beat up and sometimes shot mourners paying their condolences to the families of those who had been shot to death. The IDF often conducted raids during curfews that were tantamount to sieges, firing at homes and beating up their residents.

As the Intifada unfolded, the IDF escalated its use of lethal and seriously injuring gunfire against Palestinians by progressively relaxing the (unwritten)

rules of fire to permit soldiers to shoot petrol-bomb throwers and persons suspected of carrying petrol bombs, persons erecting or manning roadblocks, persons wearing kufiyyehs over the lower parts of their faces (masked persons), fleeing security suspects, persons failing to obey an order to halt, and wanted security suspects believed to be armed. The Israeli government also effectively sanctioned the use of lethal and seriously damaging gunfire against stone throwers.[9] By the fall of 1988, the *de facto* rules of fire licensed the use of live ammunition against stone-throwing youngsters, children running from the scene of a clash or a stone-throwing incident, children fleeing the approach of soldiers, children setting up or manning roadblocks, "masked" children, and children writing slogans on walls. At the inquiries required by the IDF following the shooting deaths of Palestinians whose deaths at its hands the IDF could confirm because they had taken their bodies for autopsies, soldiers did not have to show that the persons they had shot to death were threatening their lives. When those policies were introduced, many of the Palestinians belonging to each category of permissible targets of IDF gunfire were known to have been minors under the age of seventeen. Soldiers were permitted to use lethal and seriously damaging ammunition when they were themselves at no risk of injury or death.

Israeli authorities justified most of the child gunfire deaths by claiming that the victims were either involved in stone-throwing clashes with soldiers or had refused to obey soldiers' orders to halt and thus were shot in conformity with the procedures for apprehending suspects.[10] Eyewitness accounts tell another story. Approximately 90 percent of the 271 minors sixteen years old or younger fatally shot by the Israeli military between December 9, 1987, and December 31, 1993, were *not* throwing stones when they were shot. More than half of the slain children were *not* participating in clashes when soldiers shot them.[11] Some were killed fleeing the scene of a clash in which they had participated, others were merely fleeing the scene of a clash in which they were not participating, running away from approaching Israeli patrols or trying to escape raiding Israeli soldiers. Some were killed writing slogans on walls or setting up roadblocks, while others were simply bystanders or victims of indiscriminate gunfire. Some were picked off apparently at random, and others were in effect summarily executed. The Israeli army obstructed medical treatment for forty-four of the children they had mortally wounded—thirty of these incidents occurred during the first two years of the Intifada when Rabin was defense minister, and six in 1993 when he was prime minister and again held the Defense Ministry portfolio. In fact, two-thirds of the 271 children fatally shot by the IDF were killed when Rabin held the Defense Ministry portfolio, first implementing his "Iron Fist Policy" to suppress the Intifada, and later reimplementing it in Gaza, probably to pressure the PLO during the secret negotiations in Oslo and the public show of negotiations in Washington. Nineteen of the slain youngsters were shot by Israeli soldiers disguised in traditional Arab dress or dressed in civilian clothes and using cars with West Bank or Gaza license plates. Most of those children were "masked" or

were writing graffiti when they were shot without warning at close range. Most of them were fifteen or sixteen years old and were killed in 1992 and 1993 when the use of units to ambush not only wanted persons but also other security suspects was reescalated.[12] In at least ten cases, soldiers also beat, kicked, or dragged the children they had fatally shot.

Several factors contributed to what amounted to a permissive policy toward the use of lethal ammunition against Palestinian children, especially when Yitzhak Rabin held the Defense Ministry portfolio. First, the same lax rules of fire applied to minors and adults alike. Second, Israeli authorities turned a "blind eye" to eyewitness accounts of child gunfire deaths during the required IDF inquiries into the circumstances of those deaths. Third, in the few cases in which a soldier was found at fault in a child's death, the charges and therefore the penalties were too light to serve as an effective deterrent. It is clear from the dramatic decline in child gunfire deaths and injuries during most of Moshe Arens's tenure as defense minister that Likud pursued a far less permissive policy than Rabin did before Arens replaced him and after he became prime minister. But even under Rabin's leadership, it was clearly not Israeli state policy to target Palestinian children with a view to killing them. Child gunfire deaths constitute at most 3 percent of children reported medically treated for gunshot wounds from live ammunition, PCMBs, or plastic bullets.[13]

The scale of injuries from Israeli ammunition and the variety of contexts in which soldiers opened fire on Palestinian youngsters, however, suggests that there *was* a policy aimed at inflicting nonfatal but often serious injuries on them. In October 1988, Rabin left little doubt about his intentions in authorizing the use of force to quell the Intifada: "Rioters must emerge with casualties and scars," he declared. "This is my policy and I am responsible for it" (*Jerusalem Post,* October 10, 1988). Gunfire injuries to children had already started to escalate in August of that year, increasing dramatically in September as the IDF introduced plastic bullets and PCMBs, supposedly as "nonlethal" alternatives to high-velocity bullets for use against Palestinians.

The figures show that the IDF used that ammunition against children over eleven years of age far more frequently than against younger children. Although exercising some restraint in opening fire on young children with the most damaging ammunition, in Gaza they shot over 1,150 of them, including more than 200 preschoolers. They used the most damaging ammunition against Gaza children between the ages of eleven and fifteen almost as frequently as against older adolescents and young men. Gunshot injuries to those children accounted for more than two-fifths as many gunfire injuries as the IDF inflicted on persons sixteen years or older. Despite an announced policy of exercising restraint in opening fire on Palestinian children under the age of sixteen, the UNRWA statistics for Gaza strongly suggest that there was no significant distinction drawn by the IDF when opening fire on children in their early teens, on the one hand, and older adolescents and youths, on the other. An analysis of a represen-

tative sample of Palestinians injured by IDF gunfire that the Palestinian human rights organization, Al Haq, put together supports the same conclusion.[14]

UNRWA figures are based on injuries reported to UNRWA—many were not reported either because the injured were treated at home or were treated but not recorded to protect the injured person from arrest by the IDF. How many children were actually hit by some form of Israeli ammunition? An important set of surveys of violence experienced by Gaza children between the ages of eight and fifteen was conducted by the Gaza Community Mental Health Programme (GCMHP) in the spring and fall of 1992. The GCMHP surveys suggest that at least 6,840 children were hit with live ammunition, 3,960 with plastic bullets, and 44,460 with RCBs. These figures confirm what everyone knows—that the IDF used RCBs against children in Gaza far more extensively than the more seriously injuring ammunition.

These projections reflect more accurately than the UNRWA statistics the extent to which Gaza children confronted soldiers, but they also reflect more accurately the extent to which Israeli soldiers opened fire on children in Gaza. It is important to realize that Israeli troops often opened fire on Gaza children who were not throwing stones at them (see the PHRIC Uprising Updates). Israeli soldiers were permitted to target Palestinian children with virtual impunity outside the context of clashes and stone-throwing incidents. Israeli authorities condoned, even if they did not directly encourage such a permissive approach to assaulting "stone throwers" and potential stone throwers—that is, Palestinian children.

UNRWA statistics on West Bank injuries are based on far less comprehensive reporting than in Gaza. Israeli authorities prohibited hospitals and clinics under its jurisdiction from reporting Intifada-related injuries. Although UNRWA was able to circumvent that prohibition in Gaza, it did not fare as well on the West Bank, where more of the clinics and hospitals are Israeli controlled. The available statistics and the impressions of human rights monitoring agencies strongly suggest that while West Bank children were included as targets, they were less frequently targeted with the most damaging ammunition than their Gaza peers. As in Gaza, West Bank children between the ages of eleven and fifteen were far more frequently shot with that ammunition than were younger children.[15]

A Policy of Beating Children

Although soldiers may shoot into a crowd without specifically intending to hit children, they cannot grab and beat them up unintentionally. Most of those beatings involved two or more soldiers using batons, rifle butts, their fists, kicks, or other objects—iron bars, stones, or whatever else was at hand. The numbers of children assaulted argue an Israeli state policy of targeting Palestinian children as a group for beatings. UNRWA figures for Gaza show that over 12,700 children were treated for injuries sustained when Israeli troops beat them up. About

1,000 of those children were five years old or younger.[16] The GCMHP surveys suggest that of the more than 75,600 children in Gaza beaten up by Israeli soldiers, at least 8,100 suffered fractures. Many, if not most, of these beatings would have been administered during raids on homes when soldiers routinely beat up all family members without regard to gender or age (with the obvious exception of infants). The GCMHP surveys also found that 55 percent of those children witnessed Israeli soldiers beating up their fathers and that 85 percent had experienced Israeli night raids on their homes. These findings translate into at least 100,000 Gaza children who saw soldiers assaulting their parents, and that well over 300,000 children experienced soldiers raiding their homes.

What were IDF raids like? The Palestine Human Rights Information Centre described raids on villages as follows:

> During raids soldiers routinely break into houses, destroy windows and furniture, beat everyone present including pregnant women, children and old people; destroy food stores by smashing containers, and mixing oil, rice, flour, olives, grains, lentils, milk, sugar and other foodstuffs together, break up television sets and radios; and urinate and sometimes defecate into water tanks and solar water heating units and also shoot holes in them and smash them (almost 200 units in 18 locations were reported destroyed between September 25 and October 25, 1988; there were probably many more). The soldiers round up men between certain ages, or sometimes all people in the village, in a central location. Sometimes this is the yard of the mosque. There they force them to remain for hours, subjected to beatings, inclement weather, discomforts, and humiliations. They arrest some, beat many more, and harass everyone. Eventually people are forced to erase graffiti and remove flags and other national symbols. People who refuse are beaten, sometimes viciously. The soldiers use obscene language; they are also reported to have sexually abused women.[17]

The same practices characterized IDF night raids on homes in Gaza, where the "men" rounded up could include boys as young as nine years old. The IDF more frequently restricted their round-ups to males from fourteen years of age upward.

Children were also beaten up in raids on schools to arrest suspected stone-throwing youngsters "who frequently escaped, but the students sitting in their classrooms were harmed instead. During army attacks on schools, pupils were beaten, arrested or shot with rubber-coated bullets and live ammunition, and classrooms were vandalized and teargassed" (SCF 1990, 266–70). Children were beaten up not only in their homes but were grabbed off the street, assaulted in the street, and abducted to be beaten and dumped. The practice of beating up fathers in the presence of their children was intended to intimidate children, to terrorize them, to make them fear soldiers and feel vulnerable at any moment and in any place to the power of the Israeli state. It was clearly aimed at making them view the key authority figure within a patriarchal family structure as powerless, incapable of protecting them, their family, or their home; in effect, emasculated.

These and similar practices can be explained in part as collective punishment

aimed at intimidating youngsters and their families into submission, and in part as measures aimed at inducing enduring emotional traumas. One must not underestimate the utility of inflicting serious psychological damage on children and adults in a population intended to be indefinitely subjugated to the power of a colonizing occupier. There is a reasonably high coincidence between suffering traumatizing violence and subsequent violence within the family and among peers and between suffering violence and other symptoms of post-traumatic stress disorder. Massive, orchestrated assaults on children and families in their homes is one strategy to produce major social problems within a subject population, weakening its future capacity to resist. It is also a strategy that has some cost (which may be bearable relative to its advantages): it produces youngsters willing to sacrifice themselves if they can take some of the enemy with them.

De-educating Children

There can be no question about Israeli intentions to disrupt the cognitive development of Palestinian children by closing and raiding their schools and keeping them and their teachers out of their schools by imposing prolonged curfews. The Israeli government closed all West Bank schools from kindergarten up for nineteen months.[18] It continued a policy of closing individual schools after some stone-throwing incidents in their vicinity whether the incident was provoked by soldiers or settlers, a response to an IDF raid on the school itself, or initiated by some schoolchildren. Schools were also closed or closed to students and teachers when the IDF imposed curfews, often lasting for weeks, on refugee camps, villages, or towns. Altogether, the IDF imposed almost 15,000 curfew days by December 31, 1993 (PHRIC Human Rights Update, December 1993). Each of those measures was itself a form of collective punishment. Most Palestinian parents place a high value on their children's education, and closing schools because children threw stones is a way of punishing parents. This puts pressure on children not to throw stones and to dissuade their peers from throwing stones. Finally, closing schools and disrupting children's education is a way of crippling a generation and beyond, of impeding the development of an educated and competent leadership, and of consigning a larger proportion of the de-educated generation to lower-skilled or lower-tech jobs. Whatever the future of Israeli-Palestinian relations, Israel's assault on Palestinian education will perpetuate and strengthen its already considerable competitive advantages in every significant field.

Other Traumatizing Practices

Children were also the most numerous victims of the IDF's practice of demolishing Palestinian homes. In six years, Israeli authorities blew up 510 houses because they were the homes of individuals convicted of committing serious security offenses against Israelis or alleged to have done so, or because they

provided "screening" for attacks on Israeli military or settler targets. The IDF shelled 101 homes in the belief that armed, wanted persons were hiding in them, and demolished another 1,497 homes because they were unlicensed, a practice dramatically escalated during the Intifada.[19] Since the average Palestinian family has five children, the IDF made at least 10,000 Palestinian children homeless, subjecting them to the trauma of seeing their homes blown up, more often than not with little more than an hour's warning.

Israeli security agents (the Shin Bet and military intelligence) did not exempt children from torture during interrogations. Torturing children and maltreating them in prison are near guarantees that those children will suffer from post-traumatic stress disorder. Anyone, adult or child, male or female, arrested by the Israelis for alleged security offenses was routinely beaten during the arrest, en route to a detention center, on arrival, and during interrogations (Al Haq 1990, 228–33). Minors twelve years or older were subjected to the same methods of torture during interrogations as their elders.[20] These methods included prolonged beatings; being forced to wear a sack over the head, often smeared with dried blood, vomit, or urine; confinement in a refrigerated box for hours or days; confinement in "the coffin" for hours or days; exposure to extremes of heat or cold for hours or days while tied in a painful position; suspension by one's wrists; less commonly, electric shock to the genitals; sleep deprivation; deprivation of food, water, and/or access to toilet facilities; death threats; threats to rape a close female relative—mother, sister, wife; threats to deport the victim or close relatives; threats to demolish the victim's home.[21] Torture was used to extract confessions (usually in Hebrew which most Palestinian youngsters do not understand), to get children to inform on others, to "encourage" collaboration, but above all, to terrorize them, their families, and their peers. The systematic use of torture against persons, including children and women, suspected or accused of antigovernment activities is a mechanism of state terror aimed at suppressing resistance—violent and otherwise—to the government or state system that employs it.

Israeli detention centers will not accept children under the age of twelve, but minors twelve and older have been subjected to the same overcrowding, deprivation of adequate water, toilet facilities, exercise, and protection against the elements as older detainees. This is due, in part, to the fact that they have not been segregated from older youths and adults in the detention centers and prisons run by the IDF and in part because the physical conditions and treatment of juveniles in IDF-run detention centers was (and is) no different from what was (and is) meted out to adults. The IDF defines a "child" as any person under twelve years of age, an "adolescent" as any person twelve to fourteen, and a "youth" as any person fifteen or sixteen years of age. By military order, Palestinians sixteen years or older are held fully legally responsible. Another military order issued in April 1988 makes parents liable to fines or imprisonment for the behavior of their children under the age of twelve, which has given rise to a system of "child bail" to secure the release of a child from detention or to avoid a parent's imprison-

ment. Although children under twelve cannot be imprisoned and legally tortured during interrogations, the IDF has in effect meted out punishment and tortured children through beatings. Physical conditions in prisons run by the Israeli prison system inside the Green Line were better, but imprisoning youngsters from the territories in those institutions has meant almost totally isolating them from their families, who needed hard-to-get special permission to enter Israel proper. Like all the other practices described in this section, it violates the Fourth Geneva Convention and other instruments of international law.

The Use of Tear Gas

Palestinian children were also the most numerous victims of the IDF's massive use of tear gas. The IDF used both CS and CN gases, which are standard crowd-control weapons in the West. They used CS gas in concentrations five times greater than the concentrations used by the British in Northern Ireland and by the apartheid regime of South Africa against its insurgent blacks.

The gas irritates the eyes, the mucous membranes of the nose, throat, and sinuses, and the bronchial membranes of the lungs, and produces a sensation of being suffocated—it can asphyxiate people. It can blister the skin and causes severe abdominal pains, nausea, and headache. Exposure to large quantities has been linked to hundreds of miscarriages, to permanent damage to the cornea, and to other lasting injuries (SCF 1990, 320–38).

Israeli soldiers fired this gas into open and confined spaces almost as a matter of routine during the first year of the Intifada. It was fired into homes and dumped from hovering helicopters into entire neighborhoods and teeming refugee camps,[22] lobbed into crowded clinics, used just outside hospitals and clinics, and sometimes fired into them, and tossed into schools (Al Haq 1990, 301).[23]

When soldiers fired tear gas into schools and homes, children were once again targeted. "Targeting" carries the implication of intention. Continuing to fire large quantities of the gases into homes and in confined spaces, as the IDF did after more than twenty infants had died from asphyxia, more than suggests indifference to its potentially lethal effects.[24] The canisters supplied by the U.S.-based Federal Laboratories were clearly marked with a warning that death or serious injuries could result from firing the gas into confined spaces. The IDF ignored those warnings. In all, thirty-seven children died from the effects of CS and CN gases, twenty-four of them during the first five months of the Intifada. UNRWA reported 3,444 children in Gaza and 752 children in the West Bank treated for tear-gas-related injuries.[25] The GCMHP surveys suggest that at least 330,000 Gaza children were affected by those gases, and most were repeatedly exposed. At least as many West Bank children would have been exposed to them, since the IDF routinely used them together with gunfire and beatings during raids and in efforts to disperse demonstrations.

Children as Targets of Settler Violence

Children were targets and victims of organized settler violence that the IDF not only did nothing to restrain but often assisted.[26] Settlers were responsible for sixteen child gunfire deaths, two because of random shooting into houses during settler raids on Palestinian villages or neighborhoods, six during the massacre inside Hebron's Al Ibrahimi Mosque, one during an attack on schoolboys, one as a girl opened the door thinking the car outside contained her brother, two in apparently random drive-by killings, and four after stone-throwing incidents in at least one of which the victim was a bystander. Settlers set fire to homes, raided villages, opened fire at random in the streets of Palestinian towns, set up roadblocks at which they stopped and beat up Palestinians, including children. In one incident, a child died after settlers poured flammable liquid over him and set him on fire (PHRIC 1993). Organized bands of settlers have torched crops, cut down or set fire to fruit and olive trees, killed and stolen livestock, pumped bullets into rooftop water tanks and solar panels, sprayed homes with automatic weapons, beaten up villagers and threatened them with guns, knives, and crowbars, shot up and otherwise vandalized cars, and generally terrorized Palestinians with impunity. These raids intensified in frequency since the beginning of the Intifada, but had occurred before.

Conclusions about Targeting Children

Palestinian children were the most numerous victims of a wide range of Israeli measures aimed at suppressing the Intifada. They were not targets of some of those measures, but in one sense or another were among the targets of others. The statistical evidence strongly suggests that the IDF included children in their early teens among permissible targets of state violence when exclusion was a matter of choice.[27] The IDF also included children among the victims of its use of force knowing they would be the most numerous victims even if not the direct targets, specifically by demolishing homes and by using tear gas. Finally, Israeli authorities condoned the deliberate, "unauthorized" use of violence against Palestinian children by soldiers and settlers by (1) failing to investigate and prosecute soldiers and settlers for such assaults; (2) imposing light sentences in the few cases that were prosecuted; (3) failing to protect against organized settler violence; (4) effectively permitting soldiers to assist in that violence; and (5) imposing curfews and other collective punishments on the affected Palestinian communities but never on settlers during periods of settler vigilantism and rarely punishing soldiers when they were responsible for "unauthorized" assaults.[28] Israeli authorities did *not* have a policy of targeting children to kill them. They pursued policies aimed at injuring Palestinian children: in opening fire, soldiers shot to wound; in beatings, they beat to incapacitate, injure, "punish," and intimidate. The IDF exercised some restraint in using the most damaging ammunition against younger

children and were under relatively effective orders to avoid shooting preschool-age children and kindergarteners. They clearly had much greater freedom to beat young children. It also seems clear that de-educating and emotionally traumatizing Palestinian children—damaging them cognitively and emotionally—were objectives of a range of Israeli practices, especially during the first two years of the Intifada, but beyond as well.

Human Rights and Israeli Practices

All the Israeli practices I have described violate provisions of international human rights law by which Israel is bound as a member state of the United Nations, for which it voted, or to which it is a signatory.[29] All of those practices constitute grave breaches of the Fourth Geneva Convention of 1949.[30] As such, they count under Article 85, Section 5, of the 1977 Geneva Protocol I, as war crimes (Roberts and Guelff 1982, 439), though Israel is not a signatory to that protocol.

Now that the Intifada has failed to achieve its objectives, more as the result of the consequences of the PLO's alignment with Saddam Hussein in the Gulf War than to the success of Israeli repression, and a compliant Arafat-controlled PNA is installed in segments of the Occupied Territories, are peace, respect for the human rights of Palestinians, and reconciliation in the offing? I am afraid not. Israel remains a settler state in an expansionist, apartheid-creating mode. Since the Declaration of Principles in September 1993, Israel has escalated its expropriation of West Bank land, thickened its settlements there, altered the demographics in occupied East Jerusalem. It has secured a Jewish majority in East Jerusalem by expropriating 78 percent of its land and has designated another 8.5 percent for expropriation.[31] It has also permitted greater force than before to be used during interrogations of security suspects believed linked to Palestinian organizations opposed to the "peace process" and continues to employ assassination squads, collective punishments, administrative detention, closures, and travel restrictions, all ostensibly for reasons of Israeli security. These practices have been copied by the PNA in its efforts to suppress Islamic terror against Israeli civilians (see B'Tselem 1995).

As long as ethnoculturally based nationalism dominates Israeli ideology, coloring its leaders' calculations of their state's power interests, the state will continue to violate the human rights of Palestinians and other Arabs under its control. It will continue to violate the rights of the children of those "others," either by direct violence or in more "humane" ways. *Realpolitik* dictated a policy of targeting Palestinian children as a means of suppressing the Intifada or burdening a Palestinian political entity if suppression should fail, or both. Respect for human rights and the commitment to human decency that is at its core dictated restraint and a negotiated settlement accommodating their rights, the rights of their parents, and their demands for freedom. From the point of view of the still-dominant Zionist ideology, those children and their parents are the

threatening "others" whose well-being must be subordinated to the well-being of the "real" Israelis, the Jewish citizens of Israel.

Important steps toward bringing Israeli practices toward the "others" under its control into line with the requirements of a human rights ethic would involve an ideological shift to a general acceptance of a non-ethnoculturally defined conception of peoplehood and effective decolonization of all occupied territory. I think that these steps are also essential for any eventual reconciliation between Jewish Israelis and Palestinians. Reconciliation requires more than that because reconciliation requires an acceptable measure of justice understood in terms of a human rights ethic. It requires a practical, tangible, and mutual recognition of the equal worth and dignity of the victimized and the victimizers, of gross injustice having been perpetrated on the indigenous Palestinians, and therefore recognition of their rights to compensation and reparations and of their rights to live freely within and to control the land Israel seized from them in 1967 and began to colonize in the mid-1970s. Reconciliation would also require addressing the emotional trauma inflicted by Israeli state violence against Palestinian children and their families, a massive remedial education program, and an effective strategy to build civil society and democratic political institutions within the Palestinian enclaves at present controlled by a rights-violating, basically undemocratic and antidemocratic Palestinian National Authority. That is, they must not be confined to Palestinians whose "self-governing" institutions are and will be seen to be surrogates for direct Israeli control over the lives and future of Palestinians. They must be assisted in building the kinds of political institutions within which they will treat each other as equal in worth and dignity and understand that their former Israeli oppressors acknowledge that just as Jewish Israelis ought to be so treated within their political institutions, so too ought Palestinians within theirs. Put simply, reconciliation requires a tangible Israeli recognition of the human rights and full humanity of Palestinians, an acknowledgement that they are the undeserving victims of Israeli injustice and brutality entitled to effective and meaningful redress. Without justice, there can be no real reconciliation, and without reconciliation, there can be no real peace.

Realpolitik will never bring reconciliation and therefore will never bring peace. It is an approach that must focus on the present concerns of the Jewish Israeli electorate, calculated on the basis of the enormous imbalance of powers between Israel and the United States, on the one hand, and the PNA/PLO, the Palestinians, and relevant Arab states on the other, and aim at least at maintaining, if not enhancing, Israel's superiority over potential regional competitors and enemies. It is a perspective that relies on powers to coopt, to intimidate, to destroy, and to build, and on violence to achieve its objectives. It is necessarily a strategy of rational self-interest aiming at short-term objectives. It could accommodate a strategy of promoting or respecting human rights if power interests were served thereby or not unduly "compromised." But such accommodations require sufficient power on the part of those whose rights are to be promoted or

respected, or special gains to be secured by promoting or respecting their rights, to "legitimate" such a strategy. In the Israeli-Palestinian case, there are no significant shorter-term advantages to Israel in adopting such a strategy.

The foreseeable future is limited—*realpolitik* is ultimately self-defeating because many people are not willing to be treated as manipulatable objects to serve the economic and other power interests of others. This realization makes viable a human rights culture that undermines *realpolitik* and ethnocultural nationalism. Peace and the reconciliation it requires necessitate transcending both *realpolitik* and ethnocultural concepts of a state. But they are, I fear, distant goals. There were times in human history when people accepted caste systems. a natural or divinely ordained ranking of persons, unequal in worth and dignity. For the most part, those attitudes no longer prevail or no longer have the force they once commanded. Perhaps their modern form finds expression in an acceptance of socioeconomic-economic class structures, but even so, one's position within such hierarchies is not generally viewed as determining the relative importance of one's well-being and freedom. Reconciliation now requires an acceptable program to accommodate the demands of justice from a point of view that incorporates a concept of equal worth and dignity and sees dispossession and subjugation, oppression and ethnocultural dominion, as violations of human rights.

Indeed, other regimes have been more brutal than Israel's, out-and-out genocidal in their violence against indigenous populations, ethnocultural minorities, or insurgent political enemies. The IDF could have been much worse—it could have emphasized killing Palestinian youngsters instead of wounding them, although such a policy probably would have spurred a revolt within the army and undermined U.S. government support for the Israeli regime. So the IDF probably could not have pursued such a policy, in part because of the tolerable limits set by the values of its citizen soldiers and professionals. What this means, however, is not that the IDF and the government it served adhered to a high moral standard, a doctrine of "Purity of Arms" in dealing with resisting youngsters, but that other regimes and their armies are guilty of more horrendous war crimes. Perhaps in its response to the Intifada, the Israeli government played a "softer" variant of hardball *realpolitik* than others would have done in similar circumstances.

Confronted by the realities of the sufferings, brutality, and deprivations, anyone who can feel with and for people must reject a *realpolitik* from which those evils can be "justified." But they must also question the legitimacy of the institutions and supporting ideologies that subordinate a concern for human rights to the power interests of some segment of humanity—whether ethnoculturally defined or civically defined. If "realism" legitimates Israel's assault on Palestinian children, then the institutions and nationalist ideology that demanded such "racism" should be rejected as inherently immoral and antihuman.

In a world of sovereign states whose dominant ethic is one or another variant of *realpolitik*, a commitment to a human rights ethic sometimes requires supporting the establishment of yet another sovereign state in order to secure the rights of some segment of humanity against the depredations of another. This holds

true for the Palestinians in the territories occupied by Israel in 1967; it holds as well for Muslims, Serbs, and Croatians committed to a secular, non-ethnic state in Bosnia-Herzegovina. But that ethic also requires mobilization to press for democratization, and for the adoption of a "softball" variant of *realpolitik* by existing states, and ultimately for supranational political mechanisms that could meet the broad demands of the human rights ethic.

For those of us committed to and members of the human rights culture, we must understand and, to a point, play the *realpolitik* game with our own governments to pressure them first into adopting a "softball" *realpolitik* approach and ultimately to support reforms in international structures that will harass *realpolitik* within the parameters set by a human rights ethic. We must pressure them into supporting those institutional reforms that will undermine *realpolitik* as the dominant political ethic. The mechanisms for that pressure are falling into place within nongovernmental organizations, the human rights movement, and the movements pressing for democracy. The objective is not hopelessly idealistic, but it its achievement remains distant and uncertain. "Ought" implies "can"; there are now possibilities for international mobilization and coordination that can alter the present world order as it could not have been altered before.

For those who can feel with and for children without regard to their race, ethnicity, nationality, religion, or political orientation, actively working for a humane, rights-respecting world order is an obligation that cannot be sloughed off by submitting to the dominant ethic of *realpolitik,* ethnic partiality, or more limited political loyalties. If one has the courage to accept and state publicly the realities of Israel's targeting Palestinian children, then one has the courage to accept that broader obligation. Whether the next century will bring further disasters in the Middle East or elsewhere remains an open question. The point is to try to fashion a new world order in which the next century will bring the promise of an humane human community.

Notes

1. A serious injury is one requiring medical treatment. The figure of 130,216 appears in the December 1993 issue of *Human Rights Update,* published by the Palestine Human Rights Information Centre (PHRIC) in East Jerusalem.

2. The United Nations Relief and Works Agency (UNRWA) reported 28,978 medically treated injuries to Palestinian children fifteen years old or younger between December 9, 1987 and April 30, 1994. Of these, 9,888 were gunshot injuries, 14,351 were injuries sustained during beatings by Israeli soldiers, 4,207 were tear-gas-related injuries, and 532 were injuries from other causes, including burns from explosive devices and being thrown onto burning tires.

3. Article 27, First Geneva Convention (Roberts and Guelff 1982, 282). Article 4 defines Protected Persons as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals" (p. 273).

4. Brownlie (1981, 109). Principle 1 declares that "every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whether of himself or of his family."

5. A number of contemporary philosophers have attempted such justifications, for example, the rule utilitarian approach in Griffin (1984). See also Gewirth (1981).

6. While Canada has now accepted the "right to self-determination" of its first nations, it does not accept the standard interpretation of the formula that implies a right to exercise sovereignty within a designated territory.

7. The myth of Jewish-Arab hostility from "time immemorial" is a sheer fabrication, one of many such that fuel ethnocultural nationalists. (For documentation on ethnic cleansing, see Palumbo 1987, chs. 3–5, 8, 10; Flapan 1987, esp. "Myth Three"; Morris 1987, chs. 2–4, 6, 8; Lilienthal 1982, esp. ch. 3.)

8. The RCBs used by the Israeli Defence Forces are metal slugs encased in hard rubber fired from canisters fitted to the barrels of M-16 or Galil assault rifles. Fired at very close range, RCBs penetrate the body and have been lethal. Like exploding bullets, high-velocity bullets tend to shatter when they enter the body, causing massive damage to internal organs, splintering bones, and scattering bullet fragments. PCMBs are plastic-covered steel spheres fired from canisters fitted to the barrels of assault rifles. Because they are blunt-tipped and light, they can cause wounds similar to those of high-velocity bullets when fired at less than seventy meters. (See Swedish Save the Children Fund 1990, pt. 1, vol. 2, 319–52.)

9. See B'Tselem (1990), especially "Application of the Orders in the Field" and "Summary and Conclusions."

10. See PHRIC's monthly *Human Rights Update,* especially the issues covering 1992 and 1993, which juxtapose eyewitness accounts and Israeli military censored newspaper accounts of the circumstances in which the IDF fatally shot Palestinians.

11. See Graff (1991, ch. 2 and Appendix B), and issues of PHRIC's *Human Rights Update* published between January 1989 and December 1993 in which the context of each Intifada-related death is described. PHRIC listed 271 minors sixteen years old or under fatally shot by the IDF, 10 by Israeli settlers and 6 by collaborators between December 9, 1987, and December 31, 1993. PHRIC also listed thirty-six child deaths from tear gas and ten from beatings during the same period. PHRIC's figures include those whose deaths months later could reasonably be attributed to IDF/settler/collaborator inflicted gunshot wounds. Of 277 minors for whom there are published details in English of the contexts of their deaths from gunfire, 67 percent of those killed in Gaza and 57 percent of those killed in the West Bank were not participating in clashes or in other stone-throwing incidents when they were fatally shot. PHRIC listed 1,036 Palestinians fatally shot by Israeli security forces in that period, 61 killed by Israeli colonists, and 18 by collaborators, for a total of 1,115. Minors therefore constituted roughly one quarter (25.7 percent) of the Palestinians shot to death by Israeli security forces or Israeli agents during that period.

12. See Zureik and Vitullo (1992). This study covers the period from the outset of the Intifada to December 1990. See also the death lists in the December issues of PHRIC's *Human Rights Update,* 1991–93.

13. Child gunfire deaths from IDF ammunition account for 3.4 percent of UNRWA's total for child casualties from live ammunition, PCMBs, and plastic bullets (271 of 7,953 reported injuries). The fatalities constitute a much lower percentage than that of the percentage of children seriously injured by live ammunition, PCMBs, and plastic bullets.

14. UNRWA statistics for nonfatal reported injuries in Gaza between December 9,

1987, and April 30, 1994, for children under age sixteen are as follows: of 23,614 treated for nonfatal gunshot wounds, injuries, beatings, and tear gas, 28.6 percent were shot by live ammunition, PCMBs, or plastic bullets; 2.9 percent were shot by RCBs; 53.8 percent from beatings; and 14.5 percent from tear-gas-related injuries. Another 188 were treated for other injuries (e.g., burns and fractures). The number between ages eleven and fifteen years shot with the most damaging ammunition was equal to 44 percent of the number of older persons shot with that ammunition and was not significantly lower than the share of such injuries sustained by older adolescents and young men. About 12.5 percent of the Gaza population is composed of children between the ages of eleven and fifteen. Similar percentages were reported on the West Bank between December 9, 1987, and December 31, 1990. See Al Haq (1991).

15. UNRWA reported 1,186 West Bank children age fifteen or under out of a total of 4,805 reported medically treated for nonfatal wounds from live ammunition, PCMBs, and plastic bullets, and 1,064 of 2,946 from RCBs. PHRIC, whose reporting mechanisms on the West Bank were somewhat more extensive than UNRWA's, reported 1,738 West Bank children sixteen years old and under treated for gunshot wounds between January 1, 1989, and December 31, 1993, and estimated another 400 were shot in 1988. PHRIC listed total injuries to children sixteen years old or under at 4,960, nine more than the total reported by UNRWA for children fifteen years old or under for a sixteen-month-longer period. PHRIC also estimated that reported injuries constituted between a third and a half of actual injuries.

16. UNRWA listed medically treated injuries from IDF beatings in Gaza as follows: 7,943 between the ages of eleven and fifteen; 3,763 between the ages of six and ten, and 1,000 aged five years or younger, including two infants under the age of one. The GCMHP surveys show that 42 percent of the children surveyed had been beaten by Israeli soldiers and that 4.5 percent of them had suffered fractures from those beatings.

17. PHRIC *Update,* October 31, 1988, 3. See also SCF (1990, 53–62).

18. See the 1989 report "Palestinian Education: A Threat to Israel's Security?" of the Jerusalem Media and Communication Centre, Jerusalem.

19. See PHRIC's "From the Field," February 1993. The practice of rocketing homes in which the IDF claimed armed suspects may be hiding began in earnest in November 1992. Few suspects were found, but by February 1993, nineteen homes in Gaza had been totally destroyed and eighty-five badly damaged, leaving over 1,000 people homeless, most of them children. Figures on house demolitions are reported in PHRIC (1993) and B'Tselem (1989).

20. See B'Tselem (1990b) and PHRIC (1991).

21. B'Tselem (1991 50–74); and Al Haq (1993). B'Tselem's special report on violence against minors includes excerpts from affidavits describing prolonged and repeated beatings "all over the body," suspension, a beating when the child was suspended in a bag, confinement in the "coffin," subjection to death threats, and so on (pp. 17–24). PHRIC (1989) includes affidavits from youngsters similarly treated, and its report on the use of electric shock torture includes affidavits from two fourteen-year-old brothers who were forced to witness each other's torture.

22. For documented case studies of child deaths and injuries when tear gas was fired into their homes or dropped from hovering helicopters, see SCF (1990, pt. I, "Child Death and Injury," 45–66, 117–80, 192).

23. Attacks on hospitals and clinics are prohibited by Article 18 of the Fourth Geneva Convention, which also imposes an obligation on the occupying power to take every precaution to avoid the use of force in the vicinity of hospitals and other medical facilities. See Al Haq (1990, 27–31, 77–80). See also the PHRIC updates of March 1989, August

1990, May 1991, and PHRIC (1990, 12), when tear gas was fired into the maternity ward of Maqassad Hospital where victims had been transported.

24. See PHRIC's list of child fatalities from December 9, 1987, to December 8, 1989, reprinted in Graff (1991, 65–70, 197). In September 1988, after thirty children had died from the effects of tear gas, the IDF issued an order to its troops not to fire tear-gas canisters into homes. The order was largely ignored.

25. UNRWA figures cited here cover the period December 9, 1987, to April 30, 1994. More than half the tear-gas-related injuries to children in Gaza five years and under occurred during the first year of the Intifada: 1,416 of the 1,656 total reported by UNRWA occurred by the end of the second year of the Intifada. The decline thereafter was not due to less frequent use but to remedial measures taken by Palestinians after a tear gas attack.

26. According to PHRIC, settlers shot ten children to death between December 9, 1987 and December 31, 1993. See Graff (1991) and PHRIC updates for details. B'Tselem reported: "The IDF's recurrent failures in reacting to settler violence despite repeated warnings by politicians, reporters, and human rights organizations suggests that these failures are not the exception but part of the IDF's overall policy" (1994, 5). As for the Israeli police, "the scale, character, and recurrence of the deficiencies [in investigating incidents] show clearly that the failure is one of method, not chance. The fact that in many cases—including some involving death—no investigation is opened or files have 'been lost' indicates contempt on the part of the police for the lives, persons, and property of the Palestinians" (p. 6). See also Alternative Information Centre (1994, esp. 8–11); PHRIC's update of November/December 1993; and Al Haq (1991, 57–63).

27. Children were targeted as subjects of summary executions; lethal and seriously damaging ammunition; torture during interrogation; the same trial procedures and lack of legal recourse as their elders; the same conditions of arrest, maltreatment in detention, and imprisonment as their elders. Each of these violates relevant international standards for the treatment of minors.

28. By "unauthorized assaults" I mean (1) the use of violence that violates written regulations or published law and that, because of the publicity surrounding the incident, Israeli authorities felt compelled to investigate; (2) assaults that broke with standard practice and therefore probably violated real (unwritten or unpublished) orders or exceeded the authority of the perpetrator to initiate; or (3) assaults not authorized by Israeli authorities.

29. Every state, as a condition of membership in the United Nations, must undertake to abide by the Universal Declaration of Human Rights and the Charter of the United Nations. The Preambles to both documents explicitly commit member states to recognize the equal worth and dignity of persons and to respect the principles laid down within those documents as required by such a commitment. Israel is also a signatory to the Fourth Geneva Convention and, in 1993, ratified the Convention on the Rights of the Child. Like every other member state, it voted for the General Assembly's Declaration of the Rights of the Child (1959).

30. The articles most frequently cited in connection with Israeli violations of the Fourth Geneva Convention include Article 27 (quoted in the text); Article 3 prohibiting various practices including torture, humiliations, violence to life and person, including murder; Article 31 prohibiting the use of physical or moral coercion against protected persons; Article 33 prohibiting collective punishments; Articles 42 and 43 restricting the use of administrative detention; Article 47 prohibiting annexation of the whole of or any part of the Occupied Territory; Article 49 forbidding the forcible transfer of protected persons from the Occupied Territory for any reason whatever, as well as the transfer of citizens of the occupying power to the Occupied Territory; and Article 50, requiring the occupying power to facilitate the working of all institutions devoted to the care and

education of children. Other frequently cited provisions are Articles 16–21, 32, 53, 55, 68, 72, 76, 78, 146, and 147.

31. See Alternative Information Centre (1995). Of the 86.5 percent of East Jerusalem land expropriated or slated for expropriation by Israel, 34 percent has been used for Jewish settlement, 8.5 percent has been designated for expropriation for future Jewish settlement, and 44 percent has been set aside as "green areas" under Israeli state control. Since September 1993, Israel expropriated over thirty-two square kilometers of West Bank land along the Green Line and further inside Occupied Territory for "green areas," industrial parks, and road construction to link Jewish settlements with Jewish population centers inside Israel proper.

7

Land, Property, and Occupation

A Question of Political Philosophy

Erin McKenna

There is a tiny strip of land. Throughout history it has been a major center of civilization, religion, and strife, a place of creation and a place of destruction. It is the land of the Jews and of the Palestinian Arabs—a land possessed by two peoples, perhaps by none.

In this chapter I examine some historical perspectives on property and its relation to human conflict, explain the relationship of property to sovereignty and international law, and document the history of property law in Palestine and how the Israeli occupation has affected the status of property. One way to examine the apparent conflict between Israel's occupation and the precepts of international law is to explore whether Israel's actions are consistent with the theoretical foundations—specifically, those set forth in the political theories of Thomas Hobbes and John Locke—that purportedly underlie international law and most modern democracies (which Israel considers herself to be).[1] The chapter does not try to resolve the issue of property rights in the Occupied Territories, but points to some of the theoretical sources of the conflict over land that recent peace accords have failed to address.

Property

Throughout history, the concept of property has been the subject of concern and debate. Does property serve to stabilize or destabilize society? Although Aristotle saw it as necessary for the fulfillment of human potential, Plato considered it detrimental to the "good life." Others hold that property threatens liberty, equality, and security inasmuch as it prevents others from gaining the use of something (Macpherson 1978, 5). For example, Pierre Joseph Proudhon saw property as robbery and was critical of those who believed property is a natural right or is created by labor. Proudhon also opposed the belief that property has a divine origin; that God gave humans dominion over divine creation implies no

concept of possession or private property but, at most, free use of the earth's resources. People are basically equal, and imbalances in property create tension, which often rises to the level of conflict. When individuals begin to accumulate resources to themselves, the protection of government becomes necessary to preserve property and control violence. According to Senior (1835, 3–4): "The great object and the great difficulty in government is the preservation of individual property. All the fraud and almost all the violence which is the business of government to prevent and repress, arise from the attempt of mankind to deprive one another of the fruits of their respective industry and frugality." In Proudhon's eyes, this does not legitimize government, but demonstrates the illegitimacy of property.

In contrast, Gottfried Dietze laments what he perceives to be the decline of property. He says that property is natural, exists without society, is necessary for survival and essential for freedom and development. He believes that the nuclear threat has made the defense of property all the more essential, for he believes property instills in people a feeling of responsibility and provides them with a motivation for their preservation. He admits private property poses a conflict between freedom and equality, but he comes down in favor of freedom. Everything except private property is a secondary freedom that relies on the strength of the institution of property. Private property should be the primary concern of the people, and not such issues as freedom of speech, freedom of worship, freedom from want, freedom from fear, racial equality, and equal rights for women.

Hobbes believed that one's right to property is a natural right; even more, it is an essential quality of humans to possess. In the state of nature people possess property in themselves as demonstrated by their right to self-preservation. While there is a limited amount of space and goods, each has a right to possess what she or he "needs" for security. Every individual has as much ability to possess as to dispossess (kill) another. This constant threat effectively eliminates any attempt to cultivate the land, to build more than the shelter that is essential, and to develop knowledge, arts, or science. Society becomes something to be avoided, not enjoyed. In such a condition people are ruled by fear, and life is "solitary, poor, nasty, brutish, and short." The state of nature is a state of war.

Hobbes believed that the right to property, the security to acquire and enjoy the product of one's industry, are primary and essential to the establishment of civilization. The property one possesses in one's self leads to the right of self-preservation. The right to defend one's life, to protect one's self against harm, and to avoid involuntary restraint or imprisonment are not alienable rights. The right to one's life implies the right to defend it against being taken or impaired in any way. Any transference of this right is void because it violates reasoned self-interest. Rational self-interest, however, leads people to give up the liberty of imposing on others in order to gain the secure use and possession of goods. The protection from others is best obtained by investing in one person, or body of people, all power necessary for defense. The sovereign power must be abso-

lute and irresistible if it is "to hold everyone within the limits of peaceful competition" (Macpherson 1962, 95).

One's rights are not given as a gift, however, expecting nothing in return, but in the form of a covenant. A covenant entails trusting the other party to honor a promise; one relies on the other's sense of duty and faith. There is no basis for such trust in the state of nature, and so the formation and honoring of this first covenant depends on fear. It is fear of being harmed that prevents one from inflicting harm; it is hope of future riches that allows one to tolerate another's present riches; it is the expectation of security that causes one to be obedient. All covenants are ultimately entered into because of self-interest and fear, so it makes "no difference, as far as right is concerned, between foundation by conquest and foundation by institution" (Strauss and Cropsey 1972, 379). Whether established by conquest or institution, the purpose of government is to obtain peace and security for its citizens. The only difference lies in the fact that covenants created by conquest are entered into because of fear of the conqueror, while covenants created by institution are entered into because of fear of one's neighbors. Hobbes believed that whether a sovereign is established by conquest or institution, the reason and result are the same. The reason is fear, the result is the formation of a body responsible for security. Whether founded by conquest or institution, the citizens obey their government to obtain peace and security for themselves.

With contracts and agreements, enforceable by a common authority, property is established by law. Property exists in laws, and laws are a reflection of the sovereign's will and authority. Property has gone from being in a person to being of a person, from a natural right of every person to a right established by the will of the government. The will of the government is absolute; it must have the ability to determine and execute that which is in the best interest of the state. Disobedience becomes unthinkable because it goes against one's self-preservation. The sovereign must be an unequal body if it is to keep resistance within controllable parameters. That is all it can do—control, not eradicate.

Though the state of nature in Locke's theory is not a Hobbesian state of war, it has the inconvenience of insecurity. Each person being equal and free in the state of nature has an equal right to appropriate and enjoy the products of his or her labor. Locke presumed that people have a right to those things necessary for preservation, in the amount necessary, as long as there is enough left for others and as long as none that is taken will go to waste. The advent of money provides the means for accumulating property, and it becomes necessary to provide a means of protecting this amassed wealth. People enter civil society, form a contract to create a government, and accept a common judge in order to gain the protection of property. The contract entails rights and obligations on both sides. The people surrender certain freedoms and rights to the government, which in turn is responsible for the protection of these freedoms and rights. The government will act as a judge, and must protect its citizens, but it is contrary to its

purpose to violate anyone's right of self-preservation. It would be legitimate for people to resist a government that threatens their existence, just as it is legitimate to act in self-defense. Further, since Locke postulated the legitimizing cause of government to be the protection of property, he did not believe conquest creates a right to property.

Today, the right to property is seen as a fundamental right in liberal Western democracies, but not as absolute. There are conditions to be met and limits to be maintained. Permits for building and drilling, zoning laws, enforced water rights, and standards for the condition of the air are but a few examples of society's right to control one's use of property. Property continues to be the source of much conflict. We must address its legitimacy and limitations if we hope to achieve peace. The interests of individuals must find a balance; the interests of individuals and society must be reconciled; the interests of nations must coalesce.

Property and International Law

Questions of property lie at the heart of international law. Property serves to define national entities and to set boundaries on the exercise of sovereign power.

> At the basis of international lies the notion that a state occupies a definite part of the surface of the earth, within which it normally exercises, subject to the limitations imposed by international law, jurisdiction over persons and things to the exclusion of the jurisdiction of other states. . . . Territorial sovereignty bears an obvious resemblance to ownership in private law. . . . (Brierly 1949, 142)

A sovereign state has internal authority and is free from obligation to any outside force. The state independently determines its actions; it makes all decisions as to how it will or will not be limited. Each state has the power of self-limitation by which it creates an order most beneficial to itself. At the same time, each state has an accompanying right of self-preservation by which it can protect itself (Korowicz 1959, 23, 37, 45). This right of self-preservation can have the effect of making a state's agreements empty and its obligations void. The sovereignty of states is essential to the establishment of international law; simultaneously, the existence of such law reaffirms this sovereignty. "International law is a creation of States which, in their mutual interest, deemed it necessary to limit, by their own will, and in an objectively binding forum, their sovereignty" (Korowicz 1949, 24). If a state were not sovereign, such self-limitation could not take place; sovereignty is the foundation of international law.

Given this tension between sovereignty and self-limitation, international law must deal with the ambiguous interaction of obligation and independence. It seems difficult to control the actions of an institution that, by definition, rules itself. This ambiguity is usually resolved somewhat in the favor of independence,

though it is never entirely settled. Recognition of, and submission to, international law is voluntary because there exists no institution for its enforcement. Nonetheless, international law is, on a daily basis, adhered to in most actions of a state. This is so because it has its foundation in custom and is for the most part compatible with what a state finds is in its best interest. The authority of the law does not come from its enforceability but from the nature of the law. The enforceability of international law is a function of belief in it; its strength is proportional to the support it receives.

Within themselves, states balance the interaction of private property. International law deals with the interaction of states but must also respect domestic laws. It must recognize each state's claim to territory as well as the individual rights to property within each state. The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948, lays out the accepted international attitude toward property. Article 17 states:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property (Brownlie 1983, 253–54).

Although this declaration itself has no legal power over states, it gains its validity from the UN Charter. It is accepted by the General Assembly as a guide to the interpretation of the Charter, and so is used in the legal defense of the Charter.

The Charter of the United Nations is based on a belief in the existence of certain basic human rights to which all have an equal claim and whose defense is seen as essential to preserve peace and maintain a working international order. In the International Covenant on Civil and Political Rights it is acknowledged that a person's civic and political rights can have meaning only if economic rights are upheld as well. International law is concerned with property rights primarily because balancing property rights contributes to freedom, justice, and peace. The General Assembly Resolution of 1962 on Permanent Sovereignty over Natural Resources declares: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned" (Brownlie 1983, 232–33). While this article gives sovereignty to the state, it also defines how this sovereignty is to be employed—in the interest of development and well-being of the people.

Further, the domestic affairs of a state are not open to the censure of the international community unless they pose a threat to the maintenance of peace. Each state must retain a right to preserve itself at the same time that it accepts its obligations in the international order to maintain peace. Actions of defense are limited, however. They require a necessity that is "instant, overwhelming, leaving no choice of means and no moment for deliberation" and must entail "noth-

ing unreasonable or excessive, since the acts justified by the necessity of self-defense must be limited by that necessity and kept clearly within it" (Brierly 1949, 292). Only property that poses such an immediate threat to the security of the occupier may be taken: "The seizure of enemy property, even in lawful war, should not be considered a blameless practice or exempt from the obligation to make reparation . . . you ought not to seize or hold anything of more value than is justified by the enemy's debt to you, except . . . when required for security" (Grotius, 1949, 366).

Article 53 of the Convention concerning the Laws and Customs of War on Land lays down the same principle of seizure for security only. Article 55 requires that "the occupying state be regarded only as administrator and usufructuary of public buildings, real estate, forest and agricultural estates belonging to the hostile state, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of the usufruct" (Hall 1915, 80). Private property, which is taken on the grounds that it poses a security risk to the occupier, must be subject only to the occupier's administration. No changes as to its content or legal possessor can be made, and when peace is restored, it must be returned to its original condition.

Military occupation of property is legitimate only when necessary for the maintenance of security and peace. The time of an occupation is to be used to create order, but this is to be done in harmony with previously existing laws. In general, occupations are seen as temporary; the occupier must either establish its sovereignty over the territory or leave. The continued existence of an occupation is itself a threat to peace.

In 1970, the General Assembly adopted the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. It is made clear in this document that states should not interfere with the workings of any other state and that all people have the right of self-determination. It also makes the following statement concerning the use of force.

> The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. (Brownlie 1983, 39)

Occupation is a violation of international law that is justified only by an imperative of security, and it should not similarly threaten the security of those it occupies.

Land Policies in Palestine and the Occupied Territories

The basic structure of the land law applied in Occupied Palestine is derived from the Ottoman regime. The Ottoman land code established in 1858 remained in

force throughout both the period of the British Mandate and Jordanian rule, with only a few alterations.[2] Israelis have adopted this code as the basis for determining ownership of property in the West Bank during the past twenty years (Benvenisti 1984, 33). They accepted it explicitly by using the same definitions of land established during the Ottoman period and, more important, implicitly by acknowledging its legitimacy as a legal means of acquiring land for themselves.

According to Raja Shehadeh, two main principles were implemented in establishing the land law of Palestine: (1) what one conquers she or he owns; and (2) one can own only that amount of land that she or he can use. As a land conquered by the Ottoman empire, Palestine was in the hands of the emir, who held the ultimate ownership. Land subject to the emir's ownership became classified as *emirieh,* or *miri* land. Though the emir provided several ways for land to be held by residents, much of it was regained by being left barren or reverted back to the emir because of conflicting claims. Since the Ottomans could not physically take over the cultivation of the land, dispossessing the inhabitants, they chose to allow those already working the land to remain. Muslim residents kept working the land they had worked in the past and paid a tithe equal to one-tenth of their gross yield. The non-Muslims paid a fixed amount, or a tribute proportional to their gross yield, in order to continue cultivating their traditional ground. Since ultimate ownership resided in the conqueror, he could, and did, seize land being worked by the conquered inhabitants when conflicting claims of inheritance arose or when the second principle of ownership was violated. The second of the main principles mentioned above—that one can own only that amount of land that one can use—comes from the Prophet Mohammed. It is written that the Prophet declared that if one leaves land barren for three years, possession is lost. Anyone who will then cultivate the land gains possession of it.

With time, it became difficult to collect the revenue due from those working the land, and corruption was rampant. This system served only the tax collectors' interests and left the government dissatisfied. In 1858, a Land Code was created that would register a legal owner for each piece of land. This owner could then be taxed directly by the government. No longer was land "given in the name of the Sultan," but it was given directly to the person who paid for it, complete with title deed. The emir's ultimate right of ownership became only theoretical. The Land Code established a standard by which claims could be judged and on which settlements could be made. The three classes of land defined by this code are still used as the basis for settling disputes on the West Bank today. Land dedicated to God's purposes is known as *waqf* land. Ownership of this land is given to God and cannot be transferred by any means. A family who dedicates land to such a purpose has the best possible security against the state ever reclaiming the land. *Waqf* land is similar to land held in trust and was quite a popular method of providing for one's descendants. For this reason, quite a bit of the land in Palestine became classified in this way. The land that had previously been given to the conquered inhabitants was classified as *mulk* land—privately owned land. Arti-

cle 2 of the Land Code added to this class land used as "sites for houses within towns or villages, and pieces of land of an extent not exceeding half a dunam situated on the confines of towns and villages, which can be considered as appurtenant to dwelling houses."[3] The third class of land encompasses land that is state owned. The code describes three categories of such land—*miri, matrouk,* and *mawat* land. All usable land not claimed as *waqf* or *mulk* land was considered the sultan's and is therefore defined as *miri* land. *Matrouk* land was any state land used for roads, common pasture, or other public purposes. *Mawat* land is defined as "vacant land such as mountains, rocky places, stony fields . . . and grazing ground which is not in possession of anyone by title deed, nor assigned ab antiquo to the use of inhabitants of a town or village, and lies at such a distance from towns and villages from which a human voice cannot be heard at the nearest inhabited place. . . ." While this land could, with permission, be cultivated, it remained the property of the state. Only the crop belonged to the cultivators. The Land Code not only made it possible for the state to deal directly with those working the land but it guaranteed the state ownership of certain land.

The Land Code could not compensate for a disintegrating authority, however. As the Ottoman empire was breaking apart, the territories over which it had ruled were considered as possible spheres of influence for other nations (Sachar 1969, 7, 12). In 1919, the League of Nations recognized these territories as independent nations with unique identities, but felt that a period of transition was necessary to put these nations on their feet (Mallison 1982, 23). The British Mandate over Palestine was initiated in 1922 to watch over the land and ready it for the establishment of a Jewish state, though without cost of the rights of those already living in the land.

If disputes were to be kept under control and a Jewish homeland created, Palestine had to have a system that could provide proof of ownership for both Jews and Arabs. Surveying of land was begun and disputes were taken up with government officials.[4] Land transfers were monitored by the Land Transfer Ordinance—an ordinance requiring permits for all land transactions. The Mawat Land Ordinance of 1921 required anyone who had cultivated *mawat* (vacant) land prior to this ordinance to notify the government; otherwise they, and all subsequent settlement without consent, would be considered trespassing. This *mawat* land was under the control of the director of lands. State and public lands were further defined, expanded, and put under the control of the high commissioner, including not only roads and shared pastureland, but all mines and minerals as well. Nonetheless, by 1948 almost one-quarter of the arable land of Palestine was under Jewish control.

Unable to balance the interests and demands of both the Jews and Arabs living in Palestine, the British pulled out in 1948.[5] When Israel declared independence in 1948, Jordan took control of the West Bank. All laws in force on the West Bank as of May 15, 1948—the same system for settlement of disputes, the same surveillance of land, the same permits for transfer, the same control of state

land—were to remain so unless formally changed or removed by the government. Jordan did institute a change, which permitted state land *(miri)* to become privately owned *(mulk),* and in 1953, implemented the Law of the Administration and Vesting of State Land, which gave all power over state land to the director of the Land and Survey Department. What constituted state land was not absolutely clear. Generally, the state had a claim to all property recorded in the name of the Treasury, land previously registered as state land, and any property that returned to the state by virtue of its going uncultivated for three years. A 1961 law also claimed unforested *mawat* land as the state's, for the use of those in need of land to cultivate, though this is the only law that utilized the category of *mawat.*

Israel has not annexed the West Bank since its occupation in 1967, but began settlement anyway. "A primary requirement for the Judaization of the West Bank is the possession of land" (Shehadeh 1985, 17). Land was acquired through purchase, by declaring it abandoned, requiring it for security reasons, expropriating it for public use, or classifying it as state land (Benvenisti 1984, 30–32). Changes were made in the land laws to encourage and facilitate Jewish purchase of Palestinian land. Military Order 25 (1967) required permission, for any land transaction, from the Israeli officer who acted as head of the judiciary. Another change affected the ability to acquire land by employing an irrevocable power of attorney, and the benefit of indirect contact made such purchases easier for both parties. The extension of this irrevocable power to ten and then fifteen years through Military Orders 811 and 847 allowed for great amounts of purchasing by Israelis and Israeli organizations to occur. Order 1025 made it possible for Jewish organizations such as *Gush Emunîm* to own land on the West Bank once they had secured the permission of the civilian authority.

Land was made available for purchase by several methods. To obtain the property designated for them, heirs pay not the one-half of a Jordanian dinar previously required, but 4 percent of the property's estimated value (Jiryis 1976, 77). This creates an incentive to let the land go. Further incentive is created by rendering the land useless, at least useless to the Palestinians. This is done in several ways. For instance, in violation of the UN Declaration on Permanent Sovereignty over Natural Resources (1962), Israel controls the water of the West Bank. At the same time that Israel diverts West Bank water for its own purposes, permission to drill new wells and construct new systems of irrigation is denied the Palestinians. This policy promotes the idea of a West Bank dependent on Israel, integrated into its water system; the two become one, not by annexation, but by the necessity of the situation. It also has the effect of creating a great deal of dry, barren land (Ataov 1982, 152–56). Once left uncultivated, the land is claimed as the state's property, by a process to be described later, or it is simply sold because it is useless to the Arab farmer who cannot water it. Land is also rendered useless by Israeli road plans. The objective of these plans is to link the settlements to one another, circumventing areas of Arab settlement in the pro-

cess, and to provide passage connecting the settlements to Tel Aviv and Jerusalem. Building is not allowed within 150 meters of the road, and no thought has been given to the extent of damage caused by the roads. One plan alone will destroy 3,500 dunams of vegetable farms, 1,200 dunams of olive groves, and 350 dunams of citrus. Seven nurseries will have to be moved. An irrigation system that waters 25,000 dunams of land will be eliminated and fifteen artesian wells will be put out of service (Shehadeh 1985, 54). This fragmentation and disabling of land is helping to make land available for Jewish use.

Another way to make land available for Jewish use is the Israeli Absentee Property Law of 1950, which defines as absentee any person who is now in a state with which Israel considers herself at war. Military Order 58 (1967) defines the absentee as anyone not in the West Bank when the 1967 war occurred. Palestinians exiled after the war of 1948 left behind property with an estimated value of 119,483,784 Palestinian pounds, including "extensive stone quarries, 40,000 dunams of vineyards, ninety five percent of Israel's olive groves, 100,000 dunams of citrus groves, and 10,000 shops, businesses, and stores" (Shehadeh 1985, 34). The Absentee Law gave this property over to a custodian. The *waqf* land (land dedicated to a pious purpose,) was considered absentee land, as was 40 percent of the land of Arabs who remained considered "abandoned" and given to the management of the custodian (Shehadeh 1985, "Changing Judicial Status," 101–2). The lands given to the custodian of absentee property can be purchased for use by the Development Authority. This Authority was established by the Development Authority Law (1950) and consists of eight members of the Jewish National Fund and seven Israeli representatives (Shehadeh 1985, 34). Property, which is not absentee property, is often sold as such by the custodian when it is needed for the establishment or extension of a settlement (Shehadeh 1985, "Changing Judicial Status," 101). To be declared absentee, Military Order 58 requires only that ". . . the custodian has certified in writing that a body of persons is an absentee,' or that 'some property is absentee property." This same order states that

> any transaction—and by "transaction" is meant sale, transfer or any other form of disposal—made in good faith between the custodian and another person, in respect of property which the custodian considered at the time of the transaction to be vested property shall not be invalidated and shall remain in force even if it is proved that the property was not at the time vested property. (Jiryis 1976, 85–86)

By 1984, the custodian had seized 430,000 dunams of land and 11,000 structures by way of this order, 25,000 to 30,000 of which has been leased to Israel (Benvenisti 1984, 30).

During the Arab revolt against the British rule in 1936–39, the British issued emergency regulations that gave the government the power to do anything it felt was necessary for general security and allowed no means of appeal. These regu-

lations, used against both Arabs and Jews, were kept in force and continually amended until they found their final form in 1945. Both Jews and Arabs considered these Defense Regulations a violation of human rights. Dr. Bernard Joseph, a lawyer with the Jewish Agency said,

> A citizen should not have to rely on the good will of an official, our lives and our property should not be placed into the hands of such an official. There is no choice between freedom and anarchy. In a country where the administration itself inspires anger, resentment, and contempt for the laws, one cannot expect respect for the law. It is too much to ask of a citizen to respect a law that outlaws him. (Jiryis 1976, 9–12)

These regulations remain in force in the West Bank under Israeli rule.

The Defense Regulations "give the authorities extensive and extremely rigorous powers, and their enforcement can destroy individual freedom and individual rights to property almost completely." For example, Article 119 gives the military governor the power to confiscate any building or piece of land believed to have been used in connection with any crime or is owned by anyone who has acted unlawfully, and Article 125 gives to the military governor "the power to proclaim any area or place a forbidden (closed) area . . . which no one can enter or leave without . . . a written permit from the military commander or his deputy" (Jiryis 1976, 16–17). Over 1 million dunams—53 percent of the land Israel has seized on the West Bank—has been taken by use of this article (Shehadeh 1985, 37). There is no method of appeal for those losing their land under this article, yet it is considered a "legal" means of acquiring property.

Article 52 of the Hague regulation concerning military occupation states the following: "Requisition in kind and services shall not be demanded from local authorities or inhabitants except for the need of the army of occupation" (Benvenisti 1984, 31). An area can be closed if it is needed for training purposes, is a strategic location for the army, or the inhabitants are considered a security risk. Can this land then be used to build permanent settlements? While settlements have been built on land taken in this way, the Elon Moreh case of 1979 made such settlement difficult. Seven hundred dunams of land, within the jurisdiction of Rujeib village, had been "seized for military purposes." The process of actual settlement was begun before any of the owners of the land had been notified of the action. The order of seizure was made known to the *mukhtars* (village elders) of Rujeib at eight o'clock in the evening of the day settlement had begun, but the written announcements were not to be passed to owners until three days after the settlement of Elon Moreh had been started (Shehadeh 1985, 18–20). This action gave the landowners cause to take their case to the Israeli High Court.

This case gains its importance from the settlers' defense. They did not argue that the settlement was necessary for security reasons, but they claimed they had the right to the land because it constituted part of Eretz Israel. The Court was

convinced that the settlement was serving an ideological purpose and that no question of security was involved.[6] It was also decided that the permanent nature of such a settlement violated tenants of international law. "The military government cannot create in its area factors for its military needs which are designed ab initio to exist even after the end of the military rule in that area, when the fate of this area after the termination of military rule is still not known." The Court ruled that seizure of private property for such purposes cannot be allowed. It also made it clear when it would and would not intervene in the future:

1. Only seizures of privately owned land could be prevented or reversed by recourse to the High Court.
2. The High Court was not prepared to intervene in any disputes over ownership status of land. (Shehadeh 1985, 20–21)

The search for property not privately owned soon became a process for creating such property. The method was provided by the High Court, the motive by the government. It was suggested that instead of snatching at pieces of land obtainable under the Law of Absentee Property, the government could claim "all land as national patrimony, except what the (Arab) villages can prove is theirs under the narrowest interpretation of the law" (Benvenisti 1984, 32). Military Order 59 (1967) had already given the military government control of all the property belonging to the Jordanian government. Such land is estimated at 750,000 dunams, though the number of buildings is not specified (Benvenisti 1984, 30). Order 59 had been amended by Military Order 364, by which land was considered as state property if it was claimed as such by the government, and it was up to the party protesting this action to prove ownership (Shehadeh 1985, 22).

Military Order 192 suspended the settlement of property disputes and the surveying of the land that had gone on under British and Jordanian rule (Shehadeh 1985). Only one-third of the land had been addressed by this process, and the rest lay in uncertainty (Benvenisti 1984, 32). What records did exist were those in the tax offices. Since the people being taxed reported only what amount of land they were to be assessed for, these records are inconsistent. Some people possessed only Turkish registration of their land, while others, having gained their land by the right of cultivation, had no registration at all. (Shehadeh 1985, "CJS," 109–10). In 1980, the government of Israel began the implementation of its new concept of state land: "By virtue of the sultan's ultimate (but theoretical) ownership, all unregistered and uncultivated land is claimed as state land" (Benvenisti 1984, 34).

The law made acquisition of almost any and all land possible. In addition, Military Orders 1015 and 1039 forbid the planting of fruit trees or vegetables without permission (Benvenisti 1984, 34). Permits are required for building any

structure, drilling wells, and for using water for agricultural purposes (Shehadeh 1985, 53). Palestinians whose land is in an area closed for military purposes cannot get to it to plant or harvest it. It becomes uncultivated and therefore the state's. Land taken for public purposes, such as roads, is so carved up that it becomes difficult to work and almost impossible to water. If it is left to waste, this too is claimed by the state. Not only are there many ways to create "state land," but some Israelis argue that there is already existing state land just waiting to be claimed. Israel has claimed land classified as *miri* to belong to the state by virtue of the sultan's right; it considers *matrouk* land to be state property due to its use for public purposes; and it claims *mawat* land by virtue of its disuse. (Shehadeh 1985, 24)

Prior to 1967, land registered as state land, including land taken for public use or security reasons, constituted only 13 percent of the West Bank. The state ownership of land classified as *miri, mawat,* and *matrouk,* though held by the sultan (which transferred to the high commissioner and then to the Jordanian government) was considered theoretical only. The Jordanian government did not change this theoretical status of ownership. It was never

> the practice of the present government in Jordan, to consider all lands except land falling in the wakf and mulk categories as state land. It is, therefore, correct to conclude that in June 1967 state lands comprised those lands which were already registered in the name of the Jordanian government by the operation of one or another of the laws in force in Jordan which allowed the state to acquire land for public or military purposes. (Shehadeh 1985, 25)

In July 1967 Military Order Number 59 redefined state property:

1. All property which on the specified date (i.e., June 6, 1967) pertained to one of the following:
   a. the enemy state,
   b. a juridical body in which the enemy state possessed any right, whether directly or indirectly, and whether this right referred to control or not;
2. Property which was registered on the specified day in the name of one of the above two;
3. Property in which one of the above two was partner on the specified date;
4. Property in respect of which on the specified date one of the two mentioned in 1 above was either an owner in partnership, or a registered owner, or was in possession (Shehadeh 1985, 26).

This order reclassified hundreds of thousands of dunams of land, as state land, which has subsequently been used for Jewish settlement. It is interesting to note that the concept of "state land" has implicit in its definition that it be held for

exclusive Jewish use (Shehadeh 1985, 27, 49). Is Israel justified in occupying and appropriating land in this way?

Hobbes, Locke, and the Israeli-Palestinian Conflict

The theories of Hobbes and Locke share much in common. Both start with the assumption that individuals are free, autonomous, and possessive. Such individuals come into conflict with one another over property when one desires the same goods as another, and since both Hobbes and Locke focus on resolving conflict over property, and offer different resolutions, they are applicable here.

If property is a natural right, as Hobbes believed, then Palestinians can claim that Israeli expropriation of their land is a taking of something to which they, the Palestinians, are entitled. If the power of a sovereign is absolute, however, then the Israeli government should be able to take any steps it deems necessary for its preservation. Can these conflicting claims be reconciled?

Assuming that Israel constitutes a conquering sovereign (even though it has not officially annexed the territory of the West Bank), it should have absolute power. According to Hobbes, it is within the sovereign's power to decide what is required for peace, when war is a valid plan of action, and by what rules a state will be bound. It is well within the jurisdiction of such a sovereign to determine its security needs. Appropriation of any land so needed is not a legitimate extension of this right, but a right in itself. The sovereign has absolute power and authority. Similarly, it may take land for roads, irrigation systems, or settlements. On this view, Israel's right is absolute because Israel is the conquering sovereign power. It is the unequal body with the strength to force its will and create obedience through fear—both legitimate acts of sovereignty according to Hobbes. Israel's aim being to obtain land, there is no means of doing so that is not within its power.

What of the Palestinian resistance to the Israeli occupation? Hobbes's theory provides no protection from the sovereign because there is no need of it. On his view, the Palestinians should find it expedient to bow down to the will of the Israeli government in order to gain their continued existence, even if that existence is one with no protection of human freedoms and rights. Palestinian resistance must be seen as self-defeating and irrational.

Is there any view, consistent with Hobbes, in which such resistance makes sense? Hobbes declares that it is part of human nature to possess. As long as the Israelis deny the Palestinians the ability to possess—their land, and thereby themselves—are they not frustrating human nature? One could say that the resistance of the Palestinians is in some sense forced by the actions of the Israelis, even if these actions do not legitimize the resistance. On the other hand, what if the occupation (which has stopped short of official annexation) does not give to Israel the standing of a sovereign in relation to those it has occupied? The situation then is one closer to the state of nature—two people fighting for their

independent preservation and so legitimized in whatever action they choose to take. As individuals in the state of nature find themselves at war with all other individuals, it seems that Hobbes's theory leaves every sovereign nation in a state of war with every other sovereign nation. It is justified, then, for both the Palestinians and the Israelis to ensure their security by any means they determine necessary. Not only do both sides need to resist, they are required to increase their strength in order to maintain their existence.

Such independent and warring nations are certainly a threat to peace. This aspect of Hobbes's theory demonstrates why international law finds the continued existence of an occupation especially threatening to the preservation of order and security. An extension of Hobbes's theory from the individual to the individual sovereign shows the necessity of some international authority to which each state is obliged. Resistance to such an authority could not be prevented, but just as with an individual sovereign, this would not threaten its legitimacy. It is this possibility of having a sovereign who is not absolute and independent, but conditional and accountable, that emerges from the theory of John Locke.

Locke differentiates between a government founded by the free will of the people and one created by force. No government can gain legitimacy by conquest. "Every Man is born with a double Right: First, A Right of Freedom to his Person, which no other Man has a Power over, but the free Disposal of it lies in himself. Secondly, A Right, before any other Man, to inherit, with his Brethren, his Father's Goods" (Locke 1960, sec. 190). If an individual decides to leave the government under which she or he was born, it is understood that the individual also quits the right she or he had to property. This is not the case when a land is conquered, however.

If all rights of a government must come from the consent of the people, not from conquest, then one who conquers in an unjust war gains no rights over the conquered, while one who conquers in a just war is limited in the power it has over those conquered. The conqueror "has an Absolute Power over the Lives of those, who by an Unjust War have forfeited them; but not over the Lives or Fortunes of those, who engaged not in the War, nor over the Possessions even of those, who were actually engaged in it" (Locke 1960, sec. 178). In a just war ". . . he has an absolute power over the Lives of those, who by putting themselves in a State of War, have forfeited them; but he has not thereby a Right and Title to their Possessions" (Locke 1960, sec. 180). All that can be expected is that the losses of the conqueror will be made up for, though this too is a limited right (Locke 1960, sec. 182).

A conqueror's preservation entails the preservation of those conquered. There exists no right for the conqueror to take so much that the lives of the conquered are put in jeopardy. The rights of children to inherit that which is rightfully theirs must be respected. Though Locke himself saw that this limitation was contrary to actual practice in the world, he persisted in his advocacy of this limitation, which has now been implemented in international law.

> International law has come to recognize the rights of private property in war, for even though it may be impossible for owners of property to continue to enjoy their rights in a country under enemy occupation, these rights are not nullified thereby, but may be resumed on the restoration of peace, an occupying power may establish a "custodian of enemy property" in conquered territory to safeguard the interests of the owners. (Gough 1973, 99)

How do current Israeli policies fare on Locke's theory? The Elon Moreh case discussed above serves well to demonstrate that an occupier indeed has limited power over private property. The High Court ruled that the seizure of such property could not be allowed for the purposes of permanent settlement or use. Permanent alterations of the structure or definition of ownership, in an occupied territory, violate international law. Israel's claim that it is not an occupier, though its status as liberator is accepted by few, is a way of circumventing this illegality.

Locke admits that in a "just war" the conqueror has power over the lives of the conquered and so can command their obedience and implement their subjugation. He has, however, no right to the property of the conquered, no matter what the security risk involved might be. Conquest gives one physical control over land but, without the consent of the people, it does not give right to government. Since Locke postulates the legitimizing cause of government to be the protection of property, and indeed sees property as eventually requiring the presence of government, he cannot find conquest as a means by which a government can control property.

One must also contend with the rights Locke proposes for the wife and children. Not only does the notion of imposing an inheritance tax on the wife and children come under criticism, but the idea of ruling over them is cast out entirely. Unless a conqueror can, within the first generation, win over the support of the people, no rights over them have been gained. This consent must be freely given, or the government's power is not legitimate. If a government is freely formed, the children subsequently born under it are looked upon as joining in that consent unless they protest by leaving. Such a protest, however, does not affect the legitimacy of the government in any way. The government's legitimacy is affected if it fails to act according to reason. Rational self-interest requires one to act in such a way as to promote self-preservation and the lives of those one is responsible for. "The Conqueror has a Title to Reparation for Damages received, and the Children have a Title to their Father's Estate for their Subsistence. For as to the Wife's share, whether her own Labor or Compact gave her a Title to it, 'tis plain, Her Husband could not forfeit what was hers" (Locke 1960, sec. 183). Locke contends that property need never be given over to the conqueror. The children and wives have a right to the property as a means to their preservation. For this reason, Israel's appropriation of water rights, and its plan to create thereby a dependent West Bank, is a violation of Locke's concept of the rights of the conqueror and the conquered. The control of water, the expropriation of land, the destruction of property (homes, farms, etc.)—these

practices are referred to as "secondary genocide" (Hallaj 1982, 98). This Locke forbids.

That Israel sees itself as a conqueror with the right to enforce its will on the Palestinians is evidenced by the following passage from Meir Merhav, a staff member of the *Jerusalem Post:*

> The recent years of occupation, however, began to turn the colonizers into colonialists. We had subdued another nation and began to use it as a source of cheap labor and as a market for our wares. . . . The land on which they [the Palestinians] live is to be carved up by a grid of roads, settlements and strongholds into a score of little bantustans so that they shall never coalesce again into a contiguous area that can support autonomous, let alone independent, existence. (*Jerusalem Post,* June 29, 1979)

Israel has not only cultivated land others have left. It has created a situation that yields up such land by preventing people from exercising their own right to property and imposing on them an absolute and arbitrary power under which they have no appeal. This betrays Locke's view of the purpose of government and so delegitimizes Israeli rule. In so doing, Israel threatens not only the existence of the Palestinians but its own existence as well. Rabin's assassination demonstrates one way in which Israel's policies undermine its security. If the government exercises illegitimate power to gain its ends, individual citizens will come to see such power as legitimate and available to them. Violence will engender more violence; lawlessness will engender more lawlessness. The views of those who assassinated Rabin, and those who support his assassination, are the logical extension of Israel's policy of occupation.

Locke builds the right of rebellion into his theory of government. The Intifada is seen by many as a justified rebellion, for inasmuch as the government of Israel threatens the self-preservation of the Palestinians through land appropriation, they have the right to resist. Further, since Israel's settlement policy has engendered escalating violence from both Palestinians and Israelis, then the appropriation of Palestinian land threatens the self-preservation of Israelis. It is a policy that betrays Locke's view of the purpose of government—it fails to protect property and, so, fails to achieve peace.

Where Are We Now?

While most of the international community has condemned the occupation as a violation of international law, there have been those who defend its legality. The argument has been made in several ways: (1) once the British left, there was no legitimate sovereign, so the Israeli presence is not an occupation of anyone else's territory; (2) the occupation is necessary for self-defense and so allowable under international law; (3) there was no forced mass exodus of people in the territories so it was a legal occupation (Mallison and Mallison 1986, 153–276). These

defenses have had their effect. The appeal to self-defense has been particularly persuasive in the United States, gaining Israel substantial and sustained monetary support.

Nevertheless, there is mounting evidence that the occupation does not serve Israel's security interests. The Intifada is one example, Rabin's assassination is another. Further, what Israel is doing is a violation of international law.

> The occupying state must preserve the laws which were previously in force in the area occupied. International law and the relevant conventions concerning the take-over of land and the transfer of citizens of the occupying state into the occupied areas are very clear: "Everyone has the right to own property," declares Article 17 of the Universal Declaration of Human Rights. "No-one shall be arbitrarily deprived of his property," it continues. Article 23(g) of the Hague Regulations forbids the occupying country "to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war." Article 49 of the Fourth Geneva Convention declares that "the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies." (Shehadeh 1985, 42)

An occupying power is not to change the legal structure or functioning of the state it occupies. Israel has drastically changed the legal structure and functioning of the territories it has occupied.

Specifically, UN Resolution 242 emphasizes "the inadmissibility of the acquisition of territory by war" and asks that there be a "termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area." The Declaration of Principles (September 1993) explicitly accepts and seeks to achieve the peace called for in Resolution 242. While these principles seek to establish Palestinian self-rule, however, they put off addressing the question of the settlements. In other words, they fail to address the issue of "territorial integrity." From the standpoint of Hobbes and Locke (classical liberalism), they thereby fail to respect sovereignty. The issue of self-rule cannot be separated from the issue of territorial integrity, and peace is not possible unless territorial integrity and the settlements are addressed.

Settlements originally intended to carve up Palestinian land and make it available for Jewish use now face the prospect of isolation and a Palestinian police force. This makes the settlers nervous; they arm themselves; violence escalates. It would appear that the uncertainty of the future of the settlements was the main motivation behind Rabin's assassination. It is not only the settlers who are nervous, though. Many Palestinians see the failure to address the issue of the settlements as a way to continue with the *de facto* annexation of the Occupied Territories; they see the promise of self-rule as a false gesture to give the Israelis more time to settle the territory.

Writing in February 1994, just five months after the Declaration of Principles was signed, Edward Said said,

> Already the whole of the West Bank and Gaza has been divided into ten or 11 cantons by some 57 road barriers. Rabin's government is proceeding with a $600–million road system for the occupied territories; it is to be controlled by Israel and will connect the settlements to one another, to Jerusalem and to Israel, bypassing Arab areas and completing the territories' cantonisation. Meanwhile, land confiscation continues at a stunning pace; more than 9,000 acres in the West Bank were forcibly taken and declared Israeli military zones in December alone. (Said 1994, 19–20)

The Declaration of Principles allows a transitional period of five years. Negotiations regarding permanent status (this includes addressing the settlements) must begin no later than the beginning of the third year. Yet if the building of roads and the seizing of land continue in the interim, there may not be much room for negotiation by the time the negotiations begin.

The failure specifically to address the issue of Jewish settlements leaves the future of settlements an open question. The ending of the settlement policy is central to any real possibility for peace. The settlements result in Israel's *de facto* control of the land. Not only do the settlements violate international law and the rights of the Palestinians; they also threaten the self-interest of Israel inasmuch as they pose a continual obstacle to peace.

Notes

1. My use of the theories of Hobbes and Locke is not meant to indicate an uncritical acceptance of, nor endorsement of, their views. In other articles I have discussed some of the shortcomings I see with these theories in particular and liberal individualism in general. Some of these problems include an overemphasis on individual autonomy and the implicit exclusion of women from the political sphere. For the purposes of this paper, however, I leave these concerns aside. I believe that liberal individualism is (whether it should be or not) the theoretical perspective which dominates international law and so provides an important point of reference from which to view the Palestinian-Israeli conflict. While the critiques of the theoretical perspective are relevant to its application they are beyond the scope of this paper.

2. All information concerning the Land Code of the Ottoman period is drawn from Shehadeh (1982).

3. A dunam is equal to 1,000 square meters.

4. Information concerning the status of land laws during the British Mandate and during Jordanian rule can be found in Shehadeh (1982). Only specific quotes will be cited.

5. For an interesting and informative discussion of the Land Transfer Ordinance and Britain's attempts to limit the Jewish appropriation of land, see Stein (1984).

6. The settlements built in the Occupied Territories are part of the push for the establishment of Eretz Israel. The struggle for control over the land is central to the Israeli-Palestinian struggle. The land Israel has, it has conquered. The rest is under its power, so why does Israel not take it? To annex the area of the West Bank would greatly increase the number of Arab "citizens" within Israel. There is a fear that the Arabs could, in the future, constitute a majority and radically alter the character of Israel The last of the land to be "liberated" is too "Arab" to do so directly. It must be done indirectly then. To create a strong Jewish presence in the West Bank is viewed as the *de facto* establishment of Eretz

Israel. To achieve this dream, "we should spread a net of farmer colonies across the land which we want to acquire. When one makes a net, first one must hammer in the spikes on which the net is to be stretched. Then one spans strong ropes between these spikes. Then one weaves strong strings between the ropes, thereby producing a rough net which can then be refined with finer thread when needed. . . . We have to acquire large pieces of land in all parts of the country—and, wherever possible, whose soil and water supply assure productive agriculture" (Metzger et al., 1980, 19).

With this goal in mind, some land was purchased. While under Ottoman rule, it was possible for the Zionists to buy land from absentee landlords living outside Palestine. It was at times difficult, however, to get the land registered under Jewish names. In 1921, with Palestine under the control of the British Mandate, the Land Transfer Ordinance had been passed. It required a permit for all land transactions so as to establish records of purchase, and settlement of disputes was begun so that title could be given to that which was bought. By 1948, only 6.6 percent of the total land of Palestine was legally in Jewish hands, though this constituted about one-quarter of the arable land. Today 85 percent of Palestine is state (Jewish) owned (Quigley 1990, 174).

8

Personal and National Identity

A Tale of Two Wills

Sari Nusseibeh

Foreword

Consider the following: When one of my ancestors, Burhan al-Din al-Khazraji, son of Nussaibah, once the Great Kadi of Jerusalem, was laid to rest near the Mamelukan mausoleum in Mamilla in A.D. 1446, he presumably had little or no notion of, let alone any identity-affiliation with, the Palestinian nation. His heart and mind were set on the Moslem world, and the Islamic nation. Just over five hundred years later, when my late father, Anwar Nusseibeh, also one-time governor of the District of Jerusalem, was laid to rest at one of the entrances to the Haram, he already had developed a notion of, but yet no great sympathy for, the idea of such a Palestinian nation as an entity distinct from the Arab people. Yet a Palestinian nation had in the meantime been born, which is today feeling its way in institutionalized self-determination. The following chapter is an attempt at understanding how such a nation came to exist, in one sense of "how," and what some of the implications of its existence are. This is, then, a philosophical account of a live political history.

Ibn Khaldun and 'Asabiyyah

Writing in the fourteenth century about the emergence of human civic associations, Ibn Khaldun introduced his well-known theory of civic association in terms of *'asabiyyah*—the inherent natural instinct to prevent *(yahulu)* a misfortune or injustice *(dhulm)* to a blood relative. In introducing this concept, Ibn Khaldun may not have been seriously transgressing Aristotle's own emphasis on the role of affinal ties in the formation of such associations—an emphasis made with Plato's "static" and theoretic model of the Republic in mind.[1] Nonetheless, Ibn Khaldun articulated his presentation of 'asabiyyah so as to alert his readers to a very special role he was ascribing to this element, a role that was

intricately tied up with his sense that he was presenting us with an entirely new science, a science of the study of the laws and mechanisms governing civic associations, their existence and evolution.

Civic associations, as expressions of human associative or cooperative behavior, have a genesis that can be traced to natural primary impulses or human instincts. These primary impulses are not unidimensional. Like Aristotle, Ibn Khaldun underlines the importance of "egoistic" motivations, such as self-defense and the need for sustenance, which make associative behavior necessary. But even more basic than this aspect of instinctual motivation, Ibn Khaldun more assertively contends that a human association can be understood or explained only by reference to 'asabiyyah. Any cooperative activity *(kullu amrin yugtama' 'alayhi),* including that whose purpose or function is defense *(himayah)* or the procurement of needs *(mutalabah),* has 'asabiyyah as its springboard *(biha takunu).* This altruistic component in the explanation of an association clearly has radical ramifications on the entire edifice of any theory on social contract. At the basic level, we are told, one human's bond with another springs primarily from the instinctive sentiment of caring that the one has for the other, rather than from the instinctive caring one naturally has for oneself. But the fulfillment of this second need cannot be accomplished except through such a basic bond, and in this sense cooperative behavior is said to be necessary.

Extending his observations to account for formal civic associations, Ibn Khaldun switched focus to the concept of "rulership" or authority *(mulk).* This quality of enforcing edicts and judgments, primarily aimed at protecting individuals from each other in larger associations, is distinguishable from mere "leadership" *(ri'asah),* which does not imply the powers of enforcement. The ruler (government) can successfully enforce its edicts only if his (its) rulership is derived from the association itself through the existence of a strong intracommunity solidarity that develops into an institutionalized form of the association. The Khaldunian argument here is that it is 'asabiyyah that gives legitimacy to government, and therefore to measures taken by that government. When such a bond is absent, the entire polity cannot be described as a proper civic association.

While the locus of 'asabiyyah is primarily the circle of kinship, it changes as associations become larger, whether through demographic or territorial expansion or co-option, primarily shifting to the ruler in whom the well-being and safety of each member of the group is vested. What begins its genesis as the care an individual has for a blood relative reaches full political bloom in the framework of an authority whose function is to institutionalize this care. To the extent 'asabiyyah exists, there exist associations; to the degree it exists, associations are either strong or weak. True, the evolution of the life of an association is itself describable in economic and cultural terms, and it obeys a cyclical pattern of growth and demise, Ibn Khaldun contends. But if we today can describe the different economic phases of the association that Ibn Khaldun refers to in this

context as superstructural or phenomenological modalities, we can then describe 'asabiyyah perhaps as an intrinsic or infrastructural modality.

Social Contract and Altruism

I wish now to make brief references to two other areas, first to the classical social contract theories espoused by such figures as Locke, Hobbes, and Rousseau; and second to the current debate on egoism and altruism in the sociobiological literature.

Despite the significant differences between them, it can be argued that the classical social contract theorists, as they searched for an explanation for the hypothesized transformation into the civil state, converged on what might be called the egoistic component of human instinct. The hypothetical unencumbered, atomistic selves in the state of nature are prompted to engage in an association in order to procure a right or a requirement for themselves: either to ensure their own security or to ensure and legitimize their own security as well as that of their possessions or to legitimize and institutionalize their natural endowment of freedom.[2] Such a perspective of human nature and motivations has inevitably led to the unleashing of a host of issues having to do with the individual and society, rights and responsibilities, "the right" and "the good." If a prior cause has to be sought for an association, and if this cause is to be found in the egoistic motivation of an individual, would this not immediately ascribe primacy to the individual, thereby stultifying the role of the community—and hence, and in a roundabout way, the individual's own good?[3] Presaging with uncanny insight what he considered to be the "irrelevant" debates that would be engendered by such questions, John Dewey questioned the very foundations used by the classical social contract theorists and their followers: rather than look for prior causes in the psyche of unencumbered selves to account for the institution of Community (with a capital "C"), we would be better advised to consider the tangible, trial-and-error consequences of this or that association on the lives of individuals if we are to be able to account for the measure of an association's success or failure, or for its continued existence or decline.

The general debate on individual and collective roles and rights continues, primarily triggered by Rawls's *A Theory of Justice* and Sandel's critique of it, and still to some degree fed by the literature on social contract theory. Concomitant with this debate in political theory wc find related discussions in widely different fields, such as anthropology, ethnology, and biology, debating the comparative roles of egoism and altruism in understanding human associative behavior. Many sociobiologists now concur that cooperation is favored by natural selection, which immediately seems to highlight the role of altruism in human evolution. But many scientists "reduce" altruism to another brand of egoism. Thus W.D.Hamilton (1964) seeks to explain the natural selection of altruism in terms of "genetic investment," where altruistic behavior evolves generically with self-reproduction "in mind" but within the parameters of family genetic pools.

Although Trivers (1971), in proposing his theory of reciprocal altruism, criticizes Hamilton for having taken altruism out of altruism, he nonetheless agrees with Hamilton in understanding altruism as egoism, differing only with regard to defining both the subject as well as object of altruist behavior. For Trivers, the prompting cause for the display of altruist behavior is the perceived long-term benefit for the specific organism exhibiting that behavior, and the object targeted by such behavior is not limited to the family genetic pool; indeed, it need not even be limited to the same species.

One might well ask how can an act of altruism, needed for successful association, really be an egoistic act? The answer, Ruse (1993) tells us, is that a constitutive part of altruistic preprogramming is self-deception. This is not simply a deception concerning our motivations for action but, more fundamentally, a deception concerning the presumed objectivity of our moral beliefs. I do not know what would constitute the appropriate tool to investigate the validity of this "translation thesis," according to which altruist behavior is seen as a deceptive form of egoist behavior. It certainly sounds strange to argue that in caring for another we have to deceive ourselves into believing that we care. It seems obvious that if we deceive ourselves successfully to care or that we care for someone, then we simply end up really caring for that person. In the area of feelings, deception is a self-destructing mechanism, as the later Wittgenstein might have said.

If so, there may be room here for a distinction between two kinds of altruist behavior, a "genuine" Khaldunian kind and a "purposeful" kind that one way or another can be reduced to egoism. Whatever the case, genetically we seem to have a concurrence among scientists dealing in this area on two interrelated principles: (1) there is a distinction, at least on the ostensible cognitive and behavioral levels, between egoistic and altruistic instincts; and (2) it is primarily by an appeal to altruist behavior (without commitment to which of the two above-described kinds the reference is being made) that human associations can be explained. The first principle recognizes that there is a manifest difference, both in terms of how I feel as well as in terms of the individual I feel it toward, between the act of saving myself and that of saving someone else from drowning. A "purposeful" (rather than an "innocent") interpretation views the impulse prompting an ostensibly altruist act (for example, to seek or ensure the procurement of others' rights and needs) as the elementary sense that such an effort is a necessary condition for the procurement of such needs and rights for oneself. Such a sense can be argued to be "elementary" or "basic" to practical thought, and a fuller exposition of its rationale and mechanism can perhaps be sought in a Rawlsean-type hypothesis where an agent's instantiation of his or her self-interest is predicated on a prior cognitive formulation of the general (blind or "veiled") kind ("for all x"), rather than a direct step revealed by an existential or a self-referential statement.

Such an altruism is "purposeful" for obvious reasons. It cannot be dismissed,

since it is appropriate in explaining areas of human behavior where personal identity is viewed through the perspective of national identity (see the discussion of interrogation below). Nevertheless, while some acts of altruism can be explained in terms of "self-instantiation," where self-identity or self-interest comes to be viewed through the medium of others, the Khaldunian-type altruism can be explained only "innocently," where the fulfillment of the need of "others" or of "someone other" constitutes the primary target. The distinction is, perhaps, between sense and sensibility, the latter being a genuine concern for others.

Unlike the classical social contract theorists, Ibn Khaldun's contention seems to be that we have to distinguish between two kinds of necessary conditions to understand the genesis of human associations. One kind of necessity is "functional" or "consequential" (even "rational"), inasmuch as an association's existence and history is a function of procuring those needs, both egoistic and "altruistic," for which its members perceive it as existing. The egoism part relates to what the individual seeks for himself or herself, while the "altruist" part relates to what the individual seeks for fellow associates. In this second case, the association is to be regarded or understood as a self-serving medium, whether politically, epistemically, or psychologically. But underlying this functional layer an even more essential ingredient in the association's cohesion can be found: regardless whether an association procures the goods an individual desires, he or she is already instinctively bound up with others, through a basic sentiment of care or solidarity, 'asabiyyah. This "innocent" sentiment is both essential and manifest at a primitive as well as at the more developed levels of association.

We cannot yet claim to have a moral thesis here. Ibn Khaldun was simply intent on investigating the mechanisms that govern the ontogenesis of associations. But it is clear that an account of human nature and action that takes cognizance of primary impulses that genuinely prompt action on behalf of others as well as behalf of oneself would seem to be far more realistic and whole than one that simply stops at self-serving impulses at the primitive level. Appropriately developed and elaborated, these two distinct and distinguishable types of instincts or impulses may be used to construct a holistic theory showing the complementarity of the inclination toward the fulfillment of freedom as a capacity for self-enhancement and the inclination toward the fulfillment of this capacity to other members of the association, that is, toward equality. Such a theory would equally adequately explain the complementarity of right and duty, of the private and public selves, of individual and national identities.

On this thesis, the sense of care one has for others, of duty, responsibility, and obligation, would be as constitutive of the individual's identity as its sense of natural endowment, rights, and personal needs. In sum, if the Khaldunian thesis on an association's ontogenesis is well founded, it would inform the liberal/communitarian debate on intracommunity relations. Its roots in the behavioral, rather than in the prescriptive, sciences lend it perhaps more ready for validation.

Identity

There are some lingering questions from the fields of international law and relations. Even assuming that we have hit on the golden mean as far as the individual's relationship to the community is concerned—a relationship of checks and balances by which the dreaded sacrificial motif expressed in excessive patriotism or self-denial is held in balance by the egoistic impulse, and in which, conversely, excessive self-aggrandizement is checked by the altruistic impulse—we will still not be any the wiser as to the specificities of that twilight zone of interaction between individual and association, or as to what constitutes community in the first place.

In what sense does an association actually exist ? Do associations exist analogously to the way individual human beings exist? And if they did exist in one manner or the other, would it follow, in accordance with the Quinean dictum of "no entity without identity," that such collective entities would indeed be in possession of their own identities—even roles and rights? What would such identities consist in, and how would their roles and rights bear on the individual? Even if the posit of such distinct and independent entities is an exercise in political fantasy, we still have to cope in our political reality with nations, ethnic groups, races, and religious communities. As we grope with such concepts as national identity, or national consciousness, or the national will, or national rights, we find ourselves groping with real-world problems.[4]

Twenty years ago Pomerance (1976) tried to articulate the question of what the *self* is in the debate on the national right of self-determination, a debate inspired by Woodrow Wilson in the aftermath of World War I. The literature in the international law journals since then has been replete with related discussions on territorial integrity, sovereignty and interventionism, on secessionism, and in general on the conflicting rights of different collective selves. More recently, the banner of ethnic and minority rights within the context of cultural and economic participation and development, rather than in the context of fully fledged political expressions of sovereignty, has been raised in political journals, especially against the background of the "failed nations" syndrome. Briefly and simply, there is no consensus on what our priorities should be, on what our moral imperative should be, even on what it is we are dealing with. And beyond the fogginess that surrounds what constitutes a national entity and what degree of political self-determination or legitimacy such an entity should come into possession of, or what the implications on human or other collective rights and sovereignty titles may result from such possession, there is the further question of the application of a moral theory to intercommunity affairs.

I cannot address all those questions, but in view of the remarks already made on the ontogenesis of human associations the question of identity is relevant. There is a fundamental distinction between a self-oriented, or "vertical," dimension of identity and other-oriented, or "horizontal," dimension or, alternatively,

between a separate self and an associative self. Similarly, one might be able to speak about "parity" in the attempt to analyze the identities of individuals and groups, and about a "continuum" as one looks closer at the presumed divide between individual and community.

In traditional treatments of identity, there is a generic gap between philosophical discourse on personal identity and political discourse on national identity. This reflects the sense that the individual human being is a primary substance, whereas the human association should more properly be regarded as a relational and complex network of arrangements predicable of individuals. And even were a sociologist or political scientist dare to "quantify" such a predicate, or to treat a human association as a secondary or a tertiary substance, for example, then the burden of determining what "identity" would mean will naturally fall on the culprits and on their specialized fields of discourse.

The philosophical tradition has treated identity as being uniformly applicable to all objects without regard to the distinction between animate and inanimate objects.[5] In spite of accounting for what might generally be called "mind-predicates" of human individuals, the discourse on personal identity has nonetheless regarded the identity of the passage through history of a person almost analogously to identity of an ashtray or a car over time. Elaborated further, *ethnogenesis,* as a science of the development of group identities, does not seem to have had an analogue of philosophical *autogenesis* on the level of individuals, with the exception, perhaps, of the existentialist tradition (the case is different in the field of psychology). By this I mean that each human being is naturally assumed as somehow being possessed of an identity, and we do not encounter a problem in the ascription of such identities to individuals in the way we do when we speak of Tatars, Kurds, the Chinese of Hong Kong or Taiwan, or the Palestinians, to name some examples. In what way is this lack of discrimination a problem, and in what way would investigating such a problem bear on our initial concern with the borderline between individual and association, or with the identities of individuals and associations?

The Emergence and Identity of Collectives

When Ernst Mayr called for a distinction between the biological and inanimate worlds, his point was not simply one of discourse or lexicon (category, species definition), but with the objects of discourse (taxon, species delimitation). The philosophers' use of terms such as *class* or *set,* whether the objects or members are biological or inanimate, reveals an underlying confusion between objects in the world whose processes are governed entirely by physical and chemical laws (teleomatic), and objects whose processes cannot entirely be so explained yet which are governed or controlled by genetic programs (teleonomic). Mayr's main contention was that while inanimate objects are subject to deterministic physical laws, the behavioral processes of animate objects are always subject to

"chance elements" that preclude the ability, except statistically, to predetermine a particular evolutionary path or outcome. Although Mayr does not at this point quite make the case so explicitly, his further distinction between an open and a closed part of the genetic program in biological systems and his contention that the probabilities of evolutionary change are in part functionally determined by the open part of the program, that is, through the interaction of biological systems with the external world, gives reason to infer that the conscious choices help determine that system's evolutionary path, and therefore its identity.

Mayr's other relevant insight in this context concerns the presumed generic distinction between the individual and a more complex system. The discussion about what to regard as "a target" of natural selection—whether the gene, the individual human being, the species—is really what to consider as a primary substance. The generic distinction between individual and collectivity or species is not so well founded after all: the collectivity is in a sense an individual, just as the individual is in a sense a collectivity. Mayr uses the terms "simple" and "multiple" individuals to maintain the necessary distinction, and consents to the evolving use in biology of the term "population" to contrast the group with a simple individual.

At this stage, I would like to make two interrelated points: first, whether for the kind of reasons cited by a biologist like Mayr or by a political scientist like John Dewey, there seems to be eminent sense in emphasizing both the analogy, or parity, as well as the logical if not generic continuity, between the individual and the group. The distinction between parity and continuity in this context will bear on our later discussion of the two distinguishable dimensions of the self. But the point of the main emphasis at this stage is not so much to reify groups or to endow them with ontic "respectability" as it is to "deflate" the excessive faith in the existence of such respectability for individuals. The *a priori,* unencumbered, or residual self of the individual on this view should not be regarded as having an optically respectable status any more than the group; and the group, conversely, should no longer to be singled out for being "landed" with identity crises any more than the individual. Whether an individual or group exists, there is no solid ground for believing that the individual human being is somehow naturally or automatically endowed with a "fully fledged" identity, while the group is not. How, then, do we determine the existence and possession of an identity?

We can see how Mayr's remarks can easily be extended by the same logic to other parts of the philosophical lexicon, including "identity." The static and uniform manner in which this term is understood and applied in the case of lifeless objects must simply be understood and applied in a fundamentally different manner as we turn to interactive biological systems, especially when we come to consider those organisms that, whether simply or in a complex and derivative way, are capable of the rational exercise of their wills in cognition or action. For such systems, identity formation is a function of volition (the exercise

of the open part of the genetic program). In the field of political history this statemcnt is not so contentious. The relevant literature on national identities commonly refers to the "constructivist" thesis. According to this thesis, those distinctive features that nationally single out a particular group are claimed to be rooted in the conscious and volitional efforts of articulation undertaken by the leadership or intellectual elites. Thus, not only territoriality (the body in the case of individuals) or the inherited features and dispositions (the genetic programming), but also the subjective and specifically chosen manner of interaction with the outside environment is what eventually determines the crystallization of a separate identity. In the Israeli-Palestinian context, a good example of how such group identities are grafted in response to circumstances in the "objective" environment, and how indeed Zionism and Palestinianism have come to be mutually generative "creations" of each other, how each is "enfolded" in the other, can be found in the interesting work of Juval Portugali (1993).[6]

The evolution of an individual's identity, and differences in character—those described by "strength of character" or "distinctiveness" or "independence" and other similar epithets—can also be accounted for in terms of volition. Going further, the self, whether of the individual or the group, exists and has identity insofar as an active engagement of the will has been triggered. Thus, the "having" of an identity on this view would not be an either-or proposition but a matter of *degree,* and an end-product rather than a preexisting endowment. Further, acquiring an identity is a creative and cumulative process, rather than a quantitatively or qualitatively predetermined and fixed inheritance.

This process is one in which the self, triggered by circumstances in the surrounding environment, seeks its own space for development and enhancement through the endeavor to assert itself, self-mastery, and independence of will. I have my own identity insofar as I am my own master or sovereign. I am more puppet than person if my cognitive and action processes are entirely or mostly controlled by an external programmer. The quest of the self for identity is therefore a quest for freedom, for "a space of one's own," namely, for an ability to determine an evolutionary path of progress or enhancement. This quest of the self generates that distinct identity appropriate for the endeavor.

This identity-formation process is not unidimensional or vertical only. To focus simply on self-oriented components of an identity-formation process is to ignore the theoretic mechanism by which we explain the community-oriented component of that same process. Perhaps the thesis on the generic continuity of the biological spectrum coupled with the psychological element of 'asabiyyah can help us further understand how a self's merger into a more complex system does not negate that self's identity but, on the contrary, actively articulates it. Both features provide us with a model to the ease with which individual impulses become transmitted in such a way that (1) the individual self becomes enhanced, and (2) a collective self can evolve.

Let us remind ourselves here of the egoistic as well as altruistic explanations

for human action, as well as of the two interpretations of the altruistic impulse, the purposive and the innocent. The self's exercise of will in its search for its own space is the egoistic or "vertical" component, while the altruistic impulse is a "horizontal" component. This latter purposive impulse explains the associative constituent of the self's identity. Indeed, Ibn Khaldun would argue that it is the underlying basis even for an egoistic self and, therefore, for the self's two aspects and complete identity. Sensibility to another's pain ('asabiyyah) is more constitutive of an identity than the sensation of pain in oneself, and just as self-enhancement or vertical identity is a matter of degree, so is sensibility and horizontal identity. As individuals vary with respect to their possession of either of these two qualities, so they vary with respect to their possession of this complex identity.

These remarks relate primarily to what was described as the complex identity of a "unit" self. But there is something further to be said about the horizontal dimension of identity: what is at issue here is the nature of that twilight zone of the continuum, where the individual self merges with, or into, the collective self. The initial "horizontal" step, constitutive of the individual's complex identity, targets another "member" or unit of the same kind. But one can see how this 'asabiyyah can "spread" among and between more individuals, slowly taking on an institutionalized form and becoming eventually vested in the ruler/government of that association. It is reasonable to assume at this juncture that, in its interaction with the outside environment, the unit self's quest for its own space at a certain point may require it to intensify its associative impulse; or that, its preexisting associative impulse, sensing a collective danger, or challenge, becomes automatically intensified, giving rise to the evolution to the collective self. The association's existence, therefore, as well as its identity as a collective self, is a volitional expression (not a negation) of the horizontal dimension of the identity of the individual self.

What is it that determines the institutionalization of 'asabiyyah and the evolution of a particular collective self as a political agent (a nation as opposed to a family or a tribe)? Tentatively, the emergence and crystallization of the collective self as a political agent is a function of the volitional activation of the individual self's identity, in such a way that this self's identity becomes enhanced. This is so whether the enhancement is horizontal, with the associative self being constitutive of the individual self's identity, or vertical, where the associative component is regarded as an instrumental to, rather than constitutive of, that identity. Human motivations being so complex, it is probably wise not to discount either of these two explanations, and to assume that human (associative) actions can be explained in one way at one time, in another way another time, and yet in a mixture of the two ways on other occasions.

There is one final element to be added to the above account: we saw why a collective self evolves, but we may still wonder about how this happens. How, in particular, does the associative impulse of the unit self help create (through

"intensification") the collective self? The answer, probably, lies in the principle of generic continuity between the unit and the larger group. This continuity facilitates the transmission and regeneration of such impulses among and between these unit selves, finally reaching that critical point where, synergetically, the group begins to move with one will, much in the same way that, especially for such basic purposes as migration, unit birds merge together to form one flock for the duration of the journey, flying through the skies as though it were a single collective organism or system.

Even so, the above description may be of an "ideal" or "laboratory situation," rather than of a practical kind. In "real life" situations, the tensions and turbulences in that zone of the continuum (perhaps as a result of such conflicting motivations even in the same individual) may well be expressed in a far more complicated picture. In the present, post-Oslo, post-Intifada, postconflict Palestinian situation, for example, there are clear indications of an "recoil syndrome," where the egotistic (vertical) imperative has returned "with full vengeance," almost with a recriminatory, even accusatory, attitude toward the "associative" self in the same individual. My reference here is not to those who have entered public service or who have been "rewarded" for the "sacrifices" they have made and who can still therefore feel "wholesome," but to many of those who did not, and who feel a disappointment with what they have come to regard as their "wasted years in the national struggle."

Whatever the complications and complexities are, we may still refer back to the general explanatory principle being proposed, namely, that a self's complex identity is grafted onto and crystallized through a vertical as well as a horizontal impulse in response to challenges in the environment. This impulse, or will, generates the specific identity appropriate for the endeavor of seeking freedom, enhancement and growth. At certain moments, such growth and enhancement may be viewed as requiring an intensification of the associative will in such a manner that a collective self evolves. Personal will thus comes to be constitutive of national identity, but the latter, being an expression of the associative will, also becomes constitutive of personal identity.[7]

I wish now to return once more, again briefly, and against the background of the related comments I made, to Ibn Khaldun, and to some of the issues raised concerning intercommunity as well as intracommunity affairs. If the quest for freedom, self-enhancement, and development is constitutive of the self's identity, then even more so is the sense of care or protectiveness toward others. This sentiment of 'asabiyyah may be restricted initially to members of the same family or the same genetic pool. But, as we saw, the quest for self-enhancement, as it begins to operate in larger associative contexts and in more developed economic structures, requires an extension of that sentiment and embodiment in institutionalized form. The constituents of the self's identity on the subjective level include a quest for the equal distribution of this freedom among all members of the association. Where we find that either of these two kinds of quests are

being stunted or stifled, we also find instability or a dynamic for change at work, seeking to rectify the balance. The emphasis in the dynamics at work may be different, insofar as the one or the other of the two quests at one or another point in time are being stifled. It is thus we can understand the ethnic "explosions" in the Balkans, or the Baltic States, and within Russia and other parts of the former Soviet Union: the long history of the oppression or simply suppression of ethnic selves perforce brings about a reaction, much in the same way that psychologists tell us that analogous reactions are triggered in parallel circumstances in the individual ego.

Such explosions do not occur where ethnic or minority or even national self-expression and self-enhancement are encouraged and provided for—where the individual's dual quest for self-fulfillment and 'asabiyyah is not felt to be inhibited by an opposing force or agency. Indeed, where this quest is felt to be successful and respected, we witness a harmonious mosaic of mutually enriching communities, whether in the same republic or among republics. Collective selves can also dissolve in favor of other associative selves, as in the emergences of unions and federations and new economic structures. In such situations, enrichment may become possible through reinforcement of the multiple-level interaction of retained identities. The overall identity becomes a complex one consisting of different layers, much in the same way, on the individual level, that I regard myself as Sari, a Jerusalemite, a Palestinian, an Arab, a Moslem.

Identity under Interrogation

Let me draw on some of the experiences of Palestinian prisoners who underwent interrogation to illustrate how the ostensible conflict between egoism and altruism, or between the private and public selves, is put into sharp relief. One of the methods of interrogation is precisely to try separate the egoistic and associative selves, making the subjects feel that their identity is constituted only by the former. The subject is thus forced to face the issue of identity head on, in ways that many of us in our ordinary lives may be totally unaware of. In presenting such an extreme case to convey the organic interrelatedness of individual and collective identities, as well as the role of the will in the process of self-affirmation, I think it is possible to see the complementarity of private and public selves. That the following description is in a "literary," rather than an analytical, style is a function of its subject matter.

The "struggle of the will" is an amazing art. Armed with a physical mastery of the situation, the interrogator tries to achieve mental and psychological control. On the surface, the interrogator is free and sovereign, while the prisoner is slave and captive. But both know it is not over physical mastery that there is a struggle. The quest is for control of the will of the prisoner. Often, the interrogator wins the battle: sufficient guile and pressure can lead to quick results. Often, so perfected is the art of guile on the part of the interrogator, so undeveloped the

art of self-mastery, the sense of self-identity on the part of the prisoner, that the prisoner is not even aware in the end that he has been violated. He moves out of the interrogation labyrinth into jail, and from there finally back into real life, still as though half a person, almost as though dreamwalking. You recognize such dreamwalkers, such automated creatures, as you wander the streets. Sometimes, only much later, does such a person finally wake up. Only then he realizes the value of his own will, his own identity, and only then it dawns on him—or maybe it dawns on him only in phased doses?—that he is a victim of rape. Back there in that labyrinth, his mind, his integrity, his inner soul had been violated by the interrogator's "probe." So violated was he, that he wasn't even aware of it.

But sometimes, the interrogator comes across solid rock. Try as he might, he finds himself unable to make a breakthrough. The infliction of physical pain is subject to diminishing returns, and the person now being dealt with has succeeded in withstanding the pressure's highest allowable limits. Physical and moral degradation also seems fruitless, as the opponent seems in possession of an unreachable inner value of himself. Try to degrade him as much as the interrogators can, the prisoner seems always to tower above them, even in absolute nudity. Try to "shrink" him to an isolated prisoner as much as they can, he nonetheless seems unshakably a part of a free whole. Even the infliction of physical pain does not seem to work, as the intellect being confronted seems to be totally governed by its own master, or else it completely shuts down. Indeed, it seems like a dark labyrinth possessed by only one inner master, in which an unwanted intruder quickly feels trapped, unable to make an intelligent move. Pressure cumulatively mounts on the interrogator. Something mysterious begins to happen: the interrogator begins to feel he is losing control, that his subject is gaining more control of the situation than he can. Like a physical force directed by an aggressor that on meeting its target is skillfully tackled and realigned, thus making its perpetrator bear its brunt, so the weight of the pressure being exercised by the interrogator seems to rebound, its tentacles slowly beginning to confine his own movements. In his mind's eye, he suddenly realizes that it is a counterpart who is free. Often, calculating several steps in advance of such a situation, the interrogator chooses to make an early escape. But the prisoner knows he has won the battle.

Perhaps the interrogator does not know this, but being like "solid rock" is what the prisoner often feels at the end of the battle, but not at the beginning. As he sees the interrogator's will shrinking and collapsing unto itself, the prisoner's newly acquired sense of self-confidence and self-respect makes him feel that he can move mountains by the sheer power of his own will. But he didn't feel like that only a few days before, when he was first plunged from normal life into the dark and dirty ratholes of the interrogation cells. He was uncertain of himself. Uncertain of his power to withstand. Doubt even crossed his mind as to the value of all this—his own worth, the worth of his cause, the worth of his convictions and beliefs, the worth of his peers and compatriots. At moments, he even felt he

was on the brink of falling apart. At times, sitting alone in the darkness of his cell in between sessions, weighing the meaning of the bloodshot rage and anger he saw blazing in the interrogator's eyes just as he was being dragged off back to his cell, he would cringe and cower before the fantasized images of pain and torture to which he felt certain he would be submitted once they came to pick him up again. He had felt himself swaying inside, rocking adrift an endless wave, being pulled and tugged in this direction and that. At times, he just wanted to let go. What was it that he felt like letting go? It was like letting go of himself, letting go of the responsibility and duty over his own actions, of his convictions and beliefs, of his own self-image, of his own identity. It was as if he wanted to disengage, not just from his body, but even from his own person, as though through sleep, and to crawl up some sandy shore, alive and free. But then, slowly, and from the midst of total darkness and isolation a calm and gentle breeze would reach him, awakening his senses. The thought would hit him: But who would I be, the survivor of this imagined disengagement? Nobody. A total vacuum. Even if I felt then I had a will to move, to think, could I trust that will to be mine? If I let go of it now, surely I will never be able to reclaim it. I would not be the person I am now, who holds those convictions, who fought for them, who is now in jail because of them. Even were I to try to "call back" those convictions, these thoughts and emotions, I would surely then be deceiving myself to think they were mine. They would simply run through my brain as though retrieved by a computer from its databank; they would belong to me as much as a "program" might belong to a computer. To feel them truly as my own, I cannot disown them now, or disengage. To be sure of my will, I must remain in its control. To have my identity, to be myself, I must affirm my mastery over myself, over my thoughts and action. I must remain in charge.

The prisoner is back, but now he is freer than he was before. He has freed himself from the despair his physical circumstances were pushing him into, from the pressure on him to submit his will to another. Now he takes a second look at himself. It dawns on him that, as in Dante's *Divine Comedy,* all his fears and doubts roam within the confines of his own mind. He has fallen into the trap of externalizing them, and then becoming their victim. Once again, he realizes that, if he is in charge of his own mind, then he has the capacity to control those fears and doubts. He cannot expunge them from his thoughts altogether. He realizes that they are natural instincts, often useful for human survival. But their use stops once they take charge. The trick is to coexist with them, but not to allow them to control him. He must be the master. Thinking this, our prisoner in effect has liberated himself from another circle. He is taking charge, from the inside, and now he has freed himself from being a slave to fear and doubt.

And so the process continues. Armed with renewed self-confidence, even a better mastery and understanding of himself, the prisoner feels that he has been able to carve out an even stronger identity for himself. He feels almost like a new person, and ready to fend his opponent. He knows now what the struggle is

exactly about. Instead of the interrogated victim, the hapless and isolated underdog he felt he was, now he assumes the poise of a fighter. He is an equal, but an equal to the sum of his opponents and their weapons. Slowly, he devises his strategy. The interrogation sessions become like battling rounds, and as each new round ends according to plan, he comes out of the session feeling even stronger than before.

Much later, once the battle is over, whether among his cellmates or his friends, inside a jail compound or outside, his attitude to life becomes altogether different. He is more serene and controlled. He feels he has carved out a special identity for himself. He knows through experience what the secret of being free or autonomous really is. He knows what the secret of having a true identity is. Those who come into contact with him are immediately struck by the fulsomeness of his personality.

This description expresses the intensive interplay at the critical point of the biological continuum, of the individual and collective imperatives, or of the personal and national selves. At this critical point, these comments also express the process of identity formation as a function both of self-oriented as well as other-oriented instincts, as complementary rather than conflicting impulses. But while an extreme example of the human predicament, it reveals those tensions in the "twilight zone" experienced in more normal situations by the average person. In both cases, the affirmation of identity is very much an affirmation of the separate as well as the associative selves or impulses, with the latter being the underlying and necessary constituent of the whole.

Recognizing National Identities

Though we cannot with precision determine when the national identities of Israelis and Palestinians came into existence, the Oslo Accords reflect, finally, a mutual recognition and legitimization of these identities. There is no pretension of love, of course. Contiguous or noncontiguous national or collective selves inflict themselves on the political stage in much the same manner as individual selves do. The question, given their existence, is what principle should be adhered to in the construction of a relationship between them. In my view, the most sensible and natural endeavor is one that applies to intercommunity relations those same principles I have argued one should apply to intracommunity relations: that the capacity or opportunity for self-enhancement and development exist (freedom), and that this capacity or opportunity be made available to each (equality). In the context of intercommunity relations, this dual drive for freedom and equality reinforces the continuity between the individual and national selves. In the context of intracommunity relations, this same drive should reinforce the continuity with the human race.

The adoption of these two principles (freedom and equality) does not mean that Israel and the Palestine to-be should have exactly equal amounts of techno-

logical resources or equal budgets. It does mean, however, that a non-zero-sum arrangement be constructed in such a way that the Palestinian's newly provided opportunity for self-expression and self-enhancement be optimally used without allowing this to have a deleterious effect on that same opportunity that Israel possesses, and vice versa. Perhaps in the future it will be possible to have a rich mosaic (or even multilayered) 'asabiyyahs in the region coexisting in such harmony that the returns and benefits to each, as well as to the rest of the world, will be model for the human endeavor. Such an end will not simply be a rational, superstructural construction. In Humean terms, it would be a rational end dictated by the human heart.

Notes

Sari Nusseibeh's version of the two-state solution is elaborated in Heller and Nusseibeh (1991).—Ed.

Research for this chapter was partly made possible by a fellowship grant from the Woodrow Wilson Center for International Scholars in the 1993–94 academic year. For it I would like to express gratitude and appreciation. This chapter is part of a larger project now being undertaken.

1. For a discussion of Aristotle's position as it relates to the contractual state, see Springborg (1986).
2. These reasons are in Hobbes, Locke, and Rousseau, respectively. It may be protested that this is too simplistic a generalization, but I think the general point remains valid, with whatever provisions or conditions one may wish to place on it.
3. See, for example, the references in Crittenden (1993). This article presents the interesting argument that one's atomism is incomprehensible in the first place except within a social context, whether for linguistic or social reasons. The argument is reminiscent of Strawson (1959, esp. ch. 3 on "persons").
4. See the rich exposition and references, in Sornarajah (1981), and the review of international legal instruments in Thornberry (1989).
5. The philosophical discussion on identity has itself undergone a transformation in the past few decades, but the classical anchor referred to may have best been articulated in Strawson (1959).
6. See Portugali (1993). For a specific recent discussion on Palestinian identity in particular, see Lindholm (1994).
7. The self I have been discussing, whether of the individual or the group, has to be of an Aristotelian "middle-ground" nature—featuring *in potentia* as well as *in actu* aspects, thus as combining both sameness and change. It is neither a Kantian nor an existentialist self, to use simplistic categories. The Kantian self is indeed a function of the will, but it is an *a priori* self rather than an entity whose evolving identity is determined through objective and material interaction. The existentialist self, at the other extreme, an *a posteriori* self, can hardly be separated from such actions and interactions. Paradoxically, the process of constructing one's own identity on an existentialist view would seem almost to be a self-defeating exercise in that it is never clear, at any one point at which a particular self is engaged in an action, whether the effort being spent will go toward the betterment of *that* self's future or toward some other future self. I do not wish to impute a thesis to either view that is not essential to it. But if this contrast is helpful at all, I hope it will at least point to the middle ground that I have been trying to treat in my exposition of the self's identity.

9

The State of Palestine

The Question of Existence

Jerome M. Segal

On November 15, 1988, the Palestine National Council, meeting in Algiers in its nineteenth session and acting in the name of the Palestinian people, issued a declaration of independence proclaiming the existence of the state of Palestine. Shortly thereafter, more than 100 governments recognized the state of Palestine. The Declaration of Independence was and remains a central Palestinian document. It was through that document that Palestinian nationalism formally changed its position on the two-state solution, pronouncing UN Resolution 181 (the Partition Resolution of 1947, which provided for the establishment of Israel) an operative part of international law. It thereby reversed the position taken with respect to Resolution 181 in the PLO Covenant.

In the month that followed the Declaration of Independence, the PLO succeeded in meeting the conditions set down by the United States for negotiations with the PLO (acceptance of Resolution 242, renunciation of terrorism, and acceptance of Israel's right to exist). As a result, the U.S.–PLO dialogue was initiated, with high expectations on the part of the Palestinians. The United States had earlier, in September 1988, taken a strong position in opposition to any unilateral declaration of independence, and when the dialogue opened, put pressure on the PLO to abandon such unilateral efforts. At the same time, the United States demonstrated its ability to thwart PLO diplomatic efforts, succeeding in blocking admission of the state of Palestine to the World Health Organization and successfully pressuring America's European allies not to confer recognition on the state of Palestine.

The PLO largely abandoned its unilateral efforts at state creation, and over the next seven years Middle East politics went through the collapse of the U.S.–PLO dialogue, the invasion of Kuwait, the Gulf War, the Madrid Conference, the Washington negotiations, the Oslo Accord, and most recently the Oslo-2 accord on redeployment and Palestinian elections.

Today, within the context of serious Israeli-Palestinian negotiations, there is a tendency to see the 1988 proclamation of statehood as a charade, a joke, or a paper instrument for the creation of a paper state. This is a misperception,[1] and in

the final section of this chapter I argue that the unilateral strategy undertaken by the Palestinians in 1988 not only remains relevant to understanding the current negotiations process but that it is indeed possible that the future will see a return to the unilateral strategy of 1988. But before we can properly understand that period in Palestinian history and its possible bearing for the future, we must gain a better understanding of the concept of a state.

What Is a State?

Article I of the Montevideo Convention on Rights and Duties of States offers the standard international law account of states: "The State as a person of international law should possess the following qualifications: (a) a permanent population (b) a defined territory (c) a Government and (d) a capacity to enter into relations with other states." For the social science analyst this is not an adequate or illuminating account. Consider the first "requirement" that a state must have a permanent population. It is not clear what this might reasonably mean. Certainly a state must have a population. The existence of a state implies a certain relationship between the state entity and some group of individuals. But what does it mean to say that a population must be permanent? Permanently in a certain territory? Permanently in a specific relationship? Population is always to some extent in flux. Sometimes there are massive refugee movements out of a territory; sometimes massive movements into a territory. Sometimes there are massive increases through birth or massive short-term decreases through death as a result of some cataclysm. Such an absence of permanence does not seem to defeat the claim that a state exists.

The second condition is that there must be a defined territory. It is perhaps an open question as to whether or not there could be nonterritorial states. They would exercise sovereign authority over certain persons, but would be somewhat like multinational corporations, without any defined territory over which they had control. But let us restrict ourselves to territorial states. Is it the case that the territory of the state needs to be well defined? What does "well defined" mean? Israel has no specifically defined borders. It has not for itself stated exactly what it claims and does not claim. And why, as a matter of definition, should it be the case that a state should have clearly defined territory? Instead, all that seems necessary for a territorial state is that there is some territory that is its own, but exactly where this begins and ends is not critical.

The third condition is that a state must have a government. This indeed appears correct. To say that a state exists is to say that there is a certain relationship between something that acts in the name of the state and certain people. That which acts in the name of the state is a government. This may be quite minimal. It could be a tyrant supported by armed force doing little more than levying and collecting taxes and punishing those who do not pay, or it could be a vast bureaucracy undertaking the complex regulation of social and economic

life. But statehood does imply agency; states do things and the term used to refer to that which does things in the name of the state is government.

The fourth condition is that a state must have a capacity to enter into relations with other states. It is not clear what is meant by "capacity." If it is meant to rule out local governments that have distinct territory under their authority and have relatively stable populations but that are themselves subject to the authority of a central government and sometimes lack a legal capacity to have relations with foreign states, then it seems correct. No entity so restricted would be a state.

Collectively these conditions fail to give us a sufficient condition for statehood. For instance, nonstate governments under certain circumstances may enter into relations with foreign states and thus may satisfy the four conditions. The current Palestinian Authority has relations with the state of Israel and may have a variety of economic agreements with foreign states; there is a government, a population, and a territory—yet it is not a state. Similarly, the state governments in the United States, (e.g., New Jersey, Connecticut), which are not states in our sense of the term, can enter into certain agreements with foreign countries and appear to satisfy the other three conditions as well.

In sum, the Montevideo conditions fall short. But airtight definitions are always hard to come by. What is more important for our purposes is that the Montevideo conditions offer limited insight into exactly what it is that is at the core of the existence of states. Let us take a fresh look.

Sovereignty and External Factors

States typically lay claims to sovereignty over particular pieces of territory. The claim to sovereignty is directed both at the outside and at the inside. Directed at the outside, the state asserts that it is the decision maker with respect to a particular territory and that it recognizes no other entity as having a right to say what will occur within that territory. Moreover, states typically voice their acceptance of each other's claims to sovereignty. In acts of mutual recognition they say to one another, I recognize your right to control what goes on within your territory and you recognize my right to control what occurs in my territory. As part of this recognition of each other's sovereignty, states typically forswear any right to interfere in the internal affairs of other states.

All of this, however, is on the level of claims and commitments. It does not follow that these claims and commitments are reflected in actual practice. Yet the question of the existence of a state is not a matter of whether or not other states have said they will respect its sovereignty. If sovereignty is required for the existence of states, it is actual sovereignty. In the real world, sovereignty is never absolute. States are constantly, intentionally affecting what goes on in other states, without asking permission to do so. In part, states do this through direct actions that cause specific changes within the territory of other states. But states also affect what occurs in other territories by making it clear that their

forbearance from involvement is always conditional and by making known to the other party that there are circumstances under which they will intervene.

Every state exists with the knowledge that there are certain things it cannot do within its own territory because it would either be prevented by other states from doing so or punished subsequently. Whether or not outside interference or influence is called a "violation of sovereignty" or is viewed as acceptable involvement under international law, the point is that all states find that other states affect what occurs within their borders. There is no common standard with respect to how much interference states have to accept. While every state in fact has to put up with the reality that other states are deliberately affecting the internal environment, the degree varies enormously. For those that are very weak both militarily and economically this can be so extreme that there may be a question as to whether or not the weak entity should be called a state. But the decisive fact is not that the weak state lacks complete sovereignty (this is true of the strong as well), but the extent and manner to which it is subject to outside control.

There is one manner of control by an outside power that is incompatible with statehood and that is when the relationship between the two governments is such that the subservient one agrees that its ability to issue rules with respect to the territory and population in question requires the agreement of the other party. To do that is to enter into an agreement whereby the government will not assert sovereign control. Any government that accepts such formal subservience falls short of being a state. Thus, the manner through which other states exercise their influence over the government in question is critical. States are asserters of sovereignty, though they may have to bend to the reality that there may be harsh consequences if they exercise their "freedom" in ways that conflict with the interests of other, more powerful states. The basic point is simply that in the real world most governments have to put up with the fact that other states play a role in affecting what they can or cannot do in their own country, and they have to accept the fact that other states are constantly, deliberately affecting what goes on within their country. Often enough, such "influencing" is not viewed as a violation of sovereignty, but this only shows that sovereignty does not mean the total absence of external involvement.

States and the Monopoly on the Use of Force

It is sometimes maintained that a state exists only when the state (or the government whose actions count as the actions of the state) holds a monopoly on the use of force. Taken on its face, it is obvious that governments do not exercise monopolies on the use of force within their own territories. Someone seeking to cross Central Park in Manhattan after dark is likely to be made quite aware of that fact. There are large sections in many American cities in which the predominant user of force is not the government but the criminal.

When it is said that governments exercise a monopoly on the use of force, perhaps what is meant it that it is part of the nature of states to claim a monopoly on the use of force. And this certainly is typically the case taken loosely. All states seek to regulate the use of violent force between persons. But whatever claims states make about who is and who is not permitted to use violent force, governments constantly face the fact that other internal actors do not respect their claims. If the disrespect is so great as to be characterized as "a breakdown of law and order" then the issue of the existence of a state is joined. States do not exist when there is anarchy.[2] But the breakdown of law and order is always a matter of degree. To some extent it is always breaking down.

States and the Control of Territory

What is meant by control of territory? In part it means the control over natural resources, the ability to determine land use and ownership, the ability to control access to the water supply, and so forth. And in part it means the ability to determine who enters and who leaves the territory. But for the most part, the phrase "control of territory" is an ellipsis for "the control of the population that inhabits a territory."

How is the existence of a state related to the control of a population? We have already seen that other actors, be they foreign states or criminals, typically exercise a degree of control over the citizens of any given state. So states do not exercise a monopoly of control over their own citizens. But putting the monopoly question aside, if states control their citizens, this control is never absolute. There is always some range of actions that the state cannot get its citizens to perform. There is always some limit to government's ability to get people to do what they do not want to do. There is a point of disobedience and ultimately a point of rebellion.

Is there necessarily some minimum control that must be exercised for a state to exist? If by "control" we mean "making someone do things that they do not want to do," then I suggest that there is no minimum amount of control that a state must exercise. It is possible for a state to exist, even though the threat of force is reduced to the vanishing point. Of course, this could occur only if there was broad voluntary compliance. But if voluntary compliance can be the basis of a state, then the term "control" is inappropriate as a characterization of the general nature of states.

Rather than think of states as bodies that control populations, we might better think of a state as existing when there is a rule-giving entity that is responded to in a certain way. We have already seen that muggers in the park exercise control over the people that they encounter. Theoretically, it is possible to have a population overrun by criminals; they might well outnumber the police and the military. Yet in itself this would not mean that the criminals were in fact a government or that a state had emerged. The key issue is whether or not the population gives generalized obedience to the criminals.

Generalized obedience has two aspects. First, general orders have to be given. Rather than tell someone to step into the alley and empty his wallet, the criminal would have to tell someone to report to the alley each week and empty his wallet. Second, the obedience given to the general rules would itself have to be general. Thus the criminal could tell someone to report to the alley with his wallet each week, but unless the person responds in a general way, obedience to the rule as opposed to a series of acts that happen to conform to the rule, has not been obtained. If obedience is given only at the point of a gun, one act at a time, then the criminals have not succeeded in getting the population to obey the rules *qua* rules. But if people do start reporting to the alley once a week, with payment in hand, then the mugger has indeed changed his status. His robbery has become institutionalized as a tax system. In the absence of other competing authorities, as the scope of his rules widens, a state is emerging.

Thus the existence of a state at its core is a matter of generalized obedience by a population to some entity as the rule-giving authority. It is not necessary that this entity be viewed as legitimately exercising this authority. There can be and are many criminal states, ruled by ruthless thugs with no moral legitimacy and so perceived by much of the population. But what distinguishes them from the band of criminals described above is that they have succeeded, through fear, in obtaining generalized behavioral acceptance as rule givers. In criminal states, soldiers and police are not disobeyed as soon as they turn their back.

States and the Establishment of Conventions

States issue not only rules that tell people what to do and what not to do but also rules that establish conventions. In every society a large sphere of social existence is constituted through the performance of acts that can be performed only by virtue of the general acceptance of specified conventions that give social meaning to specific actions.

Consider the conditions under which a piece of paper is money. A piece of paper is money because people use it as such, as a standard of value and as a medium of exchange. Money predated the existence of states. But in the modern world it is the state that determines which tokens count as money. When the state issues a rule saying that a certain piece of paper is money, the population accepts this convention, and this acceptance is what constitutes the paper as money.

States issue rules as to what constitutes a contract. When have two economic agents bound themselves to each other? When have two persons seeking to get married actually done so? The authority to specify these conventions is a critical social power. Governments are not unique in their authority over such conventions. Sometimes these authorities are religious bodies (e.g., what constitutes a marriage). But in broad areas of life, especially economic matters, part of what is involved in something being a government is that it is accepted as the specifier of these conventions.

In sum, the existence of a state is essentially a matter of the existence of a certain kind of social relationship between a population and a rule-giving entity. It does not depend on absolute independence from external actors, nor on a monopoly of force, nor on complete dominance over internal actors, nor on an ability to coerce people into doing what they do not wish to do. This account of what a state is can be formalized in the following manner.

A territorial state exists when and only when:

1. There is a governmental body asserting rules covering a wide range of behaviors and conventions, directed at a population inhabiting a specific territory.[3]
2. The government does not give generalized obedience to any other entity and asserts itself as sovereign.
3. The government obtains generalized obedience from the population to which its rules are directed.[4]

On this understanding, a state is not necessarily the absolute authority on what goes on within its territory; it can be seriously challenged by a myriad of internal and external actors. And more than one state can contend for control over a specified territory.[5] The being of a state is constituted by a social relationship in which a rule-issuing entity and a people look at each other and the rule issuer says "I am your rule issuer" and the people look back and say "You are our rule issuer."[6] Outside and inside violators succeed in destroying the state only when they eliminate either the rule giver (e.g., the government) or the population or the relationship of generalized obedience.

Finally, it should be clear that the three conditions identified above in no way imply that the state is legitimate. It does not imply that it has any right to be the rule giver over the population in question, nor that it has any right to exist at all. The generalized obedience that the population gives to the government of the state does not necessarily constitute freely given consent. That all depends on the reasons why generalized obedience is given and the methods whereby it is bestowed. These cover the entire gamut from stark terror at one end of the spectrum to democratic governance at the other end. Indeed, generalized obedience not only does not imply freely given consent, it does not imply consent at all, whether freely given or obtained under duress. It is quite possible that the population stands ready to revolt should an opportunity arise and that it actively looks for such circumstances. Thus there is no question that consent has not been obtained. Yet if this population, which clearly says to itself, "We do not consent, and when the time is right we will rebel," nonetheless continues to follow the rules, then a state exists. Indeed, such absence of consent coupled with generalized obedience may well be the common condition in many states.

Implications for the Israeli-Palestinian Conflict

What Was the Intifada?

This perspective on what it is to be a state casts the Intifada in a distinct light. It was not just a revolt or protest against Israeli rule, but a process through which the Palestinian people withdrew the generalized obedience previously given to the Israeli authorities and sought to transfer their obedience to new authorities. Prior to the Intifada, broadly speaking, the Israeli authorities both claimed and received generalized obedience as the rule giver over the population of the West Bank and the Gaza Strip. The fact that Israel had not formally annexed these territories is not the critical matter. The relationship was such that, *de facto,* the state of Israel had extended itself in a permanent way over these territories.

A good example of the way the Intifada engaged the basic issue of generalized obedience can be found in the struggle over when stores would be open or closed. In the early days of the Intifada there were repeated struggles between shopkeepers and Israeli soldiers. The shopkeepers sought to respond to the rules set down by the underground authorities; the Israelis government sought to break this obedience. At prescribed times, the shop owners would close their shutters and lock up. Israeli soldiers would clip locks and raise the shutters, seeking to force a resumption of commerce. Ultimately, the shopkeepers succeeded in obeying the rules laid down by the new authorities. The underground command succeeded in establishing itself as a new authority. It issued regulations, succeeded in getting them disseminated and often in achieving generalized obedience. To do this is to function as a government.

The extent of this process should not be exaggerated. The Israelis were typically able to gain obedience at the point of a gun and maintained some ability to command generalized obedience. There are no developed indices of generalized obedience to measure the extent to which this process advanced. But refusal to pay taxes, stone throwing, resignation from positions with the Israeli administration and participation in illegal committees and demonstrations were all part of a broad process of transference of accepted authority.

The extent to which the Intifada transferred generalized obedience away from the Israelis and to new authorities differed in different areas. In the rural areas the transfer of authority was more complete. In some areas, it seems, the Israeli status was little more than that of a raiding party from a hostile neighboring tribe that has the power to enter the village at will and take away captives. Thus, the *Washington Post* in 1989 reported that in the West Bank village of Salfit there was no regular Israeli presence. The Israelis periodically came in helicopters and trucks, typically at night. But as soon as they left, a new flag was painted on the wall and a new underground leaflet posted. According to the residents, much of Salfit was run by popular committees, the alternative institutions of the Intifada. "There is one for health, another for civil defense against soldiers and Jewish

settlers, one to handle disputes between residents and even one for planting gardens. And there is a large committee to operate alternative education" (*Washington Post,* June 10, 1989, 10). In some instances, the refusal to accept Israeli authority emerged in highly symbolic forms. Thus, it was reported that throughout the territories Palestinians placed themselves on daylight savings time two weeks prior to the date this would have occurred under Israeli regulations.

At the beginning of the Intifada there were substantial efforts to establish alternative quasi-governmental institutions in the areas of health services and education. Less was accomplished with respect to legal institutions. This last area is particularly important from the perspective of a state's existence. Services such as health or education can be in either private or public hands. For a state to exist, it is not necessary that the government provide a school system or any welfare institutions. Nevertheless, governments of necessity are generalized rule givers. And in order that there rules be obeyed they have to be understood. Thus, one of the major functions of courts is to give fine-grained definition to the broad rules set down by a legislature. In addition, they serve to adjudicate disputes over the rules and in criminal matters to determine guilt and specify punishment. These functions are typically part of how states succeed in maintaining themselves as accepted rule givers. In this the courts are assisted by those who identify and apprehend rule violators and those who carry out punishment. It is not logically necessary for states to have such institutions, but without such institutions it may in fact not be possible for states to gain the generalized obedience that is necessary to their existence. The extent to which this is the case differs widely. Where there is recognized legitimacy in addition to accepted authority, a state can exist with far less of a judicial apparatus.

The Intifada did not develop a full-formed judicial system, but there were rudiments. Rules were given wide publicity. Individuals behavior was monitored, and to some extent infractions were responded to and individuals made aware of specific charges. There was some minimal process of investigation and determination of guilt and punishment. Hearsay has it that specific files were sent to Tunis for decision and possibly some form of imprisonment, though to be sure, beatings and executions were the predominant form of punishment. None of this means that individuals were given due process or that the system was just. It is clear that there was substantial abuse. Instead, it is to make only the point that something approaching a critical state institution used to attain generalized obedience existed in rudimentary form.

The Declaration of Independence

To view the Intifada as a process that was constitutive of the existence of a state, rather than as something that may lead to it later on, places the Palestine Declaration of Independence in its proper light. The declaration reflected the broader reality of state creation. The state of Palestine could not be created by a declara-

tion; states are created by a population in their decisions with respect to obedience. The Declaration of Independence of November 15, 1988, was a point within a long-term process of state creation that both preceded and followed it. At the same time, November 15, 1988, was the critical moment at which the process of state creation was formalized through the establishment of an entity that asserted itself to be a state, to be nonsubservient to any other authority and to be a generalized rule giver over a loosely demarcated population and territory.

In the declaration itself we see an instance of what such formalization means. At some point in the text there is the emergence of a new actor. The text says, "the Palestine National Council hereby declares . . . the establishment of the state of Palestine." After this the text takes a historical turn. We find phrases such as "The state of Palestine calls," "The state of Palestine declares," "The state of Palestine affirms." These calls, declarations, and affirmations were the first acts of the state of Palestine. What occurred was that a new entity came into being. The name of that entity is "The State of Palestine."

But to say "we hereby proclaim the state of Palestine" is not to create a state. It is to create a corporate entity that views itself as a state and that *bears the name:* state of Palestine. Whether or not it is a state has to do with whether or not it can function in certain ways. Broadly speaking, it depends on whether or not it can get its intended citizenry to view it as a state and to view themselves as citizens of it and to act accordingly. But because there cannot be a state without an entity whose pronouncements and actions count as the actions and pronouncements of the state, the Declaration of Independence was a vital part of the state creation process. It was a major step of formalization of the deeper process of the Intifada.

One significance of the Declaration of Independence as a process through which an entity affirming itself to be a state was created is that it opened the possibility that that entity would function as an international person (i.e., that it would be accepted by other states as an actor, as an entity capable of entering into agreements and participating in the interchange between states). It is not logically necessary that other states treat it as an international personality. It is perfectly possible a state exists that is isolated by the entire world, boycotted or not judged capable of entering into any agreements or, perhaps, in a land that is completely unknown to the rest of the world.

But being viewed as a state by other states plays a critical role by contributing to the solidification of the process whereby the entity will actually be a state (the generalized acceptance by the population). It does this in two ways. First, in viewing and treating the entity as a state, other states offer a perception of the entity that can be internalized by the entity itself and its population. In this it partakes in what Sartre recognized about the role of the perception of the Other in determining one's own self-perception. The perception, at some point, that there already is a state of Palestine, if widely shared, can even find its way into the perceptions of the Israeli public, transforming the way in which they perceive

the situation. Thus, their definition of the situation is capable of shifting from "should we allow a Palestinian state to come into being?" to "a Palestinian state already exists, why not recognize that fact?"

Second, by treating the entity as a state, other states give it a variety of powers that increase its ability to obtain generalized acceptance as rule giver. For instance, foreign states can decide to accept the travel documents (passports) of the state of Palestine (none have yet been issued) and thus it can give to the entity a power that it did not previously have and that is generally reserved for states. Passports are important because they are identity documents in a deeper sense. In carrying a passport that identifies the bearer as a citizen of a specific state the individual tends to accept that identification as his own self-identification.

These factors, which could be brought into play only after the Palestinian Declaration of Independence, demonstrate some of the potential significance the declaration had within the state-building process. Of course, the most important external recognition that would have given reality to the proclamation of statehood would have been Israeli recognition. At least in 1988, this was not to occur.

Palestinian Strategic Thinking at the Time of the Intifada

Historically the PLO entertained two strategic alternatives. The first strategy was that of armed struggle; it was affirmed within the Palestinian National Covenant as the only strategy for the Palestinians. This judgment emerged from the Palestinian objective of "liberating all of Palestine." Since "liberating all of Palestine" meant the destruction of Israel and since it is clear that no country will negotiate its own destruction, that objective could be achieved, if at all, only through armed struggle. During the Intifada, the strategy of armed struggle had strong adherents, but often with a different objective: armed struggle as a way to force Israel out of the territories. Its supporters argued that Israel withdrew from Lebanon because there was a severe cost in Israeli lives. Similarly, the withdrawal from Sinai was linked to the War of Attrition and the 1973 war. The American withdrawal from Vietnam was also ascribed to an unacceptable level of casualties. Thus the body-bag argument, the thesis that by exacting a major toll in Israeli lives withdrawal would be brought about.

The analyses of the Lebanon withdrawal, the Sinai withdrawal, or the American experience in Vietnam were only partially correct and in any event the analogies were not well taken. In Lebanon, for instance, there was not the genuine security concern that accompanies the Israeli view of the territories, and neither Lebanon nor the Sinai were viewed by a significant part of the Israeli public as a part of Israel. In the context of the West Bank and Gaza, true armed struggle would have been suicidal for the Palestinians. It would have set the stage for the total dispersion and exile of the Palestinian people and would at the same time have been a disaster for the Israelis and for the Jewish people as a whole. Nonetheless, the move toward a guerrilla struggle remains even today a distinct possibility if the peace process collapses.

The second strategy widely discussed during the Intifada focused on attaining negotiations under superpower auspices at an international conference. In particular, many Palestinians looked to the United States to force Israel to negotiate with the PLO and ultimately to accept a Palestinian state. This strategy resisted making any so-called concessions in advance of the final negotiations. In the style of haggling in the *souk* it affirmed a value in holding on to extreme and totally unrealistic positions and postures until the very last minute before the final deal is struck. The fatal flaw in the strategy was that it was built on a misunderstanding of both American politics and Israeli politics. Within the context of a hard-line extremist Palestinian posture there simply was no way to get the United States to put that kind of pressure on Israel. And as long as Israeli security fears are deep and widespread, there is no way that even if the United States sought to, it could get Israel to withdraw in favor of a Palestinian state. Pursuit of the hardline version of this strategy would have led to transformation within Israel, but the outcome would have been the Israel of Ariel Sharon.

The third strategy that emerged with the Intifada rests on the perception that the creation of the Palestinian state is most centrally a process of establishing a relationship of generalized obedience between a Palestinian entity and the Palestinian people.[7] It views the two-state solution as something that the Palestinian movement can move toward unilaterally, and the Intifada, augmented by a Declaration of Independence, as the central process whereby the state comes into being. According to one version of this line of thought, a provisional government would be established and would increasingly gain recognition as the government of the state of Palestine. At the same time it would serve as a vehicle through which the Intifada would be institutionalized. The underground command would become a part of the governmental structure. The directives of the command would be issued as laws and governmental regulations. Obedience would be demanded on the basis of loyalty to the new state. The government would start operating as such to the maximum extent possible given the presence of Israeli troops within its territory. The PNC would be transformed into the legislature of the state of Palestine. An independent judiciary would be formed. Laws passed by the legislature would be binding on Palestinians within the territories. The judiciary would function both outside the territory as well as underground within the territory of the new state. As the new government emerges, it would assume the role previously played by the PLO as the representative of the Palestinian people. The PLO would move to some new status (e.g., as a political party) or go out of existence. With the PLO out of existence, the Covenant would become irrelevant. The new state would be based on a constitution, establishing it as seeking permanent peace with the state of Israel.

On the international level passports would be issued. They would be used for travel between states that recognize the state of Palestine. A Palestinian currency would be introduced and used internationally. In the form of small, inherently valuable coins, a Palestinian currency would be introduced within the territories,

and in view of the inherent value of the coins, would (at a discount) find their way into Israel as well. Internationally, state of Palestine bonds would be issued and traded.

Negotiations, at some point, were a part of this strategy. Without negotiations there would be no resolution of the status of Jerusalem or on issues pertaining to the right of refugees to return or receive compensation, and consolidation of power would remain tenuous. Ideally negotiations would occur early in the process, but alternatively they might come late in the game. The value of early negotiations is that they help to bring about political transformation within both camps. But if this was not possible, then this third strategy proceeds nonetheless, viewing negotiations as possibly five or more years away. Moreover, early negotiations that led to deadlock would be undesirable, but when they do occur, the central issue need not be Israeli recognition of a Palestinian state but Israeli troop withdrawal from the country of Palestine. This would be brought about not primarily through superpower pressures on Israel but through political transformation within Israel. The basis for successful negotiations with Israel would rest on three processes: the achievement of a *de facto* state, the maintenance of a powerful and sincere peace initiative, the maintenance of local and international pressure for Israeli withdrawal.

Seeing that it is possible for the Palestinian state to exist even before the occupation has ended, this third strategy advocated creating the reality of peace between the two states as a *de facto* condition that might well precede its formalization in a treaty. While much of this was not undertaken in the several years following the 1988 declaration, we are now in a period in which many of these actions and functions are being undertaken by an interim Palestinian government that does not, at least as yet, identify itself as the government of a state.

The Political Psychology of the Palestinian Movement

The central fact of the Palestinian experience is dispossession from land seen as their own in the ordinary way that any land is seen as belonging to its long-standing inhabitants.[8] Moreover, the Palestinians have lost their effort to recover this land in full. Conditions of loss, defeat, statelessness, and occupation are conditions in which personal pride and dignity are threatened and often shattered. Through resistance and struggle and refusal to accept defeat and injustice, Palestinians have found modes of existing with dignity despite conditions of weakness. The issue of dignity plays an implicit but continuing and central role in intra-Palestinian political debate. George Habash expressed this theme in 1988 when he characterized Arafat's peace initiative as a "policy of concessions" and as a "striptease" in which Palestinians were first asked to take off their shoes, then their shirt, then their pants, and finally their underwear. Habash asked rhetorically, "And what do you think the Israelis are going to do next?"

The strategy of unilaterally creating the Palestinian state and protecting it

through a peace initiative was radically different from making concessions in the hope that Israel will agree to negotiate with the PLO and agree to grant Palestinians a state of their own. The Intifada was a process of massive defiance and self-assertion. It was a way of tying the hands of the more powerful Israelis and of stripping them, in the eyes of the world and in their own eyes, of their possession of the moral high ground and even of their self-pride. The Declaration of Independence was an extension of this process of self-affirmation. By proclaiming the state of Palestine, it created a perspective from which it was finally possible for the Palestinian movement to launch a sustained and clear peace initiative. It transformed the elements of a peace initiative from concessions to acts of self-assertion, ways of protecting the state, of controlling the agenda, of tying the hands of the other party, and even of transforming his outlook.

Had this process been extended, in particular, had a functioning governmental entity emerged in 1989, the evolution of the behavior and perspective of the Palestinian leadership would have been greatly furthered. The Palestinian leadership was then not yet the leadership of a government. But as it takes on that role, as is at present occurring, it encounters a new ethical, psychological, and political reality.

Movements operate within a different logic from that of governments. Within movements, actors and policies are evaluated and critiqued from a point of view that demands rigorous fidelity to ideals, basic goals, and fundamental norms of justice. Resistance movements can survive only by avoiding stances that strip its participants of dignity. Pragmatic compromise in the face of injustice is extremely difficult for movements. Governments, in contrast, have different primary responsibilities. Their role is to protect and preserve. They bear extended responsibility for the well-being of the populations they claim as citizenry. Moreover, their ability to continue to maintain the generalized obedience necessary for their very existence as governments depends on how adequately they are perceived to be carrying out these functions. Put in a different idiom, one might say that the professional ethics of leaders of a movement are different from that of leaders of a government. A governmental leader who sacrifices vital interests out of pride is judged unfit for high responsibility. The leader of a movement who does the same thing may be viewed as having refused to betray the ideals of the movement.

Another dimension of the significance of a perception that a Palestinian state exists is that it shifts the basis of obedience. As long as there is only a Palestinian national movement, different factions each pursue their own vision of how to advance the aims of that movement. On some occasions this has resulted in groups withdrawing from the PLO or central institutions of the PLO. But with a state, the situation is different. The issue of loyalty to one's country emerges, as does the concept of treason. This is true on the leadership level as well as on the level of mass obedience to laws and regulations. When following the nineteenth PNC, at which the Declaration of Independence was proclaimed, George Habash

announced that though he voted against the political resolutions, he was remaining within the PLO, he was assuming the role of loyal opposition. The force of this factor grows with the perception of the actual existence of a government.

Autonomy

The Camp David framework provided for a transitional period of autonomy. During the course of this period, negotiations on a permanent solution were to commence. The autonomy period was to last for five years. This same framework was embodied in the negotiating proposals put forward by Prime Minister Shamir and subsequently by Prime Minister Rabin. This two-stage approach, both to negotiations and implementation, was accepted by the PLO in the Oslo Accords.

To many Palestinians, a framework that called on Palestinians to enter into an autonomy period prior to any agreement on the final outcome, indeed, prior to the beginning of final status negotiations, looked like a way to entrap the Palestinians in interminable negotiations and an autonomy framework that will never end. But the generalized obedience process model of what it is to be a state cast the dichotomy between interim and final status issues in a new light. What occurs during a so-called autonomy period cannot be neutral to the question of a Palestinian state because that question is not determined after autonomy. Autonomy is the name given to a certain period of time. What occurs during an autonomy period is either part of the process of the coming into being of the Palestinian state or it is the reverse process.

Seen in this light, the negotiations over the so-called interim arrangements may really be negotiations over the exact limits of authority that the Israelis will concede to the Palestinian state. The fact that one state operates within the parameters permitted by another state does not mean that the first state is a fiction. It is a situation faced all the time by weak states, such as Finland, that border powerful and potentially assertive neighbors. And if a functioning Palestinian government emerges during the autonomy period, then the final stages of negotiations, in which the Palestinians push for Israeli acceptance of a Palestinian state, might from this perspective not be about whether there will be a Palestinian state but about moving the Palestinian state from a *de facto* to a *de jure* basis and determining the range of its authority.

An implicit appreciation of these facts by the right wing within Israel generated a reluctance even to begin autonomy negotiations. Properly understood, the autonomy period is not a prelude to the existence of the state, the state continues to come into existence through autonomy. What the autonomy period offers the Palestinians is an opportunity to consolidate their state and an opportunity to bring about Israel's willingness to withdraw its troops from the occupied Palestinian state.

The current implementation of the Oslo Accord thus can be viewed in two

quite different ways. On the one hand, there is the official perception: Palestinian statehood remains to be decided in the future, Israel has not agreed to it, and the Palestinians have agreed to put off consideration of it until the permanent status negotiations. Perhaps a Palestinian state will emerge from those negotiations, perhaps not. And then there is a process perception: The state of Palestine has already been declared. The Palestinian people in the West Bank and Gaza have already withdrawn generalized obedience from Israeli rule givers and have transferred that relationship to new Palestinian authorities. At the same time, the government of the state of Palestine has not been formally established. In the absence of that formal establishment, it has proved possible to use the negotiations process to win Israeli agreement to the establishment of Palestinian governmental organizations with wide authority. At some point in the future, either through negotiations or through unilateral assertion, these governmental structures will identify themselves as the government of the Palestinian state, thus completing a lengthy process of state emergence.

Was a Palestinian State Created in 1988?

From the foregoing is should be clear that the creation of a state is an extended process. Within this process there may be certain critical events, such as a declaration of independence, the self-assertion or election of individuals to be the officials of a government of that state, recognition of the state by other states, admission of the state to various international bodies, and so forth. Clearly in 1988 and subsequently, the central process of refocusing generalized Palestinian obedience from Israeli to Palestinian authorities was well under way, and equally clearly, some of the critical events of state creation did occur. Did this add up to the creation of a Palestinian state?

We can distinguish two very different questions:

1. Was the state of Palestine created?
2. Was a Palestinian state created?

The answer to the first question is clearly yes. Some entity named the "State of Palestine" was created on November 15, 1988. But this is not the central question. The central question has to do with the status of that entity: Did the entity called the "state of Palestine" succeed in establishing itself on the ground as a state? Did it fulfill the criteria that are necessary before one can use the term "state" as an adequate description of that entity?

Approaching the issue in this context, consider the following balance sheet:

Yes.

1. The territories of the West Bank and Gaza were not annexed by any established state.

2. The population of the West Bank and Gaza is almost totally Palestinian. These people view the PLO as their legitimate representative.[9] The PLO, acting in the name of the Palestinian people, proclaimed the existence of the state of Palestine. Though its borders were not defined, on all accounts it includes the West Bank and Gaza territories, thus the state of Palestine was the only entity to claim sovereignty over these territories.
3. Within these territories, the Israeli authorities no longer had the broad generalized obedience shared by all functioning governments.[10]
4. An underground Palestinian authority emerged, and it enjoyed, in some respects, obedience to its directives.
5. The newly proclaimed state was recognized by more than 100 existing states.
6. The state of Palestine was admitted as a state to the Arab League.
7. The state of Palestine named a president and a foreign minister.
8. The state of Palestine filed its adherence to the Geneva Conventions.

No.

1. Israeli troops continued to occupy these territories. In many respects they succeeded in getting generalized obedience (e.g., people carry identity cards issued by the Israeli government, their cars carry appropriate plates, Israeli rules governing construction and land use are obeyed).
2. Over a wide range of instances the Israelis were able to arrest and punish Palestinians who violated Israeli rules.
3. The state of Palestine did not establish a government; it lacked a legislature, a judiciary, and a full executive branch.
4. The underground command that exercised some of the powers of a government within the territories had not been subsumed under the government of the state of Palestine.
5. Although work on a constitution for the state of Palestine was undertaken, no constitution was adopted.
6. The state of Palestine issued no laws or rulings.
7. It was not admitted as a state to any agency of the United Nations; its application to WHO was postponed.
8. The state of Palestine did not issue passports.
9. It did not issue a currency.
10. It did not issue postage stamps or financial instruments (e.g., state of Palestine bonds).

Was a Palestinian state created when or shortly after the state of Palestine was proclaimed? I would say that it was not. An entity that was several steps along the way to being a state was created, but I would judge that it did not then and has not even today crossed over the line.

The central reason that the state of Palestine was not a state is that it did not

sufficiently act as one. For things to have been otherwise would have required the establishment of a government. In its absence there was no rule-giving entity to which the population could respond with generalized obedience if it sought to. In terms of the conditions for the existence of a state articulated earlier, it was the first condition, that there be "a governmental body asserting rules covering a wide range of behaviors and conventions, directed at a population inhabiting a specific territory," that was not fulfilled. And as a result, the second and the third conditions, both of which require a governmental body, were not fulfilled either.

One aspect of this is that the state of Palestine did not institutionalize the Intifada, that is, it did not subsume, consolidate, and extend the new authorities that were operative on the ground under its own authority. Indeed, the functioning of emergent authorities weakened over time. But had the state of Palestine moved decisively in this direction, it probably could have been viewed as a weak state, under occupation in some areas by foreign troops and in other areas subject to short-lived intrusions by foreign troops. Moreover, if a functioning government had been established that began to legislate, this would have resulted in an expansion of the transfer of generalized obedience to the state of Palestine. The fact that the leadership of the PLO moved ahead slowly with respect to the establishment of a Palestinian government did not necessarily mean that they were unwise. Time will tell. The name of the game from their point of view was not to bring the Palestinian state into being as quickly as possible. They had and have multiple objectives, such as ending the occupation as quickly as possible, maximizing the geographic scope of the Palestinian state, and making the Palestinian state as secure as possible once it does exist.

As I noted earlier, a Palestinian government seeking to function without Israeli consent would have been severely limited in its abilities. By contrast, holding off establishing a formal state government but negotiating and building with Israeli assistance and consent an interim authority has allowed in the past two years the full emergence of Palestinian governmental authority.

Looking to the Future

We are now (July 1996) in a period in which the Palestinians have made great strides in just the area that was not pursued following the 1988 declaration: the establishment of a Palestinian government. As noted above, the current government is not identified as the government of the state of Palestine. This is not just a facade for the sake of Israeli politics. It is not just a matter of a name. Even if the Palestinian Authority were to be renamed "The Government of the state of Palestine" there would not be a Palestinian state today. The reason is that the emerging Palestinian government is being created through a process whereby it explicitly accepts a nonsovereign status. Thus its most fundamental character, as found in its political institutions and economic policy, is not the result of its decisions but emerges pursuant to specific negotiations with the Israeli govern-

ment. The Palestinian Authority, under whatever name, is an entity that formally accepts that its authority is determined through negotiations with Israel.

Earlier I argued that no state has absolute sovereignty and that weak states may indeed be quite circumscribed in what they can and cannot do. So how is this different? The difference between this and the current Palestinian situation is that even a weak state lays claim *de jure* to having these powers. Weak states are still asserters of sovereignty. The Palestinian Authority, as a necessary condition of its gaining Israeli acquiescence for what it is able to do, agreed that it would have only those powers it negotiated with Israel. That is, it agreed in effect that it was not a state, but an authority whose powers emerge from negotiations between the PLO and Israel. By doing so, the Palestinians were able to win, on an interim basis, a vast expansion of governmental authority and a promise that its status as nonstate was itself open to further negotiation.

This acceptance of nonstate status could however change if there were a breakdown in the peace process. If that occurs, we should not be surprised to see the Palestinian Authority proclaim to its people and to the world that it is the government of the state of Palestine. Under those conditions, the state of Palestine would likely assert that it is the rightful sovereign over Gaza, the West Bank, and East Jerusalem. It would not issue a second Declaration of Independence, but would portray itself as the government of the state proclaimed in 1988. While it would not be able to exercise sovereignty in East Jerusalem, its degree of power in the West Bank and Gaza would depend on the extent to which Israel had withdrawn its troops, and what decisions the Israeli government made with respect to reoccupation—or what Palestinians might claim was invasion of the state of Palestine.

In response, a Likud government might reoccupy the West Bank areas from which Israel had withdrawn. Indeed, a Likud government might, for the first time, annex the West Bank. But such an act would not establish it as sovereign. It would not be able to resecure generalized obedience from the Palestinian population. With respect to Gaza, however, it is unlikely that a Likud government would seek to reoccupy, and thus if the Palestinian authorities at some point proclaim themselves to be the government of the state of Palestine, they will at least in Gaza be able to make a reasonable showing that in fact they are sovereign. At the same time, I would expect that they would be subject to a blockade by Israel. They would again seek admission to the United Nations and recognition by other states, and this time around, despite predictable U.S. efforts to block them, it is likely that they would succeed.

On the basis of their claim to exercise *de jure* and *de facto* sovereignty over Gaza, they will be viewed as a state. Thus, the conflict over the West Bank will not involve the question whether a Palestinian state exists, but whether that state is either *de jure* or *de facto* sovereign over the West Bank. Thus, on this scenario, the renewed conflict would be a conflict between two states, one weak, the other powerful. It would very much be a conflict over who controls the territory that neither would in fact fully control—the West Bank and East Jerusalem.

On a second scenario it is possible that the Israeli government and the Palestinians would agree, on an interim basis, to the emergence of a Palestinian state that has sovereignty over Gaza/Jericho but only administrative authority over the West Bank. Such a state would be formally recognized by Israel, the United States, and other powers. It would be admitted to the United Nations and would control its own borders and institutions. It would extend citizenship to all Palestinians in Gaza, the West Bank and Jerusalem, but within the West Bank and Jerusalem, its powers would be restricted. In these areas, power would be shared with the Israeli government as a result of a treaty with Israel. This would be of a temporary nature, with final status still to be negotiated, in international negotiations between the two states.[11]

But during this interim period, after sovereignty was achieved in Gaza, there would be a Palestinian state, and it would be present throughout the territories. In the West Bank its presence would be quite similar to that of Israel. It might enter into a condominium agreement with Israel,[12] whereby for a certain period of time the two states jointly control certain parts of the territory, or, as is more likely, they would simply extend the functional divisions reached in the Oslo 2 agreement whereby the West Bank is divided into certain regions, and within those regions, there are specific realms of authority for the Palestinian government. The difference would be that now the government in question would be the government of a Palestinian state. That government would have entered into an agreement whereby, at least for the interim, it was not sovereign over the West Bank but only over Gaza. And even in Gaza, there might be certain limitations on its sovereignty, both with respect to things that it agrees not to do (e.g., the importation of missiles) and limitations on its police powers vis-à-vis Israeli settlers.

Had the previous Labor government entered into such an agreement, it could have led to an international treaty governing settlement activity during the remainder of the interim period. Such a treaty might have proved durable despite the Likud victory. With the Likud in power there remain powerful reasons to allow the emergence of a Palestinian state with sovereignty in Gaza and administrative authority over the West Bank. Most centrally, such a structure could provide sufficient stability to stave off the emergence of high levels of renewed violence between the two peoples. Yet it is not likely that Likud will agree to this framework. Assuming that it does not, and with little prospect of a permanent status agreement, it is imaginable, as stated above, that the Palestinian authorities will act unilaterally to proclaim themselves the government of the state of Palestine.

A third area in which the unilateral strategies herein discussed might emerge is Jerusalem. Jerusalem is slated, per the Oslo Accord, to be one of issues to be taken up in the permanent status negotiations. Whoever is in power in Israel, it is quite likely that the negotiators will fail to reach a permanent agreement on Jerusalem. Israel views itself as sovereign over all of Jerusalem and is unlikely, in any formal way, to relinquish this claim. And the Palestinians are most unlikely ever to accept Israeli sovereignty over East Jerusalem, in particular, over

the Old City. Indeed, the 1988 Declaration of Independence proclaimed Jerusalem as the capital of the state of Palestine.

If there is goodwill, however, what might emerge down the road is a situation in which Israel is prepared to accept the establishment of a Palestinian state but is unable or unwilling to satisfy Palestinian needs with respect to Jerusalem. Rather than allow this dispute to bring down the peace process, the two states might agree to go forward with the two-state solution, leaving Jerusalem unresolved. To the world and to its own public, Israel would continue to assert that it is sovereign over all of Jerusalem. But at the same time, the Palestinian state would claim that it is the rightful sovereign. Most likely there would be little change in the position of much of the international community. Just as most countries do not at present recognize Israel as rightful sovereign over Jerusalem, on these developments they would continue to view sovereignty as unresolved.

Insofar as the two states were successful in developing a modus operandi for actually running the affairs of the city, the question of who was exercising *de facto* sovereignty would be muted. But perhaps for this very reason Israel would resist entering into such an agreement. Suppose, then, that Israel as the dominant power simply continues to "run" Jerusalem, making only limited accommodation to Palestinian claims. Under those circumstances, Palestinians would likely seek to find ways of making clear that they have not *de facto* acquiesced to Israeli rule over the city. Even today, Palestinians see their refusal to take part in Jerusalem municipal elections as constituting such a statement. If there were a Palestinian state with a claim of sovereignty that it sought to maintain, it would look to other means as well.

What might emerge would be a sort of peaceful Intifada, in which there are no violent challenges to Israeli authority, but at the same time a continued unwillingness to give the Israeli authorities generalized obedience and instead to demonstrate regularly that the Palestinian population of Jerusalem accepts as its government the state of Palestine. The Palestinian state could under those circumstances, provide Palestinian citizenship to all Palestinians living in Jerusalem and make them subject to Palestinian law. Although given the realities of power, the ability of the Palestinian government to have an operative executive branch on the ground in Jerusalem contrary to Israeli wishes would be severely limited, there are ample ways in which the relationship of governed and governing could be sustained by the citizens of Palestine residing in Jerusalem.[13]

Most likely is that it would take the form of widespread disobedience to Israeli law as well as obedience to new laws or regulations put forward by the Palestinian government. Within the practice of the Intifada, there are examples to be found, for instance, regulations about when commerce will and will not be conducted (i.e., the war of the shops) and regulations about the date that one turns the clock onto daylight savings time. Within the context of an existing Palestinian state, it can be expected that this would be vastly enriched, with Palestinian citizens seeking to the maximum extent possible to live their lives "as

if the state of Palestine were in fact sovereign in East Jerusalem." This will not be easy, but to the extent that they do so, Jerusalem will be governed by two states.

Notes

Portions of this chapter originally appeared in a different form in *Journal of Palestine Studies* 19, no. 1 (1989): 14–31. © 1989 by *Journal of Palestine Studies*. Reprinted by permission.

1. The Declaration of Independence in many ways was the formal expression of a unilateral process of asserting self-determination that was at the heart of the Intifada. It also represented the unification of the formal PLO framework on the outside, with the Intifada inside. But with the abandonment of unilateral diplomatic moves, and institutional creation, there was also a decline or at least an ebbing of popular Palestinian engagement. Today the state-building process is primarily a governmental process, and this will have powerful implications for the kind of state that ultimately emerges.

2. Anarchy may not mean an absence of order or a situation of chaos. Anarchism as a political ideology asserted that human beings could function amicably and orderly without the existence of any government. But even if anarchy is possible in this sense, there would be no state because there would be no entity whose acts could count as the acts of the corporate whole.

3. There is some vagueness built into this condition with respect to the meaning of "wide range of behaviors." It should not be so wide as to rule out the minimal state of the libertarians. But one might want to rule out a body that maintained its supremacy over solely religious matters.

4. The term "obedience" is used here in a weak sense, not necessarily implying anything beyond an awareness of the rules and a compliance with them as rules. In a section below I discuss the significance of external recognition by other states of an entity claiming to be a state. I do not view this as a necessary condition.

5. It is possible to have situation in which two states are rule givers in relation to a given territory and they are not contending for generalized obedience. Thus they might be rule givers jointly (condominium), or each might have their own functional areas in which they were rule givers, or each might be the rule giver for one of two distinct populations inhabiting the territory. It is easiest to understand these possibilities when both states in relation to some other area (e.g., Israel or Gaza) are for the population the sole rule giver, and then there is a third area (e.g., the West Bank) in which both are present in accord with an agreement between them. Thus we would be considering two states that were both present in a given territory but neither of which was constituted as a state solely on the basis of their relationship to that territory and population. Were either of the entities to have only one of these forms of shared rule, it would be questionable whether it was properly termed a state. The fact that all territory/population with respect to which it was a rule giver was governed by an agreement on power sharing would undermine the claim that it had asserted itself as sovereign (condition 2 in the definition). It is also possible that without any agreement on the sharing of powers, and without contending as rivals for generalized obedience, two states, neither having any other territories under its sole control, might be present in a given territory. This could occur if it turned out that their rules did not conflict with each other so that it was possible for a the population to give generalized obedience to both. But this is of purely theoretical interest.

6. In this context it is interesting to note that on a theological level it is this relationship between God and the Jewish people that is affirmed again and again throughout the Old Testament. In saying back to a government that it is the rule issuer, a people may do

so within any number of restrictions governing both the substance or process of enactment of the rules. No recognition of the rule giver as a sovereign in the Hobbesian sense is required.

7. My book *Creating the Palestinian State—A Strategy for Peace* (1989) presents a version of this strategic approach in considerable detail.

8. This is not to say that there were not also valid Jewish claims to the land, but the nature of these claims and the basis for their validity were of a very different sort.

9. Note that I earlier pointed out that legitimacy is not a necessary condition for statehood.

10. Exactly how much generalized obedience Israeli authorities maintained differed from place to place and from time to time during the Intifada. What is clear, however, is that at some points there was a widespread collapse of its ability to obtain generalized obedience.

11. I presented a proposal along these lines to Israeli Foreign Minister Shimon Peres and to PLO Chairman Yasser Arafat in April 1995. A roundtable discussion of the proposal appears in the Fall 1995 issue of *Middle East Policy.*

12. The term "condominium" is used in international law to refer to that rare situation in which two states jointly rule over a single territorial entity. In *Starkes International Law,* (11th ed.) New Hebrides is given as an example in which the United Kingdom and France for seventy-four years exercised "joint" sovereignty, ending in 1980.

13. On one level this would only be the familiar exercise of the jurisdiction of any state over its citizens who are residing abroad. Thus, Americans who live in Europe are still subject to a variety of U.S. laws governing the rights and obligations of its citizens. For a Palestinian claim to sovereignty over East Jerusalem to be sustained, Palestinian practice would have to go beyond that level.

10

The Ethical Dimension of the Jewish-Arab Conflict

Manfred Vogel

The Jewish-Arab conflict over that part of the Middle East referred to by various people either as the land of Israel or as Palestine has been discussed and debated widely from political, social, economic, and humanitarian perspectives. This should not be surprising as conflicts between ethnic/national entities clearly lend themselves to be examined and judged in terms of these perspectives, but the Jewish-Arab conflict is exceptional in that it also lends itself to be examined and judged from the ethical perspective. One may well argue that, by and large, conflicts between ethnic/national entities regarding land and sovereignty do not lend themselves to be evaluated from an ethical perspective.[1] Certainly all such past conflicts have not been in the least influenced by ethical considerations—power, and power alone, determined which ethnic/national entity came to possess the land. It was never a question of which ethnic/national entity had justice on its side, but always which had the greater power.[2] The Jewish-Arab conflict that confronts us today is a clear exception, for here the ethical dimension has been raised, certainly from the Jewish side.

Already in the very early stages of the Zionist enterprise, the enterprise in which the Jewish side put forth its claims to the land, thus precipitating the conflict, the ethical dimension is raised by the Jewish side (certainly in some quarters) with respect to the enterprise. That, if at all, it should be raised from the Jewish and not the Arab side is understandable, since after all it is the Jewish side that is the active, initiating, party in this conflict in that it is doing the displacement, not being displaced. As such, the Jewish side provides the activity on which the ethical dimension can impinge. What is less immediately understandable is why, in contrast to so many other ethnic/national entities who throughout history displaced other ethnic/national entities and were not particularly concerned with the ethical dimension of their action, the Jewish ethnic/national entity is essentially concerned with it. The reason for this goes to the very heart of what constitutes the uniqueness of the Jewish ethnic/national entity, and that only by properly appreciating this can we also appreciate the unique nature of the conflict that confronts us here. Let us, therefore, try to delineate as briefly as we possibly can the salient features of this uniqueness.

There are two salient features. First, in contradistinction to all other ethnic/national entities, the Jewish ethnic/national entity is the only one constituted by religion and not by nature. The constitution of all other ethnic/national entities is due, in the last analysis, to the biological factor (i.e., to a genetic bondage), being in this sense a kind of an extended family. The constitution of the Jewish ethnic/national entity reflects the fact that Judaism requires, as a condition *sine qua non* for its expression, an ethnic/national entity. Its structure-of-faith is such that it necessarily implicates the ethnic/national entity as its primary, most fundamental, category (the ethnic/national entity being at one and the same time its community-of-faith).[3] The search for the rationale for this claim leads us to the second feature that characterizes the uniqueness of Judaism. It lies in the fact that Judaism, by its very essence, constitutes itself within the domain of ethics rather than within the domain of ontology. Of course, a concern with ethics can be encountered in many other religions. Still, our point is that in these instances the concern with the domain of ethics does not constitute the very essence of the structures-of-faith of these religions; their essential concern is with the domain of ontology, and consequently their concern with ethics, to the extent that it exists at all, is rather peripheral and extraneous. As against this, in the distinctive and mainstream strains of Judaism (in biblical prophetic faith and in nonmystical halachic Judaism) the concern with the domain of ethics constitutes the very essence of the structure-of-faith. We can see this is indeed so by examining in which domain, the ethical or ontological, religions articulate their diagnosis of the ultimate human predicament and their formulation of the salvation offered. This determines what is essential and what is peripheral to each. Now the evidence supports the contention that while in most religions the diagnosis of the ultimate predicament and the salvation offered are expressed in terms of human finitude, thus in the domain of ontology, in Judaism they formulate themselves in terms of justice, thus in the ethical domain.

Two all-important further characterizations necessarily follow. First, the structure-of-faith of Judaism implicates as its primary and most fundamental category the ethnic/national entity. For the ethical domain requires a human collectivity for its expression, seeing that it impinges on relations that subsist between humans. But if the ethical domain is to express itself throughout the whole gamut of relations that obtain between humans, if it is to impinge on *all* possible areas where the ethical may apply (not only on the social but also on the political and economic areas), then the minimal collectivity required is the ethnic/national entity. No smaller collectivity (e.g., the family, professional, cultural or spiritual associations) can cover all these areas. To the extent, therefore, that the religion of Judaism needs to express itself through the whole ethical domain, it implicates an ethnic/national entity as the primary, most fundamental category of its structure-of-faith. Second, every action of this ethnic/national entity is subject to ethical evaluation and judgment. Every ethnic/national entity constituted by the ethical domain is placed under obligation to follow in its actions the dictates

of the ethical and, correspondingly, to have its actions subject to the judgments of the ethical. All this in clear contradistinction to the actions of ethnic/national entities constituted by biology, which are under no such obligation. Thus, it is precisely this ethical vantage point that obliges one to examine and evaluate all conflicts in which the Jewish side is implicated from the ethical perspective, and clearly the Jewish-Arab conflict falls under this rubric.

With these introductory remarks out of the way, we can proceed to the task we have assigned ourselves, namely, to evaluate, in the main, this conflict from the ethical perspective and attempt to see what solution or solutions may be acceptable to this perspective.[4]

Let us begin by briefly stating the case that can be presented on behalf of either side. The presentation of the Jewish side may run as follows: The Jewish people, having possessed the land and having exercised sovereignty over it, were exiled from it by force. By the time the Arabs arrived and conquered the land (seventh century C.E.) the Jewish presence had greatly dwindled. For the sake of the argument, let us concede that it was vacant and that, having conquered, the Arabs resided in it uninterruptedly for the past 1,300 or 1,400 years.[5] Should this grant the Arabs the *ethical* right to the land? We would submit that the answer has to be no. And this is so because of two considerations. First, the previous occupants of the land are still very much around, and second, they were removed from the land by force and against their will. Ethically speaking, the land was not available for occupancy. Had the Jews forsaken the country voluntarily, or had been driven out and then had forgotten their association to the land and given up any claim to it, a good case could have been made that the land was, ethically speaking, unclaimed and available to whomever claimed it first. But this was not the case; neither of the two possible scenarios occurred—the Jews did not leave voluntarily nor forget or give up their claim to the land and their wish to return to it.[6] So, even though the Arabs themselves may not have been the perpetrators of the expulsion and even though they may have come into an unoccupied land (which, historically speaking, may not be quite accurate), they still would not have an ethical right to the land, seeing that the previous owners are around and have not abdicated their claim to the land.[7] In the ethical context, temporal duration in no way weakens the strength of the claim to the land of the preceding occupants. The fact that by now the Jews have been removed from the land for many centuries does not affect the status of the land when viewed from the ethical perspective. For, unlike the legal context (and, for that matter, the political too), there can be no "statute of limitation" in the ethical context; what was ethically wrong a million years ago is still ethically wrong today.[8]

One further consideration must be raised before wrapping up the opening statement for the Jewish side. The activation of the Jewish claim[9] arises because the very possibility of the survival of the Jewish people in modern times during the rise of the nation-state and the emancipation of Jewry is thrown into grave doubt. The claim arises not because the Jewish people happened to feel like

activating it at this particular juncture in history or even because the technological means for making it possible are now available. No, the cause for its arising is much more fundamental and essential—it is brought about not because of fancy or because opportunity presented itself but because it became a question of life and death. Namely, while the Jewish ethnic/national entity could in the past adjust and thus survive in Diaspora existence, the changes brought about in modern times make such adjustment and survival no longer feasible. This, in the last analysis, is perhaps the real signification of the horrible tragedy of the Holocaust—if the Jewish ethnic/national entity is to survive, given modern nationalism and emancipation, it must regain possession of and sovereignty over the land.

If this conclusion is valid, it has significant ramifications for our ethical deliberations. An ethical justification may be established with respect to an act, which in normal circumstances would not merit ethical justification, if one's life were to depend on it. For example, in normal circumstances, breaking into another person's house and occupying it without the consent of the previous occupant may not be ethically sanctioned. But suppose that the only way to save one's life is to find refuge in entering and living in that house (seeing, let us say, that all the land outside the house has been completely flooded so that remaining outside the house would necessarily mean drowning), then it is not at all not clear that breaking into and taking possession of the house should be ethically condemned. And how much more so if the house had originally been one's own and had been taken away in a manner that would not be ethically sanctioned. Certainly, a case can be made for the claim that one has ethical sanction to do anything to save one's life, except taking the life of another when that other is an innocent party.

Turning now to the Arab claim regarding their ethical right to possess the land and exercise sovereignty over it, the case here is much less complex and involved. It may simply run as follows: We, Palestinian Arabs, have been living on the land for the past 1,300 years, if not longer, and this gives us the right to possess it. And although we may not have exercised sovereignty over it in the past, nowadays when the current *Zeitgeist* accords to every ethnic/national entity living on its land the right to assume sovereignty over it, we too should have that right. Finally, as to the claim that in the context of the modern world the very survival of the Jewish ethnic/national entity requires that they come to possess sovereignty over their own land, the Arab side may well reply that this may well be the case, but it is the Jews' problem, not theirs. Why should they be involved or required to pay the price for solving the Jewish problem? Why solve the Jewish problem at their expense?

One has to admit that there is some validity in both cases. For as to the possession of the land, it is true that the Arabs have lived on the land for a long time and deciding in favor of the case made by the Jewish side would clearly lead to their dispossession from the land. But is it ethically permissible to right

one wrong by inflicting another wrong? Can a wrong right a wrong? As against this, as noted above, the Jewish ethnic/national entity was driven from the land by force and against its will and, indeed, while in exile it never gave up its claim to the land or its hope and yearning of returning and reestablishing their sovereignty over it, and as such the land was not really vacant, available for anyone to take it over. Had the Jewish people disappeared in exile, as did all other exiled ethnic/national entities, there would have been no problem. But the Jewish people did not. Is it their fault? And not having disappeared, their claim to the land must be seen to stand in full force.

As to the second issue in the conflict, that concerning the survival of the Jewish people in the modern world, the Arabs' response that its solution should in no way come off their hide is somewhat ingenuous, seeing that poorer nations (including the Palestinian, Egyptian, and Syrian Arabs) have persistently placed moral claims on richer nations to assist them financially and economically. Are we to say that when one is on the receiving end, there is moral justification for involving others in one's problems, but not when one is on the giving end? The truth of the matter is that we are all involved with one another, particularly in today's global village. At the same time, it is not at all clear that there is really a *moral* justification to expect another to extricate us from our problems, particularly if such extrication is to be at a cost to that other—and the higher the cost, the less moral justification can there be for expecting the other to help. There can be no moral justification to expect another to help if so doing would risk the very existence of that other (we certainly have no moral justification to expect another to commit suicide in order to help us, not even if our life depended on that help). Thus, seeing that the extending of help from the Arab side (acceptance of the Jewish claim) would imply a high cost to the Arab side (one might say a cost equaling the committing of suicide inasmuch as it involves foregoing their own claim to possess the land and exercise sovereignty over it), there can be no moral justification to expect or demand that it should accede to the Jewish claim. Still, as we have argued, the Jewish side, seeing that its very survival depends on possessing the land, has a clear moral justification to do all it can to secure such possession, particularly since the Jews had prior possession of the land, were deprived of this possession through an ethically unacceptable use of force, and never gave up claim to this possession.[10]

We are evidently confronted here with a clash between two rights. Both sides have a case, though, in our judgment, the Jewish case is stronger because having priority in possessing the land, losing it in consequence of an ethically unacceptable act, never reconciling itself to this loss or abdicated its claim to the land is a weightier consideration than the consideration of who currently occupies or resides in the land; and because the prospect of total annihilation (as demonstrated by the Holocaust) is a weightier consideration than paying a price for the troubles of another. Still, while the Jewish case may well be stronger, there is also a case for the Arab side. There is right on both sides of the conflict, though it may

not be distributed equally, and in such a situation, there cannot be, ethically speaking, a clear-cut solution in which one side is the total winner and the other side is the total loser. The solution must be a compromise; it is not a case of all or none, but of the best possible solution or, more accurately, the least possible evil solution, under the circumstances.[11]

It seems to us that in the circumstances that confront us there are essentially only two possible solutions that present themselves—divide the land between the two parties, thus creating two states in the land under dispute, or combine the two people in one state covering the totality of the land, thus creating one binational state. And between these two alternatives we would strongly contend that the former alternative, that of division, is clearly the less evil in comparison to the alternative of a binational state. Binational or multinational states do not work. All such instances, whether formed artificially, that is, by an *a priori* political decision (e.g., Czechoslovakia, Yugoslavia), or naturally, by an *a posteriori* historical development (e.g., Canada, Cyprus), clearly show this. There seems to be a deep-seated need for a one-to-one relationship between the ethnic/national entity and state sovereignty. Each ethnic/national entity wants its own state on the analogy of each family wanting its own home. And when two or more families must share the same house (the same kitchen and bathroom), a state of continual irritation and tension leading, sooner or later, to fighting and eventually to separation will almost inevitably ensue, and this will also happen when two or more ethnic/national entities are to share one and the same state.

In addition, we have the all-important further consideration that beyond the universal need of every ethnic/national entity to possess exclusive sovereignty over its own land (and which, as such, will affect the Arab side as much as it will affect the Jewish side), the Jewish ethnic/national entity has its own special need to possess such exclusive sovereignty over its own land. For, first, a good case can be made that in order to respond effectively to the threat to Jewish existence in the circumstances of the modern world, the Jewish people need to regain exclusive sovereignty over its land. Shared sovereignty (which the binational alternative provides) is at best a solution that is only halfway effective. For clearly the effectiveness of such shared sovereignty with respect to the prospects of survival of that part of the Jewish people that opts not to settle in its own land but to go on living in Diaspora will inevitably be reduced and limited, seeing that it would now be circumscribed by the interests of the other ethnic/national party in the binational state for whom, only naturally, the welfare and survival of that part of the Jewish people that goes on living in Diaspora is of no concern. But even with respect to that part of the Jewish people that is to constitute the participating partner in the binational state, the lasting effectiveness of such a solution in protecting the interests of the Jewish people is very much in question. For, to be realistic, one must take into consideration the considerable disparity in birthrate between the Jewish and Arab sides. There can be no question that in a relatively short time the Jewish side would become a minority and then, regard-

less of what guarantees and safeguards are provided in the constituting of the binational state, the preponderance of population on the other side would inevitably, sooner or later, reduce the binational state to a single nation-state with the Jewish people becoming once again a minority that at best will be tolerated and at worst expelled.[12] Indeed, the very principle of democracy would fully justify such a reduction of the binational state to a single nation-state, seeing that it cannot very well countenance or defend inequality in the sharing of power.

Going beyond the needs of the Jewish people for survival, an equally good case can be made that the realization of the religious vocation of Judaism requires that the agent pursuing this vocation possess sovereignty. For if the vocation is (as is clearly reflected in the distinctive and, indeed, defining expression of Judaism, that is, in the prophetic expression) the establishment of the righteous community, then the agent that is to bring it about must have sovereignty. This consideration is by no means peripheral. As we have seen, the religious vocation provides the fundamental *raison d'être* for the very constituting of the Jewish people, and the unfeasibility of pursuing this religious vocation is tantamount to the very undermining of the existence of the Jewish people. For if the pursuit of the religious vocation is to be excluded with finality from the Jewish people (and not only provisionally as the Jewish people believed was the case in *Galut*), then there is no point in the further existence of the Jewish people *qua* Jewish. Thus, viewed from the Jewish side, the binational state is not really a viable option. The only acceptable option is division.[13]

The question what would constitute a fair and just division must immediately ensue. In answer, it would seem to us that there are really only two alternatives that could claim to satisfy the criterion of fairness. The first, and the one that will ideally satisfy the criterion of fairness most fully, is to have the division be commensurate with the relative weight of the claims made by the two sides.[14] If this is not practically feasible (and most probably it is not), then fairness would dictate the second alternative of an even division irrespective of the relative weight of the claims. From the vantage point of the ethical perspective, this would seem to be the least evil solution.

It is gratifying to note that the actions taken in the political/legal domain (those taken by the international community that have acquired the sanction of international law) seem to conform to this conclusion at which we have arrived on the ethical level. We have in mind the decision taken by the international community in the United Nations in 1947 to divide the land. But we cannot say that this conformity also extends to the other substantial point made in our conclusion, namely, that the division should be in some way evenly balanced. If we take a comprehensive view of the issue, realizing that the resolution of 1947 is not *de novo* but has a history that precedes it and preconditions it, we would have to conclude that, in its bottom line, the outcome favors the Arab side. For inasmuch as the United Nations derives its legal authority to address and decide this issue from the fact that it constitutes itself as the continuation of the League

of Nations, the position that the League took is of paramount importance. And with respect to this position, three things are of direct significance. First, when the League granted the land under a mandate to Great Britain, it did so with the understanding that it was for the purpose of carrying out the promise of establishing on this land a national home for the Jewish people.[15] Second, the League did not divide the land between the Jews and the Arabs but allocated it exclusively to the Jewish people.[16] Third, and this is really what is of greatest significance for us here, the land that is affected, namely, what is taken to be the land that once belonged to the Jewish people and is now granted for their restoration, encompasses the whole territory on which in 1948 and 1949, respectively, both the state of Israel and the kingdom of Jordan were established, that is, the land that is situated both on the west and on the east banks of the River Jordan. This is the land mandated to Great Britain as one unit for the purpose of its carrying out its commitment of establishing a Jewish national home. But no sooner did Great Britain receive the mandate than it proceeded in 1921, unilaterally and in complete disregard of the decision of the League (which gave it the authority over the land in the first place), to separate the territory on the east bank of the Jordan River, constituting it as a distinct entity and giving it exclusively to the Arab side. It did this purely for its own imperialistic needs. After the French received Syria as their mandate, they drove out Faisal, and the British had to find him another place, which they did by giving him Iraq. This, however, displaced Faisal's younger brother Abdullah, who, in turn, was given the land east of the Jordan River, which the British proceeded unilaterally to constitute as the separate unit of Trans-jordan. Could this arbitrary, unilateral act of Great Britain be accepted as valid from the ethical perspective? Hardly.[17]

One could argue that Great Britain unwittingly introduced by its arbitrary act of separation the principle of division called for by the ethical perspective. The net reality was tantamount to dividing the land between the two claimants, and this result should be favorably embraced after all by the ethical perspective. From the ethical perspective, this would have been a valid and persuasive position in settling the conflict; dividing the land so that the Arab side got the eastern bank and the Jewish side got the western bank.[18]

But this is not what happened. Instead, the land on the eastern bank of the Jordan River was taken as having belonged to the Hashemite family from time immemorial and as having never been part of the land involved in the dispute. It was presented as if the dispute was always confined exclusively with respect to the land of the western bank and that, therefore, its resolution from the ethical perspective required that the division be applied only with respect to the land on the western bank. This was the basis on which the United Nations acted in 1947—it proceeded to resolve the conflict by dividing the land on the western bank between Jews and Arabs in complete oblivion to the status of Trans-jordan. Is such a division acceptable from the ethical perspective? Is it even? It is hard to see how this division could be seen as fair from the ethical perspective when in

reality it is a division not of the original land in question but only of what is already a fraction of it. Surely, in such an arrangement the Jewish side will be getting only half of a half, a quarter, while the Arab side will be getting the remainder, three-quarters. By no stretch of the imagination can this be considered an even division.

Although from a purely ethical viewpoint the 1947 resolution left something to be desired and may indeed dictate a return to the drawing board, the political dimension simply will not allow us this. We are caught in a situation where while the political dimension does not indeed tailor itself in full to the ethical dimension, wisdom would nonetheless dictate that we accept its *faits accomplis.* This is one of those instances where one cannot put the clock back and start over again; it is the better part of wisdom to accept a less than perfect situation than to risk losing everything.[19]

By and large, this characterized the response from the Jewish side to the successive reductions in its claim. It acquiesced in the unilateral transfer of Trans-jordan by Great Britain to Abdulla, to the Arab side.[20] The Jewish side seems clearly to have focused its concern on the West Bank and relegating the East Bank to the very outer periphery of its consciousness, if not, indeed, excluding it altogether; it seems to have accepted and acquiesced in the separation and removal of the East Bank from the land on which it places its claim. But this is not to say that the Jewish side does not still want to see Jordan as that part of the land that would satisfy the claim of the Arab side. There is no contradiction here. For it is one thing not to want to have a certain thing for oneself and quite another to have this very same thing satisfy the claim of an opponent so that one is freed from any further claims by the opponent. The Jewish side could maintain this twofold position without self-contradiction. Still, it is important to underline that although the Jewish side would have wanted to see Trans-jordan count as satisfying the Arab claim (and this would indeed have also satisfied the ethical demand), when the United Nations in 1947 proposed to resolve the conflict between Jews and Arabs by partitioning exclusively the territory on the West Bank, the Jewish side, by and large, accepted.[21] This could have been an acceptable, though not optimal, end of the conflict from the ethical perspective. But the Arab side rejected it because it could not bring itself to accept the possibility of there being another rightful claim beside its own, and consequently any solution that gave it less than the totality of its own claim was unacceptable.

Now we would submit that the fact that the Jewish side accepted the 1947 UN solution while the Arab side rejected it and resorted to force is crucial to a proper evaluation of the events that ensued. Namely, we cannot arrive at any conclusions that would be ethically valid if we leave out of the equation the fact that the Arab side, in the face of Jewish acceptance, rejected the UN resolution and launched an all-out war against the Jewish side (now established in the territory allotted to it by the United Nations as the state of Israel). All Arab states, with no exception, declared war, and this state of war continues until today with the

exception of Egypt having terminated it in 1979 and Jordan in 1994. During this period the state of war has exploded into full-fledged warfare three times in addition to the initial war launched in 1948, namely, the Suez War in 1956, the Six-Day War in 1967, and the Yom Kippur War in 1973.[22] Only the Six-Day War of 1967 has a direct bearing on the issue before us, however, since only it resulted in a change in the distribution of land between the parties. The remainder of the land on the West Bank came under Israeli control, leading the Arab side now to demand the return of this land as a precondition to making peace.[23]

What can one say from an ethical vantage point about the status of this land captured by Israel in the 1967 Six-Day War? Who has a rightful claim to possess it? The Arab side contends that the captured land must be returned to it *in toto* on the grounds that one should not be allowed to gain possession of land by resorting to war. What is one to say to this? From an ethical perspective one cannot but fully embrace this principle—there can be no ethical justification for possessing land that was gained through resort to war.[24] But let us be clear that the principle refers exclusively to the aggressor in the war, not to the victim. It is understandable that there would be ethical justification for condemning an aggressor's action and demanding that it will not get away with it. There is full justification for demanding that resort to force should not be rewarded; it must be frustrated and its gains canceled. But there can be no such ethical justification for condemning the victim's resort to force in self-defense. Consequently, if in the course of such self-defense the victim prevails and gains some of the aggressor's territory, it is not at all clear that there is an ethical justification for demanding that such territory be returned to the aggressor. If there were, we would create a situation where the aggressor cannot lose, and this clearly would be ethically reprehensible. For if the aggressor's resort to force prevails, the land gained from the victim will not be returned; and if the aggressor's resort to force does not prevail, the territory it loses to the victim would have to be returned. We create for the aggressor the enviable but ethically most dubious situation where, if victorious, the gains of victory are kept, but if defeated, the losses of defeat are canceled. Thus, from the ethical perspective the demand to return all land gained by force is decisively and unambiguously applicable only with regard to an aggressor, not with regard to a victim.[25]

If so, then the key question regarding the return of the territories won in the 1967 Six-Day War becomes, who was the aggressor? On a purely legalistic level, the opprobrium of aggressor must remain attached to the Arab side because it rejected the UN partition plan, declared war against Israel, and did not abrogate this state of war through 1967.[26] As such, the Arab side must remain the aggressor regardless of who started the actual hostilities in 1967. Initiating hostilities *within* an existing state of war does not brand the initiator an aggressor; within a state of war the combatants have the option to decide when and where to launch actual fighting and when and where to suspend it. But let us concede that the argument presented here formulates itself exclusively in a legalistic

context and as such may well appeal to a legalistic mind though not necessarily to an ethical concern. The determining question may well remain who started the actual all-out war in 1967. After all, regardless how the situation is defined in theory (i.e., in the annals of international law), in concrete reality all-out war has not been the state of affairs for the preceding eleven years and therefore it may be legitimate to ask who started the all-out war in 1967 and brand that party an aggressor so as to bring the *status quo ante* back into effect. Whether or not this position is valid, let us concede the point and agree that the party that started the full-fledged war in 1967 is an aggressor and therefore any territory it may have gained in that war should, from an ethical perspective, be returned.

So, who started the war in 1967? The Arab side insists, very persistently, that it was Israel.[27] This claim no doubt bases itself on the preemptive strike launched by Israel against Egypt on June 5. But to leave this claim to stand by itself would gravely misrepresent matters as it conveniently closes its eyes to what Egypt was doing in the three weeks preceding the preemptive strike by Israel. Egypt was inciting Arab hatred to heights never encountered before or since and declaring repeatedly in the most explicit and official manner its intention to launch all-out war imminently against Israel in order to eradicate it from the face of the earth ("drive them into the sea" was the imagery used).

One may well argue that still what we have here thus far are only words and not actions and aggression is constituted by actions and not words. True enough, but speech can be tantamount to action—shouting "fire" in a crowded theater—and given the situation in the region at the time, such speech was tantamount to action. Further, Egypt was not merely indulging in incendiary speech but accompanying it with concrete action of a most threatening nature. It unilaterally expelled the UN peacekeeping contingent (in clear violation of its commitment after the 1956 Suez War that the removal of UN forces would be exclusively at the discretion of the United Nations) and it heavily mobilized its army on the Sinai-Israel border in a posture of attack. One may still contend that these concrete acts are not as such in themselves as yet acts of aggression, but, in any event, there can be no question that these acts combined with incendiary speech were highly threatening. The question arises as to what the threatened party can possibly do in such circumstances and not be branded as the aggressor. Would a preemptive strike in these circumstances really be an act of aggression? Put slightly differently, do we really want to maintain that in order to avoid being branded an aggressor, the threatened party must wait passively until it is actually hit before it can respond? This seems preposterous. Would we really accuse a person who managed to pull a gun and shoot first the person who was holding a loaded gun directed at him and threatening to pull the trigger momentarily as being a murderer? Instead, it would seem very clear to us that the real aggressor here is the threatening party and that the threatened party, even though it was the first to shoot, should not be branded as the aggressor because its shooting was in self-defense. If this position is not accepted,[28] a good case can be made that the

first overt act of aggression was perpetrated not by Israel but by Egypt. Prior to the Israeli attack of June 5, Egypt closed the Strait of Tiran (an international waterway) to any ships going to or coming from Israel, thereby imposing a clear-cut blockade on Israel. In international law this is clearly an act of war and thus, an overt act of aggression.[29] For more than three weeks, Israel pursued every avenue to have the blockade removed through international diplomatic pressure or, failing that, through the intervention of the maritime powers, and it was only after the clear failure of all these attempts that Israel resorted to the preemptive strike against Egypt. Given all these considerations, Israel cannot possibly be branded as the aggressor in the Six-Day War of 1967.

Although Egyptian territory captured by Israel in this war has been returned to Egypt, the return of territory captured from Syria and Jordan (the West Bank—referred to in the Hebrew bible as Judea and Samaria—and East Jerusalem) is left on the table. In both instances hostilities were initiated by Syria and Jordan and not by Israel. Indeed, with respect to Jordan, Israel literally begged it not to enter the fray, but to no avail. Thus, with respect to the territories captured from Syria and Jordan the ethically valid principle that an aggressor should not be allowed to keep territory gained by the act of aggression does not apply. The territory gained by Israel is territory gained by warding off aggression, not by initiating it, and consequently from an ethical perspective there can be no demand for its return.[30]

If the issue of the return of these territories can arise here at all, it can arise only on the political level, not on the ethical. In other words, while, ethically speaking, it may well be valid for Israel not to return the territories, politically speaking, it may be very short-sighted and stupid not to do so under certain circumstances. What needs to be underlined is that the decision is being dictated by political considerations, albeit impacted by the factors of religion and history. And here the territory conquered from Syria may well hold a different status for Israel than that conquered from Jordan, inasmuch as the Jewish side never claimed that the Golan Heights constituted part of Eretz Israel and never demanded that it be placed at the disposal of the Jewish side. The Jewish side has no proprietary concerns with this territory, and this certainly should greatly alleviate the problematic that its return may precipitate for Israel. Israel does have, however, a concern with security as regards this territory, seeing that the Golan Heights overlooks many Jewish settlements in the valley below. This concern emerges not only from a theoretical analysis of the strategic contours of the terrain involved but from the actual bitter experience of the past—from the concrete experience of what the Syrians actually did to the Jewish settlements when they held the Golan Heights. As such, although one could certainly argue, given this context, against the return of this territory to Syrian hands, one could also nevertheless argue with equal force that if security can be properly and assuredly guaranteed, the territory could be returned to the Syrians. Indeed, the latter position gains considerable force because the return of this territory has

been stipulated by the Syrians as a condition *sine qua non* for establishing full and authentic peace. In the long haul, it is no doubt the better part of wisdom to return this territory in exchange for peace.

It is a much more difficult problem when one comes to the issue of returning the territory captured from Jordan, for this territory is clearly part and parcel of Eretz Israel, the land to which both Jew and Arab lay claim. As such, the question must inevitably arise here for the Jewish side whether having come into possession of that land as a result of having withstood and overcome the aggression from the Arab side (specifically, from Jordan), it should now return it to the Arab side and so revert back to the division delineated in the 1947 UN partition plan. Should it do it even though this plan, when taken in the context of the full parameters of this conflict, was not really fair to the Jewish side, seeing that it conveniently closed an eye to the preceding unilateral, imperialistic partition by Great Britain of the original land accorded to the Jewish side (a partition that was totally unjustified and untenable both from the ethical perspective and from the perspective of international law). Should not the Jewish side take advantage of its good fortune to have prevailed over the aggression from the Arab side to rectify this imbalance? It is one thing to have acceded in 1947 to the UN partition plan in the hope and belief that this would finally settle the conflict once and for all and quite another to return to it now after the Arab side has rejected it and resorted to force. Were not all bets off once the Arab side rejected the UN partition plan, and would it not be much more acceptable from the ethical perspective if the partition were drawn along the line emerging from the 1967 war, to wit, the line whereby the Jewish side gets the land on the West Bank and the Arab side gets the land on the East Bank? This is certainly a question that many on the Jewish side would no doubt want to raise.

Raising this question, however, must not be equated with the strenuous objection to the return of any part of Eretz Israel raised by a segment of the Orthodox community in Israel that is messianically oriented (most clearly and consistently by the *Gush Emunîm* movement emerging from the Talmudic Academy of Rav Kook). True, this position shares with the foregoing one the basic desire to hold on for the Jewish side to all the land belonging to Eretz Israel (i.e., to all the land situated on the West Bank). Indeed, it is because of this similarity in the end objective characterizing these two positions that they may be lumped together indiscriminately. But such lumping together would, in truth, be totally unjustified. For although the two positions may well have one and the same objective, the claims made on behalf of this objective by these positions differ substantially from each other. While the foregoing position grounds itself in a claim to a fair division of the land under dispute, the latter position grounds itself in a claim to the sanctity of the land and its arrogation by the divine to the Jewish people. It grounds itself in Hebrew Scripture, taking it *verbally* as the record of divine revelation. On this basis one could point to certain passages in Genesis where the divine does indeed promise the land to Abraham's descendants and to any num-

ber of references strewn in other parts of the biblical narrative and in the legal corpora where the sanctity of the land is clearly stated.

Nevertheless, a claim that grounds itself in religious considerations cannot possibly have the range of persuasiveness that a claim grounding itself in ethical consideration would have. The former is inescapably particularistic and can carry no persuasiveness for people who are not adherents of this religion. As such, it is not likely to introduce a possible way of resolving a conflict, except when the parties to the conflict belong to the same religion. Religiously grounded claims would, if anything, only bring to the fore and accentuate the divisiveness between the parties. For the religious dimension in being particularistic cannot provide a common ground that both parties to the conflict may come to share. It can only exacerbate the conflict, not only because it brings to the fore and emphasizes the particularistic views of the protagonists (thus bringing to the fore and emphasizing what differentiates and separates the protagonists rather than what they may share in common) but also because it absolutizes these particularistic views by endorsing them with divine sanction, and such views are not likely to be amenable to any modifications or accommodations with differing views.

Thus, there can be no question that allowing the religious factor to intrude into the picture would greatly diminish, indeed would cancel out, the prospects of resolving the conflict on the basis of mutual accommodation and compromise—it is not difficult to surmise what the prospects for a settlement would be if the Jewish and Arab side were to be represented respectively by *Gush Emunîm* (claiming that God has ordained the whole land to the Jewish people) and *Hamas* (claiming that God has forbidden, on penalty of eternal damnation, the ceding of even one square inch of any territory once held by Islam).[31]

But while we must, indeed, grant that the case against the return of the land that grounds itself in religious considerations is to be rejected as unacceptable, this does not mean that there is no acceptable case against the return of the land grounded in ethical considerations. To the extent, therefore, that this chapter undertakes to deal with the ethical dimension of the conflict, we would have to conclude that there is no ethical justification for the demand from the Arab side to return to the *status quo ante* and that, indeed, the territorial reapportionment resulting from the 1967 war as it impinges on the West Bank reflects, from the ethical perspective, a more valid resolution of the conflict.

Still, even so, we cannot let our deliberations come to closure with this conclusion. For although from a strictly self-contained ethical perspective this indeed is the conclusion we must arrive at, if the ethical perspective is not to remain a purely theoretical exercise but is to become relevant and applicable to life, we must realize that we cannot allow it to function in a vacuum, that we must see to it that it takes into consideration what is and what is not feasible in the context of concrete, practical, political life. The ethical conclusion that the Jewish side is under no obligation to return the land on the West Bank captured

in 1967 must be bracketed. From the political perspective such a conclusion would be, in our judgment, very short-sighted and counterproductive—if such a policy of refusal aborts the chances for a final peace (as seems very likely to be the case), it would be a policy that is penny wise and pound foolish. If the price for a true peace has to be the return of the land captured in the war of 1967, then so be it; in the last analysis the ethical perspective must accommodate itself here to the political perspective in order that a much more important goal can be attained.

There is, however, still a lingering ambiguity connected with such a provision of a return of the land. Namely, if the land on the West Bank is to be returned, then, strictly speaking, from the perspective of the ethical dimension, it is to be returned to Jordan, seeing that it was Jordan that possessed the land prior to the 1967 Six-Day War. But the Arab side in the Rabat conference of 1974 relieved Jordan from its possession of the land and assigned possession to the PLO.[32] To whom should the land be returned? Shall we say that if a return is to take place, it can be done only with respect to Jordan because it was taken from Jordan? Or shall we say that because Jordan has subsequently abdicated its claims to possess the land and the PLO has been designated by the Arab side as the claimant, the land should be returned to the PLO? Well, as already noted, if the answer is to be determined exclusively by ethical considerations, then there is no case for returning the land to the PLO, since it was not taken from the PLO in the first place. But then, according to our analysis, there is really no case for returning it to Jordan either. Indeed, the analysis has made it very clear that our conclusion in favor of returning the land can be established only on the grounds of political, not ethical, considerations—it is for the sake of attaining final peace and not because of any ethical constraints. If this be the case, the return must clearly be to the party designated by the Arab side, for only as such can the return meet the demands of the Arab side for peace, and this is the whole point of returning the land.

This may well be a nonissue in the last analysis, for it is not at all clear that the distinction between Jordan and the Palestinians is really valid. Since a good two-thirds of the population of Jordan is Palestinian, what would be the distinction between Jordan and a Palestinian state on the West Bank? Why should not Jordan also be considered a Palestinian state? Moreover, it is very dubious that a separate Palestinian state on the West Bank could be economically viable, and were it to survive it would, in all probability, be a most destabilizing factor for the whole region. Thus, regardless of what the Palestinian or the Israeli side may wish or profess, the economic and political forces operating in the region would seem to indicate clearly an eventual coalescence in some shape or form between Jordan and any Palestinian entity established on the West Bank. As such, it becomes a rather academic question whether the land should be returned to the PLO or to Jordan.

There is one further issue that we ought to address briefly before bringing this chapter to a close. This is the issue of Jewish settlements on the land won in the

1967 Six-Day War. It would seem to us that if, as we have indeed tried to argue above, Israel cannot be viewed as the aggressor in the 1967 war and, even more specifically, as the aggressor against Jordan, then the land won from Jordan is not illegally occupied and consequently, from an ethical perspective, there should be no problem with Jews settling on such land, provided the land for such settlements has been legally acquired. There is no good *ethical* reason why Jews (or, for that matter, any other ethnic group) should be excluded from being able to reside in any place on God's earth. Indeed, why should Jews not be allowed to settle on land arrogated to Arab sovereignty, seeing that Arabs are allowed to settle on land arrogated to Jewish sovereignty? Arabs want their land to be *Judenrein* but not to have Jewish land *Arabrein.* Clearly, this is inconsistent. At any rate, the bottom line is that, from an *ethical* perspective, no "ethnic-rein" position is really defensible.

Having said this, we must regrettably admit that viewing the matter from the political rather than the ethical perspective, we may well have to end up with a different story. For here we come back to the position we had to take above regarding the issue of a binational state, namely, that the mixing of different ethnic/national entities under one roof does not work.[33] Clearly the presence of Jewish settlements on land that will be under Arab sovereignty harbors the seeds for future conflict. It is creating a potential "*Sudetenland* situation" where a country harbors a distinct minority of a people who populate the country next door, a sure recipe for interminable trouble. Of course, the same dire diagnosis applies *mutatis mutandi* with respect to the Arab presence within the state of Israel.

It is certainly highly undesirable for the Israeli Arabs to exist as a minority in a state that belongs to the Jews (or, for that matter, for the Jews to exist as a minority in a state belonging to the Arabs—indeed for any ethnic/national entity to exist as a minority in a state belonging to another ethnic/national entity).[34] In such a context, not only can the minority ethnic/national entity not adequately express and develop its own ethos but it is inescapably subjected to the ethos of the ethnic/national majority. Indeed, some Israeli Arabs are already complaining and demanding that all symbols of state connected with the Jewish ethos (as, for example, the anthem of *Hatikvah* or the state symbol of the candelabra) be removed because they carry no meaning for them. It is true that the various symbols and institutions representing the state of Israel emanate from and express the ethos of the Jewish ethnic/national entity, but this is the whole point of the state of Israel—that it be a Jewish state. No other state, and certainly not the various Arab states, would ever dream of giving up the ethos of the ethnic/national entity it represents, irrespective of what other minority ethnic/national entities may or may not be present within its boundaries. Anyway, this demand, if acted on, would at most only remove the symbols and institutions associated with the ethos of the Jewish ethnic/national entity; it certainly would not substitute in their place symbols and institutions associated with the ethos of the Arab ethnic/national entity (or does the demand actually go that far?). But as such, this

would only mean that symbols and institutions that are not meaningful to the Arab minority would be eliminated; it still would not mean that the Arab minority would be able to express its own ethos in the symbols and institutions representing the state. The Arab minority would still remain deprived of the capability to express its ethnic/national ethos, except that now the Jewish majority would also be deprived of this capability to express its ethnic/national ethos. Since every ethnic/national entity must be capable of expressing its ethos, this cannot possibly be an acceptable demand.

A good case can be made that the notion of a state being totally neutral to the ethoses of all ethnic/national entities is an illusion. For the state is but the institutionalized representative of the ethnic/national entity (seeing that we cannot have a state that is empty of people and that people divide themselves into ethnic/national entities) and the ethnic/national entity, by its very essence, is linked to the ethos which it creates; indeed, in an essential way, it is defined by the ethos it creates.[35] Thus, we cannot have a state that is totally neutral and devoid of any and all possible ethoses—it must be linked to (i.e., be the expression of) some ethos or other. The Arab's demand or suggestion, therefore, for the state of Israel to give up the ethos of its ethnic/national entity so as to create a vacuum, a "no-man's land" as far as the expression of ethos is concerned, and as such, of course, making it more comfortable and amenable for any minority ethnic/national entity residing within its borders (a demand or suggestion made with respect only to Israel but not to any Arab country) is simply not feasible.

If one is to talk in terms of what would be feasible in these circumstances, two alternatives suggest themselves. The first alternative is for the state to use one symbol from one ethnic/national entity and another symbol from another ethnic/national entity, or alternatively, to combine in each symbol elements from all the various ethnic/national entities that exist within its boundaries. The second alternative is for a new ethos to emerge from those of the original ethnic/national entities that would pervade all the ethnic/national entities existing within the boundaries of the state and supplant their indigenous ethoses.[36] Neither of these alternatives is satisfactory. The former does not offer us a permanent, stable solution, seeing that ethoses by their very essence require for themselves full expression and consequently must be exclusivist as regards the "territory" (i.e., the state in which they express themselves).[37] The latter fails because it would eliminate both the Jewish and the Arab ethnic/national entities and substitute a newly formed ethnic/national entity. This would be self-defeating, seeing that the intended solution was to be a solution that would have preserved and protected as much as possible the interests of both parties. Instead, this alternative effects its solution by eliminating both troublesome parties (saying, so to speak, a curse on both your houses). It is a case of the operation being successful at the cost of the patient's life.

No, the suggestion to turn the state of Israel into a neutral state (i.e., neither Jewish nor Arabic) is not viable. It does, however, reflect authentically the

predicament of the Arab ethnic/national entity that constitutes itself as a minority group within the state of Israel. Now two further possibilities ought to be mentioned. One is further to partition the land that the pre-1967 war state of Israel possessed so as to exclude the Israeli Arabs from the state of Israel.[38] While this would solve the predicament of the Israeli Arabs,[39] it would do so at a price that is really not acceptable because it would mean that the Jewish side would be called upon to settle for only one eighth of the land originally allotted to it, the other seven-eighths going to the Arab side. We concluded that to halve it is dictated by ethical considerations, seeing that the Arab side too has rightful claims, and we further conceded that for political considerations it may be wise for the Jewish side to agree to halving the half of the original land at issue, giving the Jewish side only one-quarter of that land. But to halve the remaining quarter further, even though it is also done for important political considerations, may be stretching the appeal on the grounds of political considerations beyond the breaking point—it is one thing to resign oneself to halving the half for political considerations, it is quite another to accept an additional halving of the half of the half for the same considerations. And anyway, such a partition would be from a practical point of view extremely difficult and problematic because the Arab and Jewish populations are so intermixed as to make partition extremely difficult if not indeed impossible.[40] Finally, if, not withstanding all these objections, this route is pursued nonetheless, then it would seem that, for the same political considerations, a similar partition should apply with respect to the Jewish settlements situated on the land that is to be returned to the Arab side and this, given the geographical reality that obtains, is equally a nightmare to contemplate.

The other possibility is to exchange populations—Jews living under Arab sovereignty would be moved to Israel and Arabs living under Jewish sovereignty moved to Palestine. Since there is no ethical justification for this principle of ethnic separation—only a political one at best—we should feel uncomfortable about it, though if ethnic separation could be effected in a mutual way, it may somewhat mitigate our ethical discomfort.[41] Indeed, is not the ethnic-separation principle really but the other side of the coin of Woodrow Wilson's principle of self-determinacy, a principle rightly celebrated as the most democratic principle in international politics? Is it not just another expression (albeit in a negative form) of the basic Wilsonian principle of a one-to-one ratio between the ethnic/national entity and the state? In any event, it is of the utmost importance not to confuse the ethnic-separation principle and thus the exchange of ethnic/national populations with the charge of "ethnic cleansing," a charge that all decent people would consider most odious and definitely unacceptable. Cheap propaganda would, no doubt, try glibly to overlook the fundamental difference between the two, attaching itself to admittedly some similarities (these similarities, however, are as such not necessarily evil) and on that basis claim that the two are to be equated. But this is not really tenable. For what is evil and repugnant in the notion of "ethnic cleansing" is not the separation as such of different ethnic/national entities, giving

to each its own "home" (i.e., its own state), but the specific means by which the minority (or weaker) ethnic/national entity is being separated (i.e., its being "separated" by being exterminated). It is the extermination that is repugnant and unacceptable and not the purification as such, if by "purification" we but mean the wish to establish a one-to-one ratio between each ethnic/national entity and its own state.[42] Still, there can be no denying that such exchange of populations implicates serious hardships and sufferings on the individuals involved. It is not to be minimized. Nonetheless, compared to the potential trouble and suffering that in all likelihood will come about if the *status quo* is kept, these hardships and sufferings may prove, on balance, to be the lesser evil. It is like surgery—submitting to pain, indeed to serious pain, in the present in order to avert much more serious complications and pain in the future. True, the present generation is called on to sacrifice and suffer, but it will sacrifice and suffer in order that its progeny will be spared much more serious suffering.

Granted, this possibility is far from ideal and certainly suffers from any number of serious flaws. Even if we try to humanize the exchange as much as possible, and one should certainly, at the least, try to do this to the maximal degree possible (thus, for example, extend generous financial aid, help in creating jobs and housing), there is no escaping the fact that such a course of action remains seriously flawed. Yet, as noted, the alternative may be, in the long run, much worse. Unfortunately, this conflict does not lend itself to a good, let alone perfect, solution; sadly, we must search and settle for the solution that we believe and hope will prove to be, in the circumstances, the least evil. We believe, though certainly with a lot of compunction and uneasiness, that the last solution considered here is the least evil. If anyone has a better alternative solution, let him or her come forward and let us give it a full and unprejudiced hearing. Too much is at stake here to do anything less.

Notes

1. The validity of such a claim will depend heavily on how one opts to define the ethical. This is a complex and difficult issue into which we cannot go here. Suffice it to say that for our purposes, we would define the ethical in terms of justice and justice, in turn, in terms of fairness; each party is to receive its due in a context where a balance between conflicting claims that appeals to our sense of fairness is attained.

2. The first possessions of land by humans did not imply a displacement of other human groups, and as such did not imply the dimension of power (and, needless to say, even less did they implicate the ethical dimension). The possibility of the dimension of power and of the ethical dimension entering the picture can arise only with regard to subsequent possessions of lands that implicate displacement of other human groups. It is precisely with respect to these subsequent possessions that we are making the point that although the ethical dimension is just as available here as is the dimension of power, the latter and not the former is resorted to in all these subsequent possessions.

3. It is precisely because the Jewish ethnic/national entity is constituted by its religion and not by biology and, indeed, further because its religion is not a nature-religion but a

historical-religion, that the Jewish ethnic/national entity (in contradistinction to all other ethnic/national entities, bar none) could survive the loss of its land and go on existing, preserving its identity, in the dispersion of Diaspora. Judaism can go on functioning anyplace in the world and preserve the ethnic/national entity it constitutes in spite of the circumstances of Diaspora existence; if it were a nature-religion it could not have done that. But while Judaism does not require any specific land in order to express itself and thus to preserve itself in existence, it requires an ethnic/national entity possessing sovereignty. If so, then how is one to understand the survival of the Jewish ethnic/national entity in Diaspora existence for almost 2,000 years? After all, Diaspora existence signifies the abrogation of sovereignty. Judaism succeeded because for survival only sovereignty in a minimal sense is required, and Diaspora existence could provide, for a good part of its 2,000-year duration, such minimal sovereignty by allowing the Jewish ethnic/national entity to constitute itself within the host-nations as, to use Salo Baron's phrase, "a state within a state." It was allowed considerable internal autonomy to run its own life, apply its law (the *Halakha*), practice its religion, and live its culture. In being "ghettoized," the Jewish ethnic/national entity was afforded enough *Lebensraum* to run its own life and maintain itself in existence. In the light of these considerations one can perhaps also come to understand why the emancipation of Jewry in modern times precipitates such a fundamental crisis for Judaism. For, in essence, the emancipation signifies the breakdown of this "ghettoized" form of existence, and this must mean that the feasibility of the Jewish ethnic/national entity going on maintaining itself in existence within Diaspora is seriously threatened, if not indeed abrogated. In these circumstances, the only way to safeguard the existence of the Jewish ethnic/national entity is for it to regain its own full sovereignty—if it cannot go on existing as "a state within a state" it must be able to exist as a state in its own right. This constitutes the most telling justification for Zionism, that is, for the decision of the Jewish ethnic/national entity to exit Diaspora existence and regain for itself the land of Israel.

4. Honesty, however, requires that at the outset we own up to the fact that much as we consciously endeavor in this chapter to be objective and fair in weighing the claims of both sides, we cannot pretend to be an uninterested party situated above the fray and merely refereeing between two opposed claims. We cannot in honesty emulate the role model of the judge. This writer is a Jew who is persuaded by the validity of the Zionist claim. Under these circumstances it may well be much more realistic to concede that the role model has to be that of the advocate but endeavor to make it high-quality advocacy, namely, one that while trying to make the best case for its client remains nonetheless sufficiently fair and open-minded to appreciate and acknowledge any strengths in its opponent's case. We shall certainly try hard to emulate this role model. We shall try hard to be fair and open-minded to the case of the other side, but we must declare our colors up front and that is that we are pleading the case of the Jewish side.

5. We are willing to grant in this chapter, for the sake of making our case, all advantages to the "other side" (i.e., to the Palestinian Arabs). Thus we are willing to grant that the Palestinian Arabs constitute a nation, though objectively speaking, this is very questionable. No question that they so consider themselves *today,* but this does not constitute them in objectivity as such. In the Ottoman Empire (which takes us back only eighty years) neither Turks nor Arabs themselves distinguished between Syrian Arabs, Palestinian Arabs, or Jordanian Arabs.

6. Thus, for example, the Jew would pray twice daily to be returned to the land; much of his religious life and, indeed, ethos was connected with and evoked memories of the land; last but not least, during most of Diaspora existence there was a continuous flow of Jews, albeit few in number, who risked the arduous and hazardous journey to return to the land.

7. The case here would be analogous to the case of a person who innocently (i.e., unaware of the true state of affairs) buys stolen goods. Even though the person was not the thief and has not committed any immoral act in connection with the goods in question, he or she is still, ethically speaking, not entitled to the goods. As long as the rightful owners are around and have not abdicated their claim, the goods in question are not unencumbered and free to be possessed by another.

8. While the legal context is clearly very close to the ethical—ideally it should reflect it—the distinction between the two must nonetheless be clearly kept in mind. The most important factor of differentiation is that in the legal context one must take into consideration the practical dimension, namely, try to establish the most workable, manageable arrangement. In the ethical dimension such consideration is completely beside the point; for example, a "statute of limitation" may make good sense in the legal context but not in the ethical context.

9. The claim to the land is being "activated," rather than "made" or "put forth," because the claim to possession was, as seen, always made. The innovative aspect lies in that in modern times the Jewish people act on the claim (and they do not wait for God to act on their behalf). To put the matter more precisely, it is not that there was no acting whatsoever taking place in the past. Always, through the ages, individuals immigrated to the land, but it did not implicate an act of taking possession of the land and assuming sovereignty over it. More often than not, it was for the sake of enabling the individual to die in the Holy Land. Furthermore, and this is the really significant difference between yesteryears and recent times, in the past the move to the land was in terms of individuals, while in modern times it is clearly a national movement.

10. The complexity of the ethical situation facing us here is analogous to the situation discussed above of breaking into a house to find refuge.

11. We say the "least possible evil" rather than the "best possible" solution because in these circumstances every solution would perforce be evil to both parties in the sense that neither party can satisfy its claim in full but only partially. As such, the question can only be which solution can best minimize the loss, and in this context we cannot really speak of the "best possible" but only of the "least possible evil" solution.

12. The fate of the Christian community in Lebanon is a case in point. The fact that the division here is in terms of religious rather than of ethnic/national affiliation (as would be the case in a Jewish-Arab binational state) does not affect the point we are tying to make here, to wit, that no constitutional guarantees and safeguards can withstand the counterforce of population preponderance.

13. The demand for a "democratic Palestinian state" that would include both Arabs and Jews is a nonstarter as far as the Jewish side is concerned—it is nothing more than an invitation, a call, to commit suicide. It should be noted, however, that before the reestablishment of the state of Israel a group of Jewish intellectuals, mainly associated with the Hebrew University (e.g., Yuhuda Magnes, Martin Buber, Ernst Simon) formed the *Ihud* party with the agenda of advocating a binational state. How such a group of distinguished people, obviously endowed with keen intellect and wide knowledge of Judaism, could come to this position is indeed perplexing; perhaps they understood Judaism too exclusively in cultural-religious terms to appreciate its political dimension sufficiently. But be this as it may, on this point they were, in our judgment, wrong. Finally, in the light of the considerations presented above, we must also conclude that the "cantonization" scheme proposed by a number of other people is, from the side of Judaism, not viable. It suffers from the same disadvantages that afflict the binational state proposal and thus, if our argument against the latter is valid, it will also be valid against the "cantonization" proposal.

14. Since we have concluded that the claim from the Jewish side is weightier, the division, according to this alternative, should favor the Jewish side.

15. Granted, the formulation "national home" is somewhat ambiguous and caused trouble by leaving itself open to different interpretations. It was brought about by certain leading Anglo-Jewish figures who fretted that the establishment of a Jewish state might jeopardize or compromise their claim to be English and so prevailed on the British government to fudge, weaken its original formulation, a formulation that was much more forthcoming in committing Great Britain to the establishment of a Jewish state. The important point is that this rather vague formulation in no way detracts from the bearing that the decision by the League of Nations must inevitably have on the UN resolution of 1947.

16. The decision of the League to give all to one side, to the exclusion of the other, clearly does not measure up to our ethical conclusion. Still, in practical terms, this neglect to take into account the Arab claim had really no effect, seeing that from almost the beginning it was amended and in all ensuing deliberations and actions connected with the implementation of this decision the principle of division was very much in the picture.

17. This act should also not be accepted as valid from the legal perspective, seeing that the League did not sanction it. It can claim legal validity only if legality is determined exclusively by sheer, brute power—where might makes right. Even then, this surely should not apply to the ethical perspective. Even if one is cynical enough to claim that legal right is determined exclusively by might, one could not possibly carry this cynicism and claim that ethical right too is nothing but what might may arbitrarily establish.

18. Indeed, it can be argued today that this *de facto* situation resulting from the 1967 war should be taken as the resolution of the conflict. And such an argument will certainly receive considerable added buttressing from the fact that the population of Jordan today is more than two-thirds Palestinian in origin. As such, it could indeed represent the side of the Palestinian Arabs in the conflict in the same measure that the state of Israel represents the side of the Jewish people. In this way the original land in the dispute between the Jewish and Arab side would have been divided between the two antagonists, and from the ethical perspective this would have no doubt been viewed as an acceptable resolution of the conflicting claims.

19. It should be noted, however, that the position taken here is clearly at variance with the position taken above regarding Jewish sovereignty over the land. The circumstances surrounding the two instances differ significantly. Thus, here the issue of the accord between the political and the ethical confronts us merely with regard to the question of degree, that is, how fully is the ethical going to be satisfied, while there in the above it confronts us with regard to the very application of the ethical to be political, that is, what is in question is not merely the degree by which the ethical is applied but whether it is to be applied at all. Second, in the above instance what is at stake is both the survival of the aggrieved party, the Jewish people, and the feasibility of their pursuing in full their religious vocation, the vocation that defines the essence of their being; here, neither of these two fundamental considerations is at stake. This is so because while for both the survival of the Jewish people in the context of modernity and the feasibility of their pursuing their religious vocation exercising sovereignty over the land is crucial, the size of the land over which sovereignty is to be exercised is not critical. Finally, while the Jewish people never accepted as final the change in its political status (i.e., the loss of sovereignty and banishment from the land), it has accepted the change that excluded Trans-jordan. These differences are, in our judgment, more than sufficient to justify the variance in our position with regard to these two instances.

20. The one segment of the Jewish community that held on to the claim on the East Bank were the Revisionists, though even here it appears to have been more symbolic than substantive, seeing that after 1948 they too seem to have given up on that claim. The overwhelming majority of the community seems to have accepted the exclusion of the East Bank from their claim.

21. It cannot be denied that the readiness to acquiesce in this decision is much less forthcoming than it was with regard to the decision of the British government in 1921 to separate the East Bank and constitute it as a separate entity. This should not be in the least surprising, seeing that the historical and religious bonds are so much stronger and more fundamental with the West Bank than they are with the East Bank. It is only natural that giving up any territory in the West Bank would be so much harder and more problematic for the Jewish side.

22. This, of course, does not cover the innumerable ongoing individual attacks on civilians between these wars perpetrated by people whom the Israeli view as terrorists and the Arabs view as freedom fighters.

23. This is not exactly the case with regard to the 1948 war. When a formal truce was agreed to in 1949, the boundaries delineated reflected the situation that obtained on the ground at the time, and that situation relative to the 1947 UN partition plan favored somewhat the Jewish side. But since the change was relatively minimal and the Arab side seems to have acquiesced in it in the truce agreement, it is relegated to the periphery of consciousness and does not come to bear on the issue before us. But, of course, not bearing directly on the issue before us does not mean that these wars do not disclose other aspects that bear significance in the context of the conflict here. They clearly do. Thus, for example, the 1948–49 war showed the capacity of the new state to survive against very great odds; the 1956 Suez War showed the military dominance of Israel in the region; and, finally, the 1973 Yom Kippur War showed the military capacities of the Arab armies to redeem their honor and, in consequence, enabling the Arab side to make an honorable peace (i.e., a peace between equals). However, only the 1967 Six-Day War involved significant territorial change that bears directly on the issue before us.

24. There is no escaping the fact that in the past the possession of almost all lands was gained by resorting to war. Here we are confronted with an attempt to ground the possession in an ethical perspective, and in such a perspective there can be no question that resort to war cannot justify territorial gain.

25. A demand that all land gained by force should be returned can be made only if one accepts that, ethically speaking, it can never by valid for land to be appropriated by force. But other considerations may well be of greater ethical concern and importance. For example, that the aggressor must be made to pay a price for his or her aggression (thus making the point that aggression cannot be committed with impunity), and this should, in our judgment, supersede safeguarding the fixity of territory. The latter is not an ultimate, sacrosanct ethical consideration, and a good case can be made that a victim's appropriation of an aggressor's land should be ethically acceptable, seeing that it constitutes punishment of the aggressor.

26. We cannot even say that it abrogated hostilities as terrorist activities clearly flared up from time to time throughout the intervening twenty years.

27. Should not the persistent insistence on the part of the Arabs that Israel was the aggressor be taken as an indication that the Arab side would concede that only on the basis of Israel being the aggressor can a valid case be made for the return of the territories?

28. They could no doubt contend that it is very difficult to assess properly the seriousness of threats and that therefore there is really no way of determining how much of the threat is real and imminent and how much is just bluffing. Indeed, it may be contended that the Arabs are known to have a predilection for exaggeration and hyperbole and that therefore their threats should have been taken with more than a grain of salt. This may well be true. On the other hand, when life and death are in the balance, one cannot afford the luxury of taking the risk that this time is the exception where what is said is indeed what is really intended. Resorting to hyperbole and exaggeration with respect to these matters is like playing with matches, and one who plays with matches runs the risk of starting a fire and getting burned.

29. A blockade should be taken as an act of war, of aggression. After all, strangulation is just as much an act of killing as is shooting or knifing.

30. Our discussion has shown that it is not at all clear that Israel was the aggressor against Egypt—indeed, if anything, it showed just the opposite; the aggressor was really Egypt and not Israel. Neither Syria nor Jordan can claim that they were merely rushing to the aid of an innocent victim and having failed in the rescue became themselves victims to the aggression. Syria's and Jordan's conduct shows that they were in clear collusion bent on attacking Israel and finish it off once and for all..

31. Alas, excluding the factor of the religious dimension from the conflict either on the Arab or on the Jewish side may not be so easy. For on the Arab side the parties fanatically committing themselves to the religious dimension (e.g., Hamas) have succeeded, because of a variety of reasons, in appealing to the masses and in consequence have become a numerical presence that simply cannot be ignored. At the same time, and in contrast to this, on the Jewish side, while the parties fanatically committing themselves to the religious dimension (e.g., *Gush Emunîm*) are not at all numerically substantial, the political structure—government by coalition—allows small minority parties to exercise tremendous political power and influence. Thus, unfortunately, both on the Arab side and on the Israeli side the religious dimension is a factor in the conflict, indeed, a negative factor, and must be taken account of. Since the religious dimension is far from disappearing and is very likely to increase its power and influence both on the Arab and on the Jewish side, this means that if the conflict is to be resolved through some compromise (and only as such can dreadful bloodshed be avoided), the process must be moved energetically to a conclusion. Those ready for compromise do not have the luxury of time on their side.

32. What the Arab side is really doing in dismissing Jordan and substituting the PLO in its place as the claimant to the land is to move back to 1947, as if nothing has happened in the meantime, and make their case on the basis of the UN partition plan where the Arab side to the conflict was indeed represented primarily by the Palestinians. Between 1947 and 1967, the Arab side did not acknowledge the Palestinians as a distinct, separate national entity entitled to a separate sovereignty but seemed quite content to divide the land in question between the existing Arab states. Had the 1967 war not occurred, or had it not had the outcome that it did, there would not have arisen a distinct Palestinian entity. The Palestinians would have been completely absorbed within Jordan and Egypt respectively. This would seem to indicate that the claim that there is a separate distinct Palestinian national entity is rather tenuous. If there is one, the Arab side by and large did not acknowledge it between 1947 and 1967. Although we, for the sake of our analysis here, clearly accept the presence of a Palestinian entity, this may nonetheless have a significant bearing on our thinking when we presently come to consider what final solution to the conflict may be viable.

33. The United States may escape this problematic because of two additional factors that are distinctive to its situation. First, it has a large plurality of ethnic groups and not just two or three ethnic groups, and clearly the prospects of success for a melting-pot scenario are increased with a large multiplicity of ethnic groups (particularly if the second factor also obtains). Second, the various ethnic groups are not separated from each other in different geographic localities. Even so, we cannot as yet by any means declare the U.S. story a success, for this story is by no means finished.

34. If any evidence is required to support this claim further, the Jewish experience in the past 2,000 years of Diaspora existence clearly bears witness to the serious problematic associated with a minority existence. Indeed, the justification for the reestablishment of the state of Israel is derived precisely from the untenability of continuing in such an existence.

35. Since the ethos need not be religious, the claim that resorting to a secularized state would transcend the differences between the ethoses of the various ethnic/national entities, thus providing a neutralized common ground on which the members of all ethnic/national entities can meet as undifferentiated individuals, is untenable. A secularized Jewish ethos is still quite distinctive from a secularized Arabic ethos, and consequently in a secularized state one would still have two distinct ethoses competing with each other for expression.

36. The former alternative may perhaps be illustrated in terms of Canada in its efforts to incorporate the "French factor," while the latter alternative, the alternative that clearly reflects the "melting-pot" paradigm, may be illustrated in terms of the United States.

37. This indeed is the reason why there seems to be a definite pull toward a one-to-one ratio between the state and the ethnic/national entity—a state with more than one ethnic/national entity is not stable and will eventually either merge the multiplicity of ethnic/national entities into one or break itself up into a multiplicity of states, one for each ethnic/national entity.

38. Indeed, we would not be in the least surprised if after recovering the land lost in the 1967 Six-Day War the Arab side does raise this demand.

39. And indeed, it would also solve a predicament for Israeli Jews. The Jewish ethnic/national entity, having so grievously and for so long suffered from being a minority in states belonging to other ethnic/national entities, should try very hard to avoid being placed in a situation whereby it has within its state another ethnic/national entity as a minority.

40. We have here a situation that is in a way similar to that which obtained in the former Yugoslavia—the worst of all possible situations as far as the feasibility of partition is concerned.

41. It would involve not only moving Arabs from Israel to Palestine but moving Jews from Palestine to Israel, not to mention the fact that large numbers of Jews have already been moved from other Arab countries to Israel.

42. Admittedly, the term "purification" has a most repugnant odor for us because of its widespread use by the Nazis. But this is so precisely because of the horrific ways by which the Nazis went about realizing it. It is the concentration camps, the illegal expropriation, the brutality and hooliganism, and finally the mass extermination of millions of people that is the unremitting evil of Nazism.

11

Philosophical Reflections on Religious Claims and Religious Intransigence in Relation to the Conflict

David B. Burrell, C.S.C.

One of the most intractable features of the Israeli/Palestinian conflict for Western readers remains the pervasive character of *religion* in the area. Our characteristic uses of 'religious' conspire to create difficulties for us in appreciating how pervasive a reality religion can be in the Middle East. Not only do names usually indicate religious allegiance, at least as a cultural fact, but in an initial encounter, in the absence of a perspicuous name, people will invariably be asked to identify their religious group. The fact that Muslims even resent one's referring to Islam as a *religion,* given the term's personalist connotations in the West, together with the way in which certain groups' pretensions to being *datî* (religious) in Israel can anger other Israelis, indicate how present the issue is in all groups, and readily subject to misunderstanding from within as well as from without.

Robert Wilken's (1992) historical study of the early Christian presence in the land, as well as Burrell and Landau's (1991) inquiry into Jerusalem as a city holy to all three faiths offer fresh perspective on the roots of the cultural differences traceable to religious faith. Moreover, the fact that our volume appeared some ten years after its inception made it painfully clear that we had not included Muslim voices—a perspective we had not felt so imperatively when we began it. This chapter proposes to explore the implications for a political settlement that could stem from a fuller and more enlightened appreciation of the meaning of religious faith in the Middle East, specifically in this land deemed *holy* in three major religious traditions. Recent inquiries into tradition and its role in inquiry (notably MacIntyre 1988) should help us to pose the recurrent questions in a new light, Huntington (1993) argues for the fruitfulness of utilizing such categories in our analyses of international relations.[1]

Enlightenment presumptions regarding the intrinsic superiority of "universal" over "particular" perspectives have been subjected to searching reexamination in

the philosophical arena. To urge that analysis in considering the situation in Israel/Palestine will at once test the power of current constructive forays into "tradition-directed inquiry" and may offer fresh light on the conflict as well, for example, so-called fundamentalist groups from each of the religious communities involved—Jewish, Christian, Muslim—turn out to be rejectionist in the face of the initiatives relevant to a "process" toward peace. Is there a way in which those same religious traditions can be exploited to regard these movements as positive rather than threatening? Must each renounce its "particularist" perspective to do so, or are there ways in which those very particular perspectives can be claimed to promote movements toward peace? It will prove useful here to flesh out the categories that Samuel Huntington introduces quite tentatively and exploratorily, showing how fruitful such perspectives can be. The fact that established international relations analysts have tended to respond negatively to his proposals should stimulate us to develop his fledgling analysis, for their criticism may well reveal a blind spot on the part of standard political science to the significance of religious and even cultural realities.

Religious Claims to "the Land Called Holy"

As the various "voices from Jerusalem" assembled in our book testify, the three Abrahamic faiths would concur with Dante in regarding that place as the umbilical cord of the universe. Now it runs counter to our Western ways of thinking, if I may put it so, to grant any special panache at all to *place.* We can at best associate memories with places in our life, or perhaps single out our place of origin as personally significant, but no place as such can be privileged for us. To think so, we feel, would be to allow nostalgia to overcome good sense. Good sense favors the universal over any particular, for that perspective frees us from tribalism. Much of the implicit warrant for the ingrained attitude of "displacement" that Christians have long contended for their creed over its Hebrew preamble stems from such a valuation. The God of the Hebrews is just that, a tribal god, any cursory reader of the Hebrew Scriptures will attest, and they will find backing in the textual critics. The moral superiority of the New Testament over the Old is evident on its face. These attitudes are firmly embedded in our use of "old" and "new" to chance the two covenants.

Yet despite Christianity's penchant for universalism, the connection with Jerusalem is irrefragable: it was *here* that Jesus died and rose from the dead with a charter that fulfilled Hebrew prophetic writings by reversing their directionality. Where Isaiah had all the nations coming *to* Jerusalem to mark the messianic age, Jesus initiates it by telling his disciples that they will bear witness to his name, "beginning *from* Jerusalem" (Luke 24:47).[2] Any attempt to subordinate that locus to some interior appropriation of the kerygma will prove to be at variance with Christian faith, for it must make light of the uniquely historical fact of Jesus. Yet for all that, the inscription over Jesus' tomb located within the Church

of the Holy Sepulcher reads: "He is risen; he is not here!" So pilgrimage to Jerusalem on the part of Christians has always retained a taste of the equivocal; Christians celebrate the death and resurrection of the Lord eucharistically wherever a community of believers is gathered. Nor can those Christians who live in or near these places made holy by the physical presence of the Lord claim any privileged position as Christians—any more than Jesus would allow any primacy to members of his own family.

So the intention of the medieval wars of religion, dubbed "Crusades" after their intended object of locating the actual cross of Jesus and of "controlling the holy places," would remain equivocal. At different times that stated intention could win the endorsement of popes and other religious leaders, yet many others would derogate it as a deceptive front for adventures of conquest and exploitation. It had never been deemed necessary that the church establish hegemony over the holy places for it to be the church of Christ. What seemed far more imperative was to make a show of force against an interloper judged at best to be a Christian heresy: the relatively newly minted contender of Islam. The very fact that most later Christians have laundered the Crusades right our of their story of Christianity suggests that the endeavor was less religious than political. Yet the legacy of that conflict, as well as part of the reason for its undertaking, remains the conviction that Jerusalem especially is holy to both of these Abrahamic faiths. The claim of Islam is less immediate, stemming initially from identifying the temple mount as "the exalted place" (*haram al-sharif*) whence Muhammad undertook his mystical "night journey" (Qur'an 53:13–18), and subsequently expressing the innate desire to claim significant portions of the globe for the "way of truth" by incorporating it into the *dar al-Islam:* the territory of Islam, where people could follow the "straight path" outlined in the Qur'an and return worship to God in an unimpeded fashion.

Of the three Abrahamic faiths, however, one might think the Judaism would have the clearest and strongest claim on this land, given the plethora of biblical promises. Yet history speaks otherwise. The destruction of the temple in 70 C.E. forced an end to Jewish claims of hegemony over the land promised to them; a closure that Gentile Christians were anxious to enforce once they came into political power. For the demise of temple and territory was seen by Christians as historical and theological proof of the eclipse of the "old testament" by the new. Yet rabbinic Judaism learned to adapt to this new political situation by focusing on people rather than land. Even the resurgence of Jewish identity in the nineteenth-century political idiom of Zionism, while it sought to realize the oft-repeated prayer "*shana hava bi'Yerushaleyem*" ["next year in Jerusalem"], was at one time at least prepared to listen to the compromise location of Uganda. Similarly, while the western wall of Herod's imposing temple remains a holy site, few show any concern to reconstruct the temple as the symbolic center of the universe because it is the home of the Lord of heaven and earth.[3] For one thing, only a few are able to envisage repristinating animal sacrifices, a major preoccupation of temple cult. So

the intimate connection of Judaism with the land presumed and promoted in the bulk of its sacred writings could make a thoroughgoing return to their ostensible sense too confining a prospect.

Given the differing relations of each of these religious traditions to the land, as a practical consequence one will be able to find groups within each of them that claim religious sanction far maintaining a dominating presence there, while yet others in the same tradition will be willing to negotiate that presence in terms that assure it without insisting on hegemony. The differences here do not seem to follow religious lines as such, but depend on the way in which a particular political agenda colors and exploits a religious tradition. The distinction here can be subtle: it may look as though *Gush Emunîm,* in pursuing an aggressive campaign of settlements in the West Bank, simply understands the permissions and sanctions of the Bible differently from the way that other Jews would be prepared to do. So the differences could be said to be "religious" after all. But even those who undergird their political position with the starkest scriptural warrants would hardly be vindicated were they to try to excommunicate those who fail to find such a position in the Hebrew Scriptures. And the reason they could not succeed in such a maneuver does not simply lie in the fact that Judaism recognizes no such authority; it is rather that a long-standing strain in the tradition insists on tolerating diverse implications from the Scriptures. There can be no doubt, of course, that enthusiastic groups in any religious tradition will attempt to capture center stage, rhetorically relegating others to an inferior status as faithful adherents of the tradition; but each of the traditions in question has developed defenses against this spontaneous strategy.[4]

An understandable result of using religious rhetoric to bolster a position of intolerance toward other religions, and inevitably toward one's coreligionists of a more tolerant bent, will be to drive the more tolerant toward a manifestly "secular" position on such matters. That is a common phenomenon in Israeli politics and in Judaism more widely, as it is also in Muslim countries. In each of these milieus the presence of a party using religious rhetoric to promote a nationalist program inevitably spawns an opposition group intent on showing how distant they are from religion so understood, and more starkly, from any role at all for religion in the political order. Religious extremism foments secularism in the political arena. Yet it also remains true that a purely *secular* stance regarding political organization ill befits either tradition. Jews for twenty centuries were bereft of political power, it is true, yet the modes of social organization within the communities themselves could hardly have been called "secular." Similarly for Islam, which may have acknowledged a distinction between religious and political leadership roles, but nevertheless always held politicians accountable for supervising a society favorable to Islam as well as to "struggle in the way of truth." So it would seem that each of these traditions would be better served by undertaking a sophisticated retrieval of their respective traditions regarding the relations between religious and political domains, instead of spontaneously re-

treating from any tradition either by making an ahistorical appeal to the Bible or to Qur'an or by opposing any appeal at all to revelation. In other words, both "fundamentalists" and "secularists" show themselves to be ignorant of the traditions that they respectively pretend to promote or to reject.

This eventuality—that "fundamentalists" assertively lead with the *tradition* card while "secularists" prefer to dispense with it altogether—creates the optical illusion that the ostensibly religious group actually speaks for its tradition, yet in fact it allows both to proceed in virtual ignorance of the resources latent in their shared tradition. How so? Fundamentalists in any tradition are notoriously ahistorical in their appeal to revelational texts, while the retreat of the other parties into a "secular" stance gives observers the optical illusion that those who tout the religious texts actually *represent* that tradition.[5] Nothing could be further from the truth, as we shall see, yet this illusory optic is sustained by those who find their coreligionists' positions so offensive that they are repelled from even entertaining, much less undertaking, a serious alternative reading of the tradition. So the ironic situation ensues in which Western scholars, currently subject to the scornful epithet of "orientalist," need to remind Muslims, for example, of sophisticated models of political organization from their own tradition that can offer serious alternatives to the romantic pictures of Medina that dominate Islamist rhetoric (Lapidus 1992).

Retreat from tradition on the part of intellectuals operating under the enlightenment pretense that inquiry can be carried out *sans* context leaves the field of tradition open to those who use language borrowed from it but have never felt any serious responsibility for mastering that language as a tool for attaining a sophisticated understanding of their religious faith. For a complex of social and political reasons having to do with Western hegemony reasserted during the nineteenth century, Islamic intellectual life has been particularly vulnerable to this bifurcation and consequent domination of the religious field of discourse by the Islamists—a term reserved for those who seek a political solution by straightforward appeal to the Qur'an, bolstered by a romantic view of the early polity in Medina. The resurgence of Jewish scholarship under the cultural umbrella of a "Jewish state" should have supplied an environment reducing the danger of such bifurcation in Israeli intellectual life, yet the largely secular model of "disinterested" scholarship, even and especially in matters religious, has assured that matters are often not that different among Jews than among Muslims. That is, even when intellectuals may be knowledgeable of the tradition to which they ostensibly belong, they do not think of themselves as actively operating within that tradition, so the knowledge obtained cannot be used to enrich and critically develop that very tradition. This profile is a familiar one among American scholars of religion, whose absorption in "religious studies" need carry no entailments whatsoever for enhancing the actual life of the religion they are studying.

As a result of all this, political claims made by people in the name of religion, and so put forward as religious claims, create an optical illusion regarding the

political agenda and resources of the religious groups in question. Their more articulate adherents tend either to be cowed into silence by the enthusiasm of their "fundamentalist" coreligionists or so put off by the outrageous claims made in the name of religion that they eschew any discussion of the public relevance of their religious faith, since that arena has already been captured by those who have put themselves forward as representing its interests. As a result, few actually occupy themselves with studying the tradition in question to mine what resources it may have to confront the issues that face all human beings today, and for which we need all the help we can muster. Yet the very power of religious traditions lies precisely in their capacity to exploit their past self-critically as well as use that understanding to criticize current "secular" conceptions of human flourishing. This is the way in which traditions of any sort—cultural as well as religious—become viable vehicles of human self-understanding: by being effectively auto-critical.[6]

So it is no wonder that claims made in religious terms by "fundamentalists" in any of these traditions will be made in such a way as to evoke intransigent counterclaims on behalf of any other religious group whose adherents may be jousting for the same turf—be it actual territory or prestige or power in other forms. Yet what remains to be considered is whether each of these religious traditions could not also provide the resources to understand themselves in the face of one another in such a way as to render their respective claims compatible. Once we have unmasked the ostensibly religious forces as more politically than religiously motivated, and done so by invoking a notion of *tradition* that favors their own self-understanding instead of simply operating from a form of Western condescension, we may be in a position to offer a constructive role for such religious traditions in an environment in which religious faith or culture continue to operate. So it is better that it do so self-consciously and articulately, rather than ignorantly and romantically, subordinated to barely masked aspirations to power.

Beyond Intransigence to a Lived Pluralism

James Strachey translated Sigmund Freud's *Das Unbehagen in Der Kultur* as "Civilization and Its Discontents." Samuel Huntington undertook to alter the optic of his fellow international relations analysts through an essay entitled "The Clash of Civilizations," where "clash" intimates the facts of the post–Cold War world as well as echoing the understandable preoccupation of international relations analysts with conflict, and "civilization" is synonymous with "culture," as it was for Freud's translator. Are civilizations bound to clash, cultures fated to be in conflict? That is one of the critical questions put to Huntington, yet it is less germane to his exposition than it is to our inquiry. For the gist of his piece is not that the differences enshrined in diverse cultures are bound to result in clashes, but that when we do face conflict in a world no longer squeezed between two political giants ostensibly at ideological variance, that conflict will tend to follow

cultural or civilizational "fault lines." The presumption of conflict built into the title more reflects the preoccupations of the discipline itself, as I have suggested. His novel point involves introducing *civilization* (or *culture*) as an analytic tool for understanding the origin and directionality of clashes as they emerge: "Differences among civilizations are not only real; they are basic. . . . They are far more fundamental than differences among political ideologies and political regimes. Differences do not necessarily mean conflict, and conflict does not necessarily mean violence. Over the centuries, however, differences among civilizations have generated the most prolonged and most violent conflicts" (p. 25).

Generated or exacerbated? Here lies the ambiguity in even utilizing the notion of difference. Differences can either be threatening or enriching, as our personal lives abundantly illustrate. Collective differences can easily be exploited by emphasizing and even distorting their threatening aspect to pander to people's fears. Cultural differences have both a collective and a personal dimension, which makes *culture* (or *civilization*, as Huntington uses it) an unwieldy instrument for analysis in international relations, where the focus has been on entities defined politically. Any term as inherently analogous as 'culture' will resist fixed definition so that those determined to making their analysis "scientific" will find it unsatisfactory. But what if allegiance to nation-states inescapably involves cultural factors ingredient in constituting a nation? What would then justify our overlooking the *nation* dimension simply to focus on the *state:* the political entity? Given the attractiveness of the nation-state for two centuries, Huntington's analysis hardly sounds novel; it is rather a reading waiting to be offered, only suspended during the period of superpower conflict in the wake of World War II, and before that, in European concern for "balance of power" during the process of colonization in which balance among European powers apparently held the key to the destiny of the world itself.

Scientific or not, the tool of *culture* or *civilization* seems to be the best one available to our attempt to understand the world in which we live, with its conflicts, in a way that respects the realities involved. Huntington's rejoinder defends his proposal—and it is just that—against others in these terms: "More significantly, there are all the religious alternatives that lie outside the world that is perceived in terms of secular ideologies. In the modern world, religion is a central, perhaps *the* central, force that motivates and mobilizes people" (pp. 191–92).

So culture, or civilization, will include religion paradigmatically. Yet of course, *modernity,* with its secularization thesis, had persuaded us "modems" that religion would soon prove as irrelevant to the rest of people as intellectuals had discovered it to be for themselves. So the "modern world" to which Huntington refers must be "postmodern" in conception. This is one more indication that his essay is directed primarily to colleagues, trying to persuade them to enrich their store of analytic categories in an effort to understand the realities with which people are constantly dealing.[7] And religion is one of these, whether the

adherents be themselves observant or faithful, or not, since the terms in which people understand themselves in most societies will include a religious reference, and for believing or observant elements that will prove to be a consciously shaping factor. We shall see how such a perspective will prove its usefulness to our inquiry.

An American political philosopher, Ronald Perrin, offers a less conflictual perspective in a recent article entitled " 'For Me to Be a Jew You Must Be a Palestinian': Complementarity as the Promise of Pluralism" (Perrin 1995). He has little or nothing to say about the Middle East, but challenges the easy use of "pluralism" by academics, which often seems to function as a euphemism for diversity, since while differences may grate, pluralism is good. His central point is revealed in the initial exchange: "for me to be [a Jew] you must be [a Palestinian]," where one may substitute in the brackets whatever groups are currently facing each other in straitened circumstances, while noting that the context is a conversation: "for me . . . , you. . . ." We are not talking *about* cultures or civilizations; we are talking *to* one another *as* participants in different cultural groupings. And there it is the difference that matters. And not simply that there be different sorts of people around, as the demand for "diversity" often limits itself to insisting. But rather that their presence is ingredient in my becoming the sort of person to which I aspire. Perrin (1995) describes this move as "finding ourselves in one another's stones" (p. 45). Anything short of this will be a relatively empty celebration of multiplicity and "tolerance," where neither posture challenges me in my constitutive identity.

Perrin's ideal of authentic pluralism invokes the rich metaphor of *complementarity:* "When two parties to a relationship complement one another that relationship is one of mutual dependence and mutual affirmation" (p. 36). And such a posture will demand "practices within which difference is . . . an internal good" (p. 44, acknowledging Alasdair MacIntyre). He illustrates this—with ritual disclaimers—by "the experience of family life. The moral promise of family life is the physical and spiritual nourishment of each member in a setting of reciprocal empowerment. . . . [Indeed,] it is difficult to understand the persistent value and intuitive appeal that references to the family convey without assuming that the vast majority of us share a sense of that promise" (p. 36). We all realize the herculean efforts it takes to achieve that, but many of us can identify with that ideal. Expanding this vision of complementarity to a larger society, Perrin notes, would require "practices wherein the different parties to a relationship have chosen or would choose to affirm and preserve that which makes them different" (p. 44).

Practices of this sort do exist, we know, yet they are seldom celebrated in the media, which has a predilection for clashes and conflicts. One such would be Open House, a venture of Dalia and Yeheskel Landau in Ramle, near Tel Aviv. This Arab village, overrun in the early days of the 1948 war of independence for Israel, retains a small but significant number of Arab residents. After Dalia and Yehezkel met the young Palestinian whose home Dalia's parents had occupied

as immigrants from Rumania, they vowed to dedicate the house she had subsequently inherited to an encounter center for Jewish and Arab children. As original participants in *Oz veShalom,* the religious peace movement in Israel, they had had much experience in boundary-crossing encounters and decided to begin with children.[8] The semiannual "progress reports" offer tangible evidence that one can initiate such practices with children, and one can glimpse between the lines the effect that their positive celebration of *difference* must be having on these youngsters, specifically to prepare them to live in a new Middle East. As Perrin (1995) puts it relative to the current peace initiative: "Palestinian and Jew may finally be coming to recognize that they occupy one another's stories in a way that defines each of them but only if they preserve that element of their relationship that is, indeed, definitive" (p. 44). So the goal is not to make everyone the same. Quite the contrary, for "this would involve the conscious acknowledgment by the Jew that she is not a Palestinian in a way that is radically unlike the way she is not an American, a German, or a Swede. This would be a way that defines each party to the relationship—'in order for me to be a Jew you must be a Palestinian' " (p. 45; in italics in the original).

Perrin's observations not only help correct some superficial impressions about the extent to which our American society might be authentically "pluralistic" or not. They can also amend an initial impression that Huntington was intent on assigning the blame for "clashes" to cultural or religious differences as such. Clashes or conflicts will occur, and religious differences can be enlisted to exacerbate them; even invoked to make them especially intransigent. Yet the counterexperience of relishing differences, and even enjoying the fact that one's neighbors live by such different norms, especially when one is invited to participate in their celebrations, is probably even more pervasive. Most trusted analysts of Bosnia-Herzegovina tell a centuries-old story of religious and political entanglements, usually involving neighboring superpowers, in which different groups played the religious card to secure their irredentist claims on the other, while the societal subtext relates families living cheek by jowl and sharing in one another's ritual engagements to the extent that different cultural and religious groups can do so. Inevitably people fell in love, so interreligious marriages were frequent as well. What makes the current situation in Bosnia so tragic is precisely the fact that their shared history had not been one of conflict so much as one of collaboration and respect for difference, yet those differences could also serve as ready tinder for incendiary outbursts.[9] At the same time, however, those very religious communities whose fierce loyalties have been enlisted to exacerbate the conflict are the best, if not the only, groups positioned to find ways through the barriers of difference.

Implications for Religions in the Next Century

So the fact remains that aggressive and exclusive nationalisms can elicit staunch support by exploiting religious differences. Nor have religious groups them-

selves traditionally been sufficiently aware of the ease with which they can be so exploited. The missionary movement in Christianity, currently illustrated by the *da'wah* movement in Islam, focused on gaining adherents to one's religious family. A natural enough impulse, but one that often seems to relish a negative view of the "other" to motivate its participants. Christianity has had to adopt fresh strategies in the face of criticism that their missions were inextricably intertwined with Western colonial expansion and hence with a wholly "unchristian" disdain of those they were seeking to convert. Individual missionaries, of course, often overcame this complex of prejudices and did so precisely by developing a healthy respect for those whose lives and culture they increasingly adopted. And the result was indeed a new face of Christianity. People of that sort seem to have little difficulty, in practice, reconciling their missionary zeal with an effective desire that their neighbors be the best Hindus, Muslims, or Buddhists they can. While willing and eager to share the "good news" of Christianity, part of that same good news is seen to be that Christians need "others" to become what they are called to be in the upcoming century of encounter. In that sense, *mission* has been increasingly transmuted into *encounter,* at least in normative Catholic ecclesial reflection. The transmutation can hardly keep believers from joyfully communicating and sharing their faith, yet it does mean that they need not adopt as their primary goal *making* others into Christian believers.

The difference may sound subtle, and those who observe religious groups from the outside, and so tend to focus on their fanatical fringes, may curiously combine with religious enthusiasts to find such an attitude "wishy-washy." Yet for a believer it makes all the difference and even formulates better the inner motivation of the missionary movement than focusing on aggressive conversion tactics. Already in the 1950s a leading French theologian, Jean Daniélou, had tried at once to capture the heart of missionary endeavor while detaching it from colonial pretension by insisting that missionaries did not bring Christ to foreign lands so much as they *found* him there. By this arresting formulation he was actually offering a prescient description separating authentic from crusading missionary endeavors. For what was found was inevitably Western culture, while what was *found* was a fresh response to the message of the Gospels on the part of people whose history and culture prepared them to hear this revelation differently from those formed in western Europe. And since the message of any text will be subtly altered by its hearers, Rahner's thesis (1979) that the *fundamental* achievement of Vatican II was to bring nineteen centuries of western European Christianity to a close, brilliant as it was as a re-periodization of Christian history, nonetheless simply formulated the practices of enculturation that corresponded to Daniélou's earlier re-description of "mission."[10]

Will religious groups respond to such a challenge? Can they do so and remain true to their specific élan? If one would believe the media, the answer to both questions would have to be negative. But then religious faith, with its possibilities for renewal, is seldom revealed on a media screen. What is called for is at

once a fresh way of looking for the motivating forces in our world, akin to that proposed by Samuel Huntington, plus a sustained program of activity on the part of religious groups, developing practices of the sort outlined by Perrin. If religious groups have not been devoted to sustaining such practices of respecting and celebrating—even incorporating—difference in the past, a reading of their own traditions in the face of the needs of today's world could indicate that they are among the few forces in society that have the resources to promote and develop an authentic pluralism and that the common good of a world of diverse civilizations demands just that. Moreover, there are enough initiatives in all religious groups to offer actual paradigms of the kind of practices needed. Furthermore, while the current ascendancy of militant "fundamentalist" groups in every religious culture across the globe certainly militates against this proposed analysis and prescription for action, the activities of these groups over time could prove to be as self-destructive as they are now thriving. Much has to do with the dynamics for renewal and self-understanding present within religious groups themselves, and this is at once a question of fact as well as of faith.

Yet it is also a baffling mixture of fact and faith, especially as we find it in the outlook and practices of individuals formed in the diverse communities of the Holy Land. How difficult it is to display or credibly assess the attitudes of workers, students, parents, or children from these different communities, and especially their attitudes toward each other! Education at different levels will bring people together, encouraging them to trade stories and to bridge communitarian divisions by sharing in common goals. While these common goals could easily be described in humanitarian terms, using the language of human rights, the impulse to engage in such uphill effort calls on the deepest motivation we can muster, which is often religious. So while there may be little conscious connection between persons' religious adherence and their goals as defined by the focus of their energies, the shared work of reconciliation will inevitably call on attitudes reflective of their earliest formation, and so display something of their religious background, even when their motivation could hardly be called religious.

The shared desire for peace, for example, will be expressed differently by Jews than by Arabs, and that expression will reflect different histories as well as different relations to the land stemming from the formative stories of their respective traditions. The fear that one side will dominate the other is ever-present, of course, as power is ingredient in all negotiations. Yet the fact that their fate is inextricably intertwined also calls for that quality of understanding that demands that their differing stories be respected and even celebrated in the manner which Perrin articulates. Hardline groups will make such mutual understanding increasingly difficult, as they preach the contrary doctrine that difference is threatening and so demand that one always resist intimidation. Here again, religious communities appear to be strategically placed to challenge such a teaching by creating counterenvironments in which people are invited to exchange what is of worth to them and to find ways of enhancing those dimensions of social and political life.

Leaders who contribute to these milieus will be of another sort than the militants who demonstrate for the media. They will be no less adamant in claiming what their people deserve, but will do so in a way that respects the fears and concerns motivating the other. (One Palestinian friend remarked to me, after having spent a year studying in America, that his people needed to become more aware of the genocide at Auschwitz, and its cumulative effects on the Jewish psyche. For no matter how crudely it had been exploited by Zionist propaganda, it was a horrendous tragedy whose outrageous proportions needed to be assimilated by Palestinians if they were to share a land with Jews.)

Formation of such leaders is a clear priority now, when the lure of peace seems to be kept just beyond the horizon by forces that compel attention by advocating hatred and violence toward the other. Educational endeavors can bring young people together in programs designed to facilitate such interaction, as we have been doing for some years in the Peace Scholars' Program at the University of Notre Dame, a one-year scholarship program offering a live-in education opportunity to students from different cultures, and often cultures currently in conflict. Graduates of this program are currently working in Israel/Palestine with groups dedicated to a peaceful coexistence. Here again, respect for the cultural factors involved, including religious commitments and orientations, seems critical to motivating different groups to adopt polices conducive to a broader common good. The goals will be consonant with those of a human rights agenda, but the means will highlight differences and cultural specificities where that language tends to overlook or minimize them—to assure that the goal be common.

A characteristic Western reaction to communal differences is to look for ways of covering them over with a bland "secular" rhetoric, as in the official line of Indian politics. But any observer of South Asia will quickly note that the term "secular" grossly misrepresents the motivating forces of that region, as recent outbreaks have so dramatically shown. Yet it seems only to be adding fuel to the fire to underscore cultural and religious differences, so despite one's cultural sensitivities, a language of "human rights" emerges as the only remaining alternative. That may well be the case on the surface, and such language proves effective precisely in inviting all parties to a shared floor of discourse, yet the point of this chapter has been to remind us that none of us live our lives there, and that it needs to be supplemented by a growing sensitivity to those dimensions of human life and practice which may differ, and significantly so; yet these very differences need not lead to clashes but can be conducive to even greater bonding across the divides imagined and encountered than one can expect from a "thin" agreement on what can be agreed upon.

Notes

1. Huntington (1993) with the author's subsequent comments in *Foreign Affairs* 72 (September/October 1993): 2–26 and *Foreign Affairs* 72 (November/December 1993):

187–94, have been published separately as a *Foreign Affairs Reader* (New York: Council on Foreign Relations, 1993).

2. I am indebted to the Appendix in Davies (1974) for this prescient reading of Acts.

3. See Levenson (1988, ch. 7: "Cosmos and Microcosm").

4. *Gush Emunîm* and other "fundamentalist" movements in Christianity and in Islam have been subjected to a critical analysis in Marty and Appleby 1991, especially the chapters on *Gush Emunîm* by Gideon Aran (265–344) and on Sunni Arab movements by John Voll (345–402). American "fundamentalist" largely uncritical support for the policies of the state of Israel is not emphasized by Nancy Ammerman in her chapter on North American Protestant fundamentalism (1–65).

5. See the editors' concluding chapter in Marty and Appleby (1991).

6. This is Alasdair MacIntyre's argument for the fruitfulness of "tradition-directed" inquiry, best developed in MacIntyre (1990).

7. As I was writing this sentence I was visited by a recent Bulgarian resident in our family student housing, where I live, who reminded me (in French) that they had a great deal of experience living with different cultures, which she and her husband would be happy to share with me to enrich my study of Islam. Indeed, that seems to be the sort of reference Huntington is making by having recourse to civilization as an analytic category. Her husband, the academic, declined himself as a resource, professing not to know anything about such realities!

8. For information, write to Open House, P.O.B. 26187, Jerusalem 91261 (tel: 972–2–423952).

9. See "War at the Crossroads," available from the Balkan War Resource Group, c/o War Resisters League, 339 Lafayette St., New York NY 10012; or Kaplan (1993).

10. I have been profoundly indebted to Karl Rahner's seminal lecture on "world-church" (Rahner 1979).

12

In Search of the Emperor's New Clothes

Reflections on Rights in the Palestine Conflict

Hugh R. Harcourt

Whether or not philosophy can actually contribute anything of value to the resolution of the conflict in twentieth-century Palestine, it seems to me that those with a philosophical bent of mind do have an obligation to enter the conceptual arena simply because serious matters of philosophical import are at stake. It is true that the fateful struggle here is over land and the survival and destinies of peoples. But the battles are being waged and have been waged with more than guns, bombs, and knives. The weapons also include concepts, ideas, and formulas with which philosophers have long wrestled. The casualties from the Palestinian conflict have been enormous and appalling in terms of death and suffering. The casualties of language and lucidity usually pass unnoticed in the media's fascinated focus on the vivid material evidence of the ever-present human suffering.

This chapter focuses on the concept of *rights* because I am convinced of the importance of the concept as such and because the term "rights" appears to be one of the most ill-used of all terms at both the verbal and existential levels of the Palestine conflict. The very fashionable aura that surrounds "right" and "rights" contributes in no small part to the muddle over their meaning. After all, a right is self-evidently good and "human rights" sounds even more axiomatically virtuous, so who dares ask exactly what the terms refer to without risking moral opprobrium? The more one listens both to the combatants in the Palestine conflict and to their partisans and spectators, the more difficult it becomes to determine what is meant exactly by the incessant use of and appeals to "right" or "rights." It is clearly evident that the overheated polemics contain demands, assertions, needs, desires, pleas, and rages. But it is not easy to connect any of these verbal forms with what could legitimately be called rights. It is further depressing to discover anyone who declaims on the matter of rights, who is able to state clearly and unequivocally what he or she means by the term "right." One finds this conceptual lacuna not only among partisans whose rhetoric disguises the most cynical and brutal intentions but also among those whose rhetoric clothes the loftiest moral and humane intentions for a resolution of the conflict.

For these reasons, it seems in order, before proceeding further, to offer a definition of "right" around which reflections on the subject may be oriented. This procedure is not meant to be arbitrary or to foreclose further discussion. It is intended to illuminate and clarify issues. If, as often happens, no attempt is made to define such terms at the outset, then further discussion tends merely toward the escalation of polemical fervor and confusion. Definitions are important when the term and the reality it denotes are important. Merely rhetorical uses of "right" and "rights" often disguise serious complex issues that should be exposed to sober investigation and analysis. The definition here offered is not meant to be esoteric. It is in line with the appropriate uses of the term specified in the *OED,* though not simply identical with any one of these possible meanings.[1]

Preliminary definition: A right is a valid effective claim which A makes on B for B to do or forebear something with respect to A. A and B may be individuals or collectives of any size, though, as we later see, excessive size weakens the strength of the claim. Although it is the conflict between Palestinian Arabs and Israeli Jews that gives impetus to these reflections, a definition must be a workable one for other situations of conflict or dispute as well.

In asserting that the claim of A over against B must be *valid* I mean that in order to qualify as a right it should be distinguishable from any other type of claim. The one thing that is not lacking in the Palestinian conflict is claims of A on B, and virtually every one of these claims declares itself proudly to be a right.

It is my contention that in order for a claim of A on B to be valid, B must be conscious of an obligation or duty to do or forebear what is claimed by A over against him. A may claim, demand, plead, beg, threaten, or insist on whatever he wants from B, and it may in the fullest sense of the term be a just claim, but it is not a right if the consciousness of obligation to grant the claim is not present in B. A just claim (however this is defined) may be enforced on B by the full weight of the law, but it lacks status as a right without the consciousness of obligation on the part of B that validates the claim.

Without the validating consciousness of obligation, what may happen is exactly what does happen in the Palestinian conflict, as in so many other conflicts and crises in the contemporary world. One person or group loudly demands that others do or forebear this or that action and stridently proclaims that this is "my right" or "our right." So many of these demands are regularly decorated with the epithet of "absolute" or "eternal" or, more commonly, "every right in the world." One demands something, and no matter what the demand, however modest or extravagant, no matter how reasonable or absurd, brutal or humane, it is declared a right and thereby acquires a mysteriously exalted status in the arena of public opinion. All sorts of efforts are then mobilized to support this proclaimed right. The fact that politicians' careers can be destroyed if they are not nimble enough to hop on the latest "rights" bandwagon is perhaps no great loss. The more important casualty is the concept and reality of right.

What, then, could produce in the consciousness of B an obligation to grant the

claim of A and thus validate a claim? I can conceive of no other viable possibility in the world of the late twentieth century than some form of *contract* or covenant or agreement. What in a contract could produce in the consciousness of B this obligation? Surely only a balanced reciprocity of claims of both and all parties over against each other. To put it more simply, a consciousness of obligation in this day and age can be produced only as a necessary concomitant of reciprocal rights.[2]

It may well be that in past cultural milieu the consciousness of obligation was the product of very unequal social relationships. Thus a vassal may have felt a clear obligation to his liege lord, and the lord may have felt a lesser or even casual obligation, or at least an unequal one, to his vassal. One may even describe this situation as one involving rights. But this simply will no longer work in the modern world. The egalitarian temper of the age has made such relationships and their presumed rights obsolete. Where relationships of gross inequality and oppression obtain today, the fight against these inequalities and injustices is carried on under the banner of "rights"; not, I suggest, because rights are present in this situation but because they are not present. The lack of rights is the essence of the problem.

If there is no settled ethos agreed on by contending parties—as is so clearly the case in the conflict between Israeli Jews and Palestinian Arabs—then the motivation for the possibility of contract or covenant can only be enlightened self-interest. Such an understanding of the contractual basis of right must assume that the contending parties will not knowingly agree to a reciprocity of rights that is to the disadvantage of one party and to the preponderant advantage of the other. Thus, this understanding of contract as a basis of rights contains the two further assumptions of a balance of goods on each side that is desirable to the other and a modicum of sanity.[3] There should be no cause for uneasiness here if such a contract appears to owe more to the nexus of commercial transactions in a bourgeois contemporary world than to abstract metaphysical principles.[4]

The preliminary definition of "right" offered here specifies that for the claim to be a right it must be both valid and effective. To be effective means that there must be clear empirical and continuing evidence that B actually does or forebears according to the claim of A for there to be a right. The right must be concrete in the specific relationship between A and B. Here one is continually presented, especially in the Palestinian conflict, with the most alarmingly absent-minded misuse of the verb "to have." It is claimed that certain groups and individuals *have* certain rights when it is evident that they have nothing of the kind. For A simply *does not have* a right or rights insofar as and as long as B does *not* do or forebear what A's claim requires. At this point in the discussion, appeal is predictably made to this or that declaration of human rights or universal rights by some international body, agency, or organization. It is claimed that A has rights because an internationally recognized and respected body declares that A has such rights. And even though the declaration is publicized and propagated,

A, be it a Palestinian or Jewish person or collective, or any other ethnic or racial or religious group, suffers the disadvantages of having no such rights.

I once came upon a Palestinian student who had just been released from detention after being picked up at random off the street in Ramallah by the Border Guards. He was neither charged nor accused of any crime. He had merely been beaten savagely for an hour or so and then been dumped back out onto the street again. Through his pain he demanded bitterly, "Where are the rights? Where are the human rights now?" One does not usually expect philosophical profundity in the bitter rage of pain and despair, but the lad understood the issue of rights precisely.[5] I chose not to inform him of the internationally accepted documents wherein his rights could be found.

Imagine a pauper who holds in his hand a piece of paper that purports to be a bank draft for $100. He discovers that no bank or financial institution will cash or otherwise honor this document. No shopkeeper or store clerk will give him goods in exchange for this document. Is it, then, really a bank draft for $100? Imagine now that the International Monetary Fund and the World Bank intervene to declare officially that this document is a genuine bank draft and that the UN Security Council passes several resolutions declaring emphatically that the document is what it purports to be. Still, no bank, financial institution, shop, or store will give the man so much as a penny of credit, cash, or goods in exchange for the document. The poor man *does not have* a bank draft for $100. What he does *have* is a worthless piece of paper.

To assert that a claim must be valid and effective in order to qualify as a right is a way of indicating the inner and outer characteristics of a right. The one who makes the claim, as well as the one against whom the claim is made, must be conscious of the reciprocal obligation, which binds them and is based upon contract, and there must actually be the action or forbearance of action specified in the reciprocal rights. Though other terms and phrases may be chosen to express the same reality, validity and effectiveness express the necessary sufficiencies of right.

The term "contract" is not meant here in any restrictive sense. The term indicates the agreement or consent or assent of the *relevant* parties upon which a reciprocal recognition of claims, that is, rights, can be based. Contract *may* be enshrined in a constitution or binding legal document, but there may also be cases where there is nothing more than verbal agreement. What is so important in the case of the Palestine conflict is precisely the absence of such an equably balanced contract of reciprocity between the contending parties *and* the unavoidable necessity of such a contract between these specific parties, namely, Palestinian Arabs and Israeli Jews, in order for there to be any possibility of rights whatsoever. This seems to me to be so obvious that its expression must sound banal. Yet obfuscation is the depressingly dependable order of the day at precisely this point. Both parties and their many partisans insist that rights are to be grounded always somewhere else than in the only place on which they can be

grounded. It may well be the great difficulty of envisaging any eventual contract of free equal parties that induces so many to postulate other extraneous grounds for right. The actual situation in Palestine is appalling and the outlook is painfully bleak. Distractions about extraneous grounds for rights may well have psychological value as a therapeutic. I do not think they contribute much to an understanding of the fateful issues at stake in this bloody contest.

Once right is detached from some form of contract there is no limit or end to what claims can be disguised with the august label of "right." Zionism is an instructive example of the point, and seldom has the point been expressed more succinctly than by Chaim Weizmann in a January 17, 1930, letter to James Marshall.

> . . . When the Balfour Declaration and the subsequent Mandate of the League of Nations laid down that a National Home was to be established for our people in Palestine, 90 percent of its inhabitants were Arabs, and the consent of the local population was not asked, nor is it likely that it would have been obtained; but in view of "the historical connection of the Jewish people with Palestine" (which is explicitly recognized in the Mandate), there was no more need to ask the local Arabs whether they agreed to our entering Palestine, than there was to ask us whether we agreed to their remaining in the country. . . . We enter Palestine by right and not on sufferance. . . . But equality in rights between partners as yet very unequal in numbers requires careful thought and constant watching. Palestine is to be shared by two nations; one is there already in full strength, while of the other only a mere vanguard has reached it. . . . If there is to be our National Home in Palestine, if the right of free access to the country is to be maintained, if the idea of the rights of both nations is valid, clearly that half of the future population which is on the spot and is determined to keep out the other half, must not be given a free hand nor conceded powers which are due to the whole population only. (Litvinof 1978, 206ff)

The full text of Weizmann's letter is enlightening. In it he pours scorn on the whole idea of democracy for obvious reasons. In those years before the establishment of the Jewish state it would have been rather unlikely in a democratic poll for the overwhelming majority of Palestinian Arabs to vote to disinherit and displace themselves in order to facilitate the establishment of a state for European Jewish settlers. Since Weizmann and his co-Zionists felt constrained in view of their project to reject the possibility of an agreement (contract) with the indigenous Palestinians, they thereby abrogated the possibility of a right for their undertaking. Weizmann's claim, and that of others, that the British government or the League of Nations had the authority to grant rights in Palestine to European settlers against the implacable opposition of the native Palestinian population reduces to this formula: A endows B with rights over the life, livelihood, and property of C, irrespective of the opposition of C. As a cynical summary of the ways of big-power politics in an age of imperialism, the formula is unremarkable. As a philosophical argument, it is not worthy of serious consideration.

As Weizmann's words and subsequent history make clear, when right is

detached from contract (the letter explicitly insists that the consent of the local Arabs must *not* be sought), then the only issue of importance is *strength* and the term "right" becomes an ideological fig leaf. The present state of Israel with the massive economic, military, and political backing of the United States is now *the* dominant power in the region. It overwhelmed by force and expulsion the majority Arab population of Palestine. Israel's enormous strength appears to be in no danger of diminution in the foreseeable future. But Israel's very strength undermines the possibility of rights in spite of the frequent loud proclamations of its rights. This discontinuity between *strength* and *right* had already been delineated with precision by Rousseau:

> The strongest man is never strong enough to be master all the time, unless he transforms force into right and obedience into duty. Hence "the right of the strongest"—a "right" that sounds like something intended ironically, but is actually laid down as a principle. But shall we never have this phrase explained? Force is a physical power; I do not see how its effects could produce morality. To yield to force is an act of necessity, not of will; it is at best an act of prudence. In what sense can it be a moral duty?
>
> Let us grant, for a moment, that this so-called right exists. I suggest it can only produce a tissue of bewildering nonsense; for once might is made to be right, cause and effect are reversed, and every force which overcomes another force inherits the right which belonged to the vanquished. As soon as man can disobey with impunity, his disobedience becomes legitimate; and as the strongest is always right, the only problem is how to become the strongest. But what can be the validity of a right which perishes with the force on which it rests? If force compels obedience, there is no need to invoke a duty to obey, and if force ceases to compel obedience, there is no longer any obligation. Thus the word "right" adds nothing to what is said by "force"; it is meaningless.
>
> "Obey those in power." If this means "yield to force" the precept is sound, but superfluous; it has never, I suggest, been violated. . . . If I am held up by a robber at the edge of a wood, force compels me to hand over my purse. But if I could somehow contrive to keep the purse from him, would I still be obliged in conscience to surrender it? After all, the pistol in the robber's hand is undoubtedly a *power*. . . . Since no man has any natural authority over his fellows, and since force alone bestows no right, all legitimate authority among men must be based on covenants. (Rousseau, *The Social Contract,* chs. 3, 4)*

In recent years, Israel's spokespersons and supporters have insistently demanded that the Palestinians and the Arab states acknowledge publicly and solemnly "Israel's right to exist." Why exactly does Israel need such an acknowledgment from its neighbors or from the Palestinians? Security considerations are often adduced but they are not persuasive. As the Arab states' military powers increase arithmetically, that of Israel increases geometrically. The possibility of an actual military threat to Israel's existence is difficult to envisage. Then why

*Reprinted by permission of the Peters Fraser and Dunlop Group Ltd.

the demand that its right to exist be recognized? Amid all the media clamor over this matter in recent years, it is strange that so few sober voices have been raised to point out the vacuity of the demand.[6]

There is no such thing in international law or diplomatic relations as the right of a state to exist. Diplomatic recognition implies only that the state so recognized does actually maintain authority and control in the territory over which it claims sovereignty. (In the case of Israel even these territorial limits of sovereignty are as yet undetermined legally.) Israel's demand to have its right to exist recognized, while making no apparent legal or diplomatic sense, does make another kind of sense, which is of interest here. The muddled logic of this "right to exist" when untangled and translated into straightforward language probably reads as follows: Israel demands that all governments and peoples, but especially the Palestinian Arabs, acknowledge formally the moral justification of the existence of a Jewish state on Palestinian soil, that is, Israel demands that the Palestinians assent to the legitimacy of Zionism and its expropriation of their land.

Such a right, even if it did have diplomatic or legal status, would still lack in the case of Israel the legitimating balance of reciprocity. Yet one senses here the unarticulated acknowledgement of many Israelis that in the final analysis only the Palestinians, for all their relative powerlessness, have it in their power to grant rights to Israel.

There is certainly a strong and illustrious tradition in modern political theory and constitutional practice of natural rights. Such theories possess the great advantage of providing a secure point of reference or a fulcrum of justice above and beyond or apart from the specific laws and mores of society. Natural rights provide the standard by which the rights founded upon contract may be judged moral, fair, equable, or just. After all, if as is here claimed, rights arise solely from contract, how can they be evaluated if no standard of right exists apart from contract?

Without abandoning this socially transcendental virtue of natural rights theories, it should be pointed out that they also suffer from several weaknesses, especially with reference to conflicts such as the one now convulsing Palestine. In the first place, it is difficult to pin down the meaning of "natural" since all concepts of nature are human conceptual inventions that usually bear the unmistakable marks and biases of the particular socioeconomic conditions in which they arise. The so-called natural rights of Locke's *Second Essay on Civil Government* are an unmistakable example of this.

Pure nature, that is reality apart from human society and artifice, does not contain anything that could possibly be construed as a right. It contains matter and motions that can be described with scientific laws, but matter does not move through obligation or duty. It moves only through force. This movement by means of force is apparently the inspiration for Hobbes's theory of The Right of Nature, a term that in Hobbes sounds almost ironic.[7]

A further difficulty with natural rights theories is that they arise not in nature

but specifically in modern Western societies. While appearing to guarantee rights to all men, they so often serve to legitimize the prerogatives of the ruling class that is striving for domination. Again, Locke's strong emphasis on the natural right of property authorized even by the book of Genesis is instructive here. Finally, natural rights theories require a shared fabric of culture in order to stand any chance of gaining general assent. That shared cultural fabric simply does not exist in Palestine. Even if all the relevant parties in dispute shared the modern Western culture that would allow agreement on the general outlines of a theory of natural rights, such rights would still remain merely elegant statements of what ought to be until they were embodied in mutual agreements (i.e., in contract or covenant).

There are partisans of Israel who claim that events described in the Bible, particularly in the Old Testament, establish the right of twentieth-century Jews to establish a nation-state in Palestine. There are awkward difficulties in pursuing this line of argument. The stories of Genesis and Exodus present the origins of the traditions that connect the Hebrew and Israelite tribes with the land of Canaan (modern Palestine); however, the most strenuous efforts of several generations of scholars have not been able to uncover any historical or archaeological evidence for the existence of the events and personages referred to in these texts. There is no concurrence between biblical narratives and demonstrable historical facts before about the eighth century B.C. (see, for example, Thompson 1992).

The stories that describe the origins of ancient Israel may be understood as myths, legends, poetry, or epic. All the interpretive tools appropriate to such literary genres ought to be employed to facilitate understanding the meanings of these stories. But however one chooses to categorize and interpret them, the fact remains that they are *fictitious*. Various forms of fiction bear their own peculiar and appropriate forms of truth. I do not see how a collection of historical fictions can serve as a basis for a claim of right to a specific section of geography in the twentieth century. Surely a transition from ancient fictions to modern moral or legal geographical right is a *metabasis eis allo genos*. One might with analogous justification attempt to base the legality of a mining concession on the text of *Snow White and the Seven Dwarfs*. After all, the story does tell us that the dwarfs worked a specific mine.

Even if we set aside for the moment all skepticism about the historical veracity of Old Testament texts and take them at face value as literal statements of truth, which is the way they are read by millions of Jews and Christians, I still fail to see how they can provide the basis for geographical rights in the midst of the Palestine conflict. The texts claim that a Divine Being has established a unique covenant with ancient Israelite or Hebrew tribes and promised them possession of the land of Canaan. Surely such a covenant, so far from providing a basis for rights, abrogates in advance any possibility of rights between the contending parties in Palestine. If one party has a special divinely authorized claim to possession of the land, which special relationship is not accessible to the

other party, then no contract is possible that would undergird a mutual reciprocity of more or less equal rights. Even if the Old Testament covenant did provide a relationship of obligations and statutes between the parties to the covenant, the conflict in Palestine is not between Yahweh and a Jewish people, who are not all descendants of ancient Israelite tribes. The conflict is between Jews and Palestinians, and it is within that nexus of dispute that rights in Palestine do or do not exist.

It is an undeniable fact that most Jews both within and beyond Israel feel a passionate attachment to Eretz Israel, whatever may be the historical or religious content of this attachment. It is also a fact that this passionate feeling, along with a variety of forces, military, political, and economic, brought the modern state of Israel into existence. But passion plus force does not equal right.[8]

Well-intentioned religious thinkers, especially from Christian circles, have attempted to overcome the particularistic difficulties of biblical texts by interpreting the chosenness or election of the Israelites symbolically, allegorically, or figurally. Thus, the texts that appear to refer only to "the children of Moses," their progenitors and descendants, are claimed to refer instead or primarily to all humans or all humans who suffer and long for liberation. This approach does have the merit of avoiding the difficulties of a straightforwardly literal reading of the text, but it suffers from other drawbacks. Quite apart from the debatable hermeneutics involved in this procedure, the principle difficulty with it is that the dedicated Orthodox Jews who form a significant segment of one of the contending parties in Palestine fervently believe that the Old Testament texts mean exactly and primarily what they say. If twentieth-century observant Jews did not believe that the Old Testament promises and commands referred specifically to them, then why would they be Jews in the first place, let alone Zionists?

Occasionally one runs across an Israeli partisan who has realized the futility of trying to justify the Zionist conquest of Palestine with a theory of right. In the early 1980s on an official tour of the *Gush Emunîm* vanguard settlement of Ofra in the heart of the West Bank, I recorded the following statement from a settler working in the carpentry shop. "I don't believe in Zionism [sic!]. This is our inheritance. It is just for us to pick up. There is not even a question of rights here. God has given it [Eretz Israel] to us [repeated several times]. God alone knows about wars and their terrors. God is our commander-in-chief, our commanding officer. If he commands us to go to war and if during the war He commands us to remove some people from some land, then we obey."[9]

Alongside theological attempts to fabricate a Jewish right to the geography of Palestine, and sometimes mixed with these theological claims, are to be found secular arguments based on very different and modern assumptions. Both in the arena of propaganda and in the consciousness of many Israelites and Zionist supporters is to be found a rationale based upon a labor theory of value. The classic formulation of this theory is to be found in John Locke's *Second Treatise of Civil Government* (ch. V). Locke's theory begins with the claim that personal identity can be reduced to ownership of property. A person owns himself. His

self is his property and no one else has any right to dispose of this self-property. When a person applies his labor to anything in a state of nature (not yet anyone's property), he "mixes" himself (his property) with that previously unowned object and thereby makes it his property by right. This mixing of self through labor with an object to create property rights is approved by the consent of men generally and thus appears to embody some sort of contract. The theory was provoked by the land enclosure controversy in seventeenth-century England. It has become a powerful syndrome, almost an automatic reflex, in subsequent Western culture.

The Zionist use of the Lockean syndrome, both as a propaganda device and as a leit motif in Israeli self-consciousness, takes various forms from severe to mild. The severe form, as articulated by Golda Meir, simply denied that there were any Palestinians living on the land when the Zionist settlers arrived. The land was empty, barren, neglected. The Zionists made the desert bloom and drained the swamps, and so forth. Thus, by mixing their labor with the barren land and making it fertile, they created a right to it. The mild form of the syndrome is presented by Zionists who admit that there were indeed Palestinian Arabs living on the land before the Zionists arrived, that these Arabs have been badly treated in subsequent history and that they even ought to have some limited autonomy. But then comes the familiar refrain about the desert and the swamps and the miracle of nation building and development. The conclusion of the argument can then be left unspoken. The Western mind almost instinctively moves from a blend of historical fact, untruths, and myth to moral right. This illogical transition is almost a reflex in the minds of many Americans because it so closely imitates the way in which they understand their right to their geography and their relationship to the previous native inhabitants. This may also help explain why many American immigrants to Israel are attracted to the *Gush Emunîm* and other settler movements.

All attempts by a nation to fabricate a right over its geographical territory, whether these attempts take historical, theological, secular, or emotional form, have been dealt a fatal blow by Yeshayahu Leibowitz (1992, esp. chs. 22 and 25). The flaw in all such attempts, Leibowitz observes, is that they involve a category mistake (p. 229). A geographical territory is an objective datum, but a nation is a mental construct that exists only so far and so long as the consciousness of nationhood exists in the minds of its members. An individual human being or even an organization may have rights within a defined social or political context. An individual may have property rights insofar as these rights are established and protected by legal and judicial institutions. But a nation as a purely mental reality is not a person and cannot have legal or moral rights over an objective natural datum. Rights exist within the nexus of social relationships and are meaningless beyond it. A nation can certainly assert a right over an expanse of geography, and it can congratulate itself if all or a majority of other nations recognize this imaginary right. But the moment this right is challenged, it cannot be successfully defended on moral or legal grounds (as can a person's rights to

property or freedom or expression, for example). Leibowitz does not shrink from drawing the inescapable conclusion of his argument, and he makes use of a midrashic reference to formulate it. A nation possesses its territory by "dint of robbery," not by right (pp. 231, 242). If it is objected that this formula is not applicable to every single nation past or present, it does fit neatly the case of modern as well as ancient Israel.

It is beyond the scope of these reflections to deal with the relationship between right and statutory (positive) law. It can be noted here that the history of the Palestine conflict offers no support to a theory that would equate right with law or base the former on the latter. Almost everything the Zionists have accomplished in Palestine is "legal," from the expropriation of the land and the expulsion of hundreds of thousands of Palestinians to the treatment of Palestinians under interrogation (where the Israeli High Court has sanctioned the use of "moderate physical pressure"). The laws are a unique collection of Ottoman, British Mandate, Jordanian, and Israeli statutes plus Israeli military orders, which may change from day to day but which have the forceful effect of law in the West Bank and the Gaza Strip. The Israeli authorities are skillful in selecting from this array of legal possibilities the appropriate authorization for each situation. The one thing they cannot do with any of the legal possibilities or all of them together is create rights. The reason is obvious. These laws merely give form and justification to the will of the strongest.

One of the burdens that rights carry in any contemporary situation is their very popularity, dare one say their "political correctness"? It seems that anyone or group with any cause, be it noble or base, claims that "I (or we or they or it) have a right that must be granted." This insistence that every claim or demand be labeled a "right" causes multiple casualties. It trivializes important, urgent moral issues and devalues the concept of right by applying it to inappropriate causes merely because it has the attraction of a trendy fashion. There are many weighty moral urgencies that have nothing at all to do with rights.[10] The worry is that if "rights" is misused so widely as an item of rhetorical fashion, then it can easily go out of fashion or even become discredited, like a food fad or a hairstyle.

Rights of whatever kind are in principle *limited.* They are limited by the fact that they must stand in some social nexus of reciprocity in order to qualify as rights. An absolute right (to a tract of land or to a city, for example) would be a conceptual absurdity. More ominous still, claims of "absolute right" have often been the ideological prelude to tyranny. If philosophers contribute nothing else to the abatement of the Palestine conflict they can at least point out that claims of absolute right are appropriate only from the podium of a Nüremburg stadium.

Declarations by international organizations and institutions concerning human rights are probably the modern descendants of earlier natural rights theories. They are an improvement on the tradition in de-emphasizing nature and providing for international agreements by which governments may affirm their commitment to establish and protect human rights. Even where governments do not

sign such covenants or do not abide by the provisions to which they have agreed, such international declarations can be of value as pressure on recalcitrant states and as guides and impetus for the establishment of the rights that *ought* to exist in any individual country. It is certainly not my intention to undervalue these universal declarations. Yet it is important not to overvalue them, especially on the battlefields of the Palestine conflict. International pronouncements, however just and eloquent, are not rights in spite of such claims until and insofar as they are embodied in contract. Even if both Israel and the Palestinians assent to the provisions of an international document, the problem of rights in Palestine remains unresolved, for the conflict is between the two relevant parties, not between each of the parties separately and some international organization. It might also be argued that the concrete validity and effectiveness of rights sometimes stand in inverse proportion to the geopolitical scale of the declarations of rights. Pious rhetoric by media-sensitive politicians is such a tempting alternative to the difficult and tiresome business of actually bringing rights into existence and protecting them.

It might be said by those concerned to take a balanced position on the Palestine conflict that it is really a conflict of rights. It is certainly a conflict of claims and demands, which are often labeled "rights," but to call it a "conflict of rights" makes no conceptual sense at all. It sounds like the sort of thing one might hear from the Red Queen. Suggestions that there is in Palestine a conflict of rights may also disguise or distract attention away from the very serious issues that need to be exposed and analyzed if the nature of the conflict is to be understood.

From time to time the Israeli authorities announce measures that are supposed to ease the conditions of the Palestinians living under occupation, and Israeli apologists never tire of pointing out that Palestinians are allowed to appeal even to the Israeli High Court. Such entitlements might be thought of as rights, but they are a travesty of rights. Whether or not such measures reduce suffering, they are dispensed at the pleasure of and in the interest of the ruling power, and they can at any time be withdrawn for the same reasons. They are not unlike the improved diet or extended visiting privileges dispensed by the governor of a prison in order to dissuade the inmates from setting alight their mattresses or mounting protests atop the roof of their cell block.

On the ground in the midst of the conflict itself there are individuals and organizations, Palestinian and Israeli, whose dogged commitment to human rights leads them day by day to work against enormous odds for the alleviation of suffering and the weakening of oppression in whatever modest unspectacular ways can be discovered in specific situations. Their tireless commitment to their Sisyphian task never fails to amaze. Their efforts are often, without exaggeration, heroic. Their efforts to relieve oppression are called forth precisely because rights are absent, not present. The creation of genuine human rights in Palestine would make their current work obsolete.

At least two objections can be raised against the contract theory of rights on

which these reflections are based. In the first place, modern contract theories were devised as a way of grounding the legitimacy of *a* civil society, that is, a society whose population was ethnically and/or religiously homogeneous enough to form a possible *single* civil society. It may seem awkward to put forward a contract theory of rights in the midst of the Palestine conflict, which shows no signs of producing a *single* civil society in the foreseeable future. I understand that such was what was envisaged in the former hope for a "secular democratic state in Palestine." It was clearly the Zionist insistence on a Jewish state that prevented such a state from emerging. This was as much a loss for Jews as it was for Palestinians, as I believe subsequent history will demonstrate. But the only alternative to perpetual conflict is some sort of eventual agreement or contract between the two peoples, even though a single civil society remains for the moment on the utopian horizon.

A second objection might be raised as to the religious implications of a contract foundation for rights. Hobbes, Locke, and Rousseau granted the utility of religion as a unifying or pacifying factor in civil society. At the same time, the contract theories they proposed as the fundament of civil society are very clearly critical alternatives to the religious convictions, controversies, and structures of existing societies. The social contract is uncompromisingly a secular concept. It is intended, among other things, to lead men beyond the folly and suffering that religious enthusiasms inflict on communal existence. It may therefore be claimed that such an avowedly secular understanding of the basis for rights is out of place in Palestine, where religious passions and traditions continually fuel the conflict. The rejoinder to this is that it may be because of the religious dimensions of the conflict that a secular concept is the only one that will actually work. Spectators outside the conflict may speak from time to time about the common Abrahamic inheritance of all three monotheistic faiths, but such utterances do not seem to have much real significance for the parties now locked in combat.

These two objections to a contract theory of rights are indeed serious. They are exceeded only by the objections that can be brought against all other possible theories.

It is not my purpose to try to spell out the form or terms an eventual contract would take. That is a task for lawyers, administrators, political leaders, and above all for the peoples now in conflict in Palestine. It is they finally who must agree through a balance of powers and goods and hopes that rights shall replace conflict. The partisans of both sides, the international organizations and agencies and informed persons throughout the world, who now express their concern for peace in Palestine through declarations about human rights, can help in pointing the way toward those rights that *ought* to exist. It is not until this *ought* is transmuted into the *ought* of reciprocal moral obligation within the lives of the currently contending parties that rights will exist in Palestine as a replacement for conflict.

Philosophers can insist along with all others who desire peace that rights

ought to exist. Until they do, the further contribution of philosophers can be to urge rhetorical restraint and conceptual clarity on all concerned.

Notes

1. *Oxford English Dictionary,* 2d ed., vol. 13 (Oxford, Clarendon Press, 1989), 922–23. See esp. definitions II.7.a and II.9.a.

2. What are of relevance to these reflections are explicit contracts, whether statutory or informal. There are also *implicit* contracts, which provide the underlying stability on which the health of civil societies depends. Though they are not immediately visible, they are discoverable by reason. The simplest example of an implicit contract is the relationship in which a citizen of a free democratic society stands to his fellow citizens and the legal and political structures of society. He is obliged by unspoken assent to the contract to abide by the rules and laws of the society as long as he remains within it. He may of course work with others or alone to alter and improve the structures and statutes of the society. Contracts and their resulting rights are not eternal verities. They often need alterations to preserve their balance. The citizen may opt out of the contract. He may leave the society and join another or form his own. But as long as he remains within the society he assents to the implicit contract whether he is ever conscious of his assent or not. In Plato's *Crito* the imaginary conversation between Socrates and "the Laws" reveals for his hearers the implicit contract between Socrates and his polis, and by implication the implicit contract between Athens and all its citizens.

3. In his argument against the so-called right of slavery, Rousseau pointed out that it is inconceivable for a whole people to agree to enslavement under contract. "To speak of a man giving himself in return for nothing is to speak of what is absurd, unthinkable; such an action would be illegitimate, void, if only because no one who did it could be in his right mind. To say the same of a whole people is to conjure up a nation of lunatics; and right cannot rest on madness." See *The Social Contract* (New York: Penguin Classics, 1981), bk. I, ch. 4, p. 54 (first published in 1762).

4. Gough's work (1957) contains a valuable survey of the subject. Nevertheless, one of Gough's theses, namely, that each social contract theory is part of a long interdependent tradition stretching back to the ancient Greeks, is not a passive explanation for the recurrence of such theories. As Gough also points out (p. 4), the social contract is not a serious attempt to explain the origins of societies. Instead, it is an insight into the fundamental presuppositions on which societies rest; it is more likely that philosophers in many Western societies continually rediscovered the contract as the most coherent explanation for the fundament of their societies. To be fair to Gough, he is also aware of the ways in which socioeconomic conditions influenced different contract theories, especially the most recent ones.

5. The same point is made more poetically from the cell of a Palestinian held under administrative detention. "Where are those countless committees who cry for human rights? They come and go like hothouse flowers, like the budding show pieces placed carefully at the prison gate. The prison warden smiles when he receives them and he smiles as he sees them off. What do they write in those reports of theirs? What are we to them?" (Ghazzawi 1993, 66–67).

6. One commendable exception is G.H. Janson in *Middle East International,* January 7, 1983, 10–11.

7. See Hobbes's discussion of the Right of Nature in *Leviathan,* pt. I, ch. 4 (first published in 1668). Hobbes's theory is certainly natural, but it is difficult to understand in what sense it has anything to do with a right.

8. If one puts the equation Passion + Force = Right on an historical continuum, one would come close to a summary of Hegel's understanding of right. Hence his antipathy to contract theories of right, particularly that of Rousseau's. See Hegel's *Philosophy of Right,* paras. 75 and 258 (first published in 1821).

9. The man identified himself as Abe Berman, an immigrant from Monsey, N.Y.

10. An unfortunate example is the current clamor about animal rights. Human individuals, societies, and governments have an enormous burden of responsibility for the perilously fragile ecosystem of our planet. Within this larger responsibility is our moral obligation not to misuse animals, domestic or wild. But to jump from this unquestionable moral responsibility to a claim that animals have rights is to introduce muddle to moral obligation. We have an unavoidable moral responsibility to the whole ecological system. Why single out animals as supposed bearers of rights? Should not plants also have rights? What about bodies of water, mountains, molecules of air, grains of sand? Extravagant claims about "rights" contribute nothing here. As in the case of monetary inflation, excessive circulation debases the coinage.

13

Beyond Justice and Rights

Competing Israeli and Palestinian Claims

Robert L. Holmes

The Palestinian Intifada began on December 9, 1987, and ended on September 13, 1993 with a handshake on the White House lawn between Yasir Arafat and Yitzhak Rabin. That handshake ushered in a new era of hope for eventual reconciliation between Israelis and Palestinians. I say eventual reconciliation because much of the hard work of building peace between the two peoples was only begun at that time. The accord that handshake symbolized could be the foundation for peace; or it could represent nothing more than a lull before the Intifada surges anew with even greater intensity or before Israeli society is torn by civil strife, as opponents of peace with the Palestinians—at least of the sort proposed by Rabin—try to prevail in an increasingly violent struggle for power. Terror attacks by Hamas and Islamic *jihad* give ample evidence of the potential for the first outcome. The assassination of Rabin gives ample evidence of the potential for the second. In the worst case, both developments could occur at once.

Much will depend on the leadership on the two sides. But even more will depend upon the Israeli and Palestinian people themselves. For it is, in the end, their acceptance or rejection of one another that will determine whether peace is achievable, not what is said by a few men who can, at best, claim to represent only a majority on their respective sides. And whether there is acceptance of one by the other will depend on whether common ground can be found between the two; or, if it does not now exist, can be forged by their mutual efforts.

In posing this question I am deliberately distinguishing it from the question whether there is any common ground between Israel and the various Arab states (or, if you like, between the Israeli government and various Arab governments). For as much as some would like to view it as part of the same problem, the relationship between Israel and the Arab states is a distinguishable problem from those dividing Israelis and Palestinians. And the problems dividing Israelis and Palestinians are by far the more complex of the two.

The importance of searching for such a common ground cannot be overemphasized. Socrates, as he awaited execution and agreed to review his decision not to escape,[1] made clear one of the principal truths of any attempt to resolve

disputes by rational means. It is that, as a preliminary, some common ground must be found from which both parties can assess the issues dividing them. Failing that, no amount of reasoning is likely to avail. Indeed, we might add, it may serve only to harden positions, thereby confirming in the minds of each side the unreasonableness of the other. The best outcome, then, as we often find in personal relations, is that both sides agree to disagree; the worst outcome, as the history of humankind often attests, is that they resort to force.

But by a common ground I mean more than just a shared premise in a rational argument, of the sort Socrates has in mind. I mean a thinking in a new light. In Eastern thought, the Jains speak of nonabsolutism, by which they mean the conviction that we should not simply settle for apparent contradictions but should always seek a broader point of view from which they either disappear or are transcended. William James, much later, and in a different connection, gave an example that can illustrate the sort of thing the Jains had in mind. He tells of a dispute that arose on a camping trip about what took place when a man circled a tree trying to get a look at an elusive squirrel on the opposite side of the trunk—which he failed to do because the squirrel kept moving so as to keep the trunk always between him and the man. One group contended that the man was going around the squirrel, the other denied it. James proposed that once it was clarified what might be meant by "going around," further dispute was pointless. If by "going around" one means being first in front of, then to the side of, then behind, and again in front of a thing (as when one goes around a house), then the man doesn't go around the squirrel. But if by "going around" one means navigating a circle that contains within it the thing in question, then obviously he does. A broader point of view than that of either of the disputants shows the contradiction to have been a superficial one. Whether complex social, political, and moral disagreements lend themselves to such analysis, of course, is problematic; in those cases the disambiguation of key terms may not be possible. And if it should be possible, there is no assurance that both parties to the disputes can be moved out of their own point of view to adopt the broader perspective. Be that as it may, the first step with any conflict is to see whether such a broader point of view is possible. And here we have to be mindful of the possibility that it might require a reorientation that is much more radical than just recognizing some ambiguities in language. And that possibility is what we propose to explore with the Israeli-Palestinian dispute. For I believe there is such a point of view here. But it is one that requires shifting much of the focus of the debate, and setting aside many of the issues in terms of which it has been carried on in the past.

Even to speak of Israelis and Palestinians is misleading at the outset. For roughly 18 percent of Israelis are considered Arab and identify in varying degrees with the cause of those Palestinian Arabs in Diaspora. And as measured by birth and ancestry, many Israeli Jews are as Palestinian as any Arabs, having been born in Israel and in some cases descended of Jews who lived in the region thousands of years ago. At the same time, some other Israelis (such as some

spouses of immigrants from the former Soviet Union), are neither Jewish nor Arab; they were neither born in the region nor do they have cultural ties there.

Complicating matters further, many Palestinians are almost certainly descended from the original Canaanites, the indigenous peoples of the region—generally believed to have been predominantly Semitic, but who may or may not have been Arab, and may have predated both the Israelites and the Arabs. Or they are descended from the Philistines or Edomites (Sakran 1976, ch. 16) or are mixtures of those peoples with Arabs who moved into the region in the seventh century[2] or are descended from mixtures of the preceding with Greeks, Romans, and later Crusaders from Europe (Sakran 1948, 11). On the other hand, if, contrary to the biblical tradition of Joshua, the Israelites did not invade and conquer the region, but were, as some more recent accounts would have it,[3] native Canaanites themselves who gradually coalesced into an identifiable group at some stage of prehistory, then those among their descendants who are still living in the region are as incontrovertibly Palestinian as any other peoples. This would probably make many Israelis and Palestinians quite literally cousins, as they are according to the Book of Genesis. The only safe conclusion is that no one can say for certain at this point precisely what the earliest ethnic history of the region is, much less detail the lineage of any substantial portion of the individuals now labeled "Palestinian" and "Israeli."

Compounding matters, neither side can even describe the issues without using contested language. The Occupied Territories to some are the administered territories to others. The West Bank to some is Judea and Samaria to others. Even the concept of Palestine itself is disputed, it being alleged by some to be a Jewish invention, by others to be Roman invention (Peters 1984), and by both sides to have boundaries most favorable to the respective claims they advance. Accordingly, whether Palestinians constitute a "people," (as Israel's Golda Meir denied), or if they do, whether they did so at the relevant times in history (such as 1917 or 1948) to warrant imputing to them an actionable right of self-determination, becomes a central issue. In this mix of historical, ethical, linguistic, conceptual, and factual claims that envelop the dispute, language itself becomes a weapon. This makes it difficult even to discuss the issues in evaluatively neutral terms.

Moreover, the precise nature of the dispute is itself a matter of dispute. For most Palestinians the dispute is over the Palestinian's right of self-determination in the territories, with an end to Israeli occupation/administration, settlement, and appropriation of land and water. For most Israelis it is simply over Israel's right to exist in peace, with a cessation of all threats to its security (though with major differences among Israelis in their concepts of the boundaries within which that right is to be exercised).

But both sides have tended to represent the others' objectives as maximalist: Israelis viewing Palestinians (and more recently the Shiites in Lebanon as well) as bent on the destruction of Israel, Palestinians viewing Israel as bent on expan-

sion and perhaps even the expulsion of Palestinians from the land. And both can cite such views among those on the opposite side. Some Israelis do want to cling to the territories and some do favor the "transfer" of Palestinians to other lands; and some Palestinians still favor the "liberation" of all of Palestine, an aim renounced by the PLO but passionately reaffirmed by the radical Islamist movements, Hamas and Islamic *jihad*.[4]

Cautioning that these complexities should be borne in mine in any thorough evaluation of the current situation, and that each of them merits sustained treatment in its own right—more than we can provide here—I shall for purposes of simplicity speak of the Israeli-Palestinian dispute, intending by it the dispute between Israeli Jews (though not by any means all of them) and what I shall consider (subject to qualifications in view of the preceding uncertainties) Palestinian Arabs, whether residing within Israel or not, and whether actually of Arab descent or not.

While it might seem that resolution of the foregoing issues is a precondition of progress on the moral issues, in fact it is arguably the competing positions on the moral issues that generate the dispute on these other issues in the first place. That is, it is not as though Israelis and Palestinians confront the same set of "facts" and then simply arrive at different evaluations on the basis of those facts; instead, they start from radically different normative and even conceptual frameworks and perceive what are taken to be the facts through these very different lenses. For this reason, I want to focus on what seem to me to be the central moral, and to a lesser extent, political issues directly.

Much of the debate between Israelis and Palestinians has centered on the notion of justice and rights. The extent to which rights are respected is commonly taken to be a measure of justice. Justice in turn is thought to be at least a necessary condition of peace. This suggests a *prima facie* interdependence among the concepts of rights, justice, and peace with justice—understood in terms of rights—as the pivotal notion in the pursuit of peace.

This might seem to provide at least a common methodological ground between Israelis and Palestinians. It suggests that both sides need only join in an assessment of their respective claims regarding rights and justice. Having reached agreement on those issues, then they need only proceed to design a settlement that accords with that finding. Not that this would be easy; but in theory the concept of how to proceed is simple. I want to challenge the view that this is a productive way to proceed. I contend that justice between Israelis and Palestinians as *peoples* not only is unnecessary to peace but is in fact impossible of attainment. More than that, its pursuit is most likely to be obstructive of peace.

Although in theory it might be desirable to adjudicate claims of justice on each side, to try to do so in practice inevitably degenerates into moral scorekeeping. Every alleged wrong by one side is countered with an alleged wrong by the other; the result is a chain of accusations extending so far back that its beginnings are lost in thickets of bitterness and recrimination. To be serious about

pursuing this course one would have to compile a list of all the accusations and then try to document the facts and assess the accuracy of each accusation. Having done that, one would have to try to assess responsibility for each incident and determine whether or not it warranted the subsequent response by the other side. And one would have to do this all the way back to the *first* alleged wrong, however far into the past that might lead. The rights and wrongs would then have to be tallied up over that long history and a determination made as to which way the scales of justice tip on balance—a project that obviously could never be completed.

But suppose such a monumental project could be completed. Suppose one could establish by whom the first wrong was committed, and on which side the preponderance of wrong has fallen over the years. And suppose both sides could agree on that assessment. Would that suffice to establish justice in the relations among the two peoples today?[5] It would not. For many of the individuals who have suffered injustices over the years are no longer living. Justice *cannot* be done them. No quantification of past injustices can alter that. And many of those who would suffer as a result of any attempt to implement long-standing historical claims of justice are not yet living. They are the Israeli and Palestinian children of the future, who will be born into a world they have had no part in creating, and for whose past wrongs they are in no way responsible. To disadvantage them from birth solely on the basis of the wrongs of their ancestors would be to add future injustice to the injustices of the past and present.

In the event the scales tipped against the Palestinians, would they have to acquiesce forever after to Israeli rule or, failing that, seek refuge in Jordan or other Arab countries (where, but for Jordan, to date they have not received a warm welcome)? Would Israelis, if the scales tipped against them, have to acquiesce to Israel's transformation into a secular Palestinian state with a Palestinian majority; either that or disperse to other countries (in many of which Jews have historically suffered persecution). The only alternative to such drastic solutions[6] would be for the two sides to work out some sort of compromise. That is precisely what they have sought to do since the agreement between Arafat and Rabin, without benefit of having resolved all the issues of justice and rights.

This is not to say that justice is unimportant or that there is equal justice on both sides. It is to say only that preoccupation with justice keeps both sides locked into the past. And that allows the past to control the present. For it encourages each to impute the worst to the other—trying to balance the scales of justice, after all, is a zero-sum game—and to cling to the image thus created of the other irrespective of countervailing evidence. Those present perceptions then, in turn, become major factors in determining the future. The extremes of this attitude are found in the conviction of some Israelis that Palestinians want to drive Israelis into the sea, and of some Palestinians that Israelis want to drive Palestinians into the desert. The one sees only a threatened obliteration of Israel, the other only its biblically mandated expansion to the Nile and the Euphrates.

Insofar as a concern with justice and rights is likely to be productive, attention should be given, not to claims of justice on the part of collectivities, or abstract entities like *the* Jewish people or *the* Palestinian people, but to the claims of individual persons. What is needed, in other words, is a shift away from a collectivist ethics that takes the highest value to be the survival and well-being of abstract entities (e.g., the state, the nation, or particular peoples, races, cultures, or religions) to an individualist ethics that places primary attention on the survival and well-being of individual persons living here and now, even if that well-being is tied to the maintenance of certain cultural and religious bonds with others and with certain groups. What I am calling a collectivist ethics[7] becomes communitarianism when elevated to the level of a whole political philosophy. But it need not be a part of such an outlook and can stand on its own. It is primarily an ethical orientation, not a political one—though it has obvious political implications.

In other words, it is justice between Israelis and Palestinians as peoples that I say cannot be achieved and is almost certainly counterproductive to pursue. Justice between individual Israelis and Palestinians living here and now—and their offspring who will live in the future—may be achievable, at least in some measure. It is, in any event, worth striving for. But its pursuit should not be burdened with the baggage of the past, including grievances nurtured for generations.

What is needed, I suggest, is a reorientation from the past to the future, with a shift from a concern with collectivities to a concern for individuals; and with it, a shift in the moral vocabulary in which the issues are conceptualized, away from a preoccupation with justice and rights to a concern with compassion and conciliation. Rights represent claims; they are legalistic and tend to be backward looking. One supposedly has a right because it was legislated, or conferred by someone in the past. Or one has it because of some express or tacit contract in the past, or—in the case of so-called natural rights—because one was born with it.[8] Framing difficult issues primarily in terms of rights and dealing with them exclusively in those terms sets people against one another. As Mary Ann Glendon (1991, 137) puts it, "Rights asserted on behalf of groups tend to pit group against individual, one group against another, and group against state. They thus raise specters of individual oppression, of new tribalism, and of the old problem of faction." The language of rights is self-centering, and, for that reason, alienating. It tends to lead people to focus upon themselves and their perceived victimization. In so doing, it separates them from others, who are seen either as victimizers or as third parties to be won over to their cause. When the alleged rights are profoundly religious ones, it puts possible solutions out of reach. This it does in the polarized positions of Jewish and Muslim fundamentalists. When each side is convinced that the same land was given to it by God—as fundamentalists on both sides contend—the competing rights-claims become unadjudicable. The stage is then set for confrontation and eventually violence. What is surprising is not the assassination of Yitzhak Rabin, who symbolized to

many on the radical Jewish right the unforgivable betrayal of this claim, but the fact that so many in Israel and the rest of the world were surprised by it. This is not to take lightly the psychological force of this absolutist way of thinking. Many people draw meaning for their lives from their identification with larger collectivities; to ask them to set that aside and begin to look at things in a new light is not as easy as asking them to put on a new pair of glasses. Epitomizing the magnitude of this problem in Jewish thought, where it has figured prominently, Shalom Rosenberg (1986) writes: "Pervasive throughout Jewish tradition is the theme that redemption is linked not merely to the fulfillment of the commandments, but first and foremost to the command to inhabit the Land [of Israel], a commandment realized through immigration, which thus takes on unique redemptive significance."

Where rights-claims are unadjudicable because deeply embedded in cherished religious convictions, and when, further, each side insists that the collectivity to which it belongs has right and justice on its side, it is pointless to challenge those claims. To do so only reinforces their holders' sense of a threat to their convictions. What one can do is to ask each side to refrain from *exercising* that supposed right in the interests of peace. This position leaves the fundamental claims unchallenged yet opens the way to progressing on the substantive nonmoral issues. And it asks of one side precisely what it asks of the other, no more and no less. Not everything one has a right to do ought to be done, and not everything one has a right to ought to be possessed. In fact, pressing one's rights can often unnecessarily worsen a situation. It may even sometimes be *wrong* to press one's rights. Rights are but one kind of relevant moral consideration, and they can sometimes be overridden by other considerations, such as those of utility or compassion. Let each side cling to its claim. If that claim is deeply embedded in a cherished religious outlook, then do not tamper with it. But encourage each side to put that claim in a safe place, so to speak, where it can be revered by the faithful, and then get on with the business of living and making something constructive out of this life, in full view of the realities of what it will take to achieve peace.

This would not by itself resolve the fundamental problems. But it would cast them in a new light and open the way to rendering them less intractable. Collectively, both Jewish and Palestine peoples have territorial claims in the region. But many individual Israelis and Palestinians do not. Some—roughly 40 percent of Israelis and an undetermined but growing number of Palestinians—were born elsewhere. Others, like some Palestinians from other countries, have not lived there for generations. Still others, like some descendants of Jews by conversion from other countries, may have no ancestry in the region at all. It is not possible in many cases to designate who falls into which categories, any more than it is possible to say with certitude which among the area's people are indigenous Palestinians. But this simply underscores how questionable many of the claims of individuals are to preemptory rights to residence in the region. To try to

resolve the issues between Israelis and Palestinians on the basis of claims to such rights is as futile as trying to decide who has wronged whom the most on the historical scale.

Barring further deportations, expulsions, or emigration from Israel and the territories, soon virtually every Palestinian in diaspora will have been born outside Palestine (meaning now that part of Palestine composed of Israel and the territories). And discounting further large-scale immigration of Jews to Israel, soon most Israelis will have been born in Israel and known only Israel as a homeland; and of those, an increasing number—unless Jewish settlements are dismantled—will have been born in the disputed territories of the Gaza Strip, the Golan Heights, and the land (whether one calls it the West Bank or Judea and Samaria) between Israel and Jordan. These are facts. Whatever past injustices they may reflect, they must be faced. That is a prerequisite of any realistic search for lasting peace. And these facts cannot be dealt with effectively by clinging to a collectivist ethic, rooted in problematic, unverifiable historical and religious claims.

A new moral orientation would require cultivating concern and compassion for all the people of the Middle East, not just for some, and not just for those identified with a collectivity. And I say all the people rather than all *peoples*. It is not merely, or even primarily, collectivities that I have in mind here. My concern, rather, is with individual persons. For whatever their beliefs and backgrounds, they all have much in common. As Individuals, Israelis and Palestinians love children, desire happiness, and have a need for peace and security. This is where the common ground between them lies. The fostering of compassion for one another in the light of such shared values may hold the only hope for eventual reconciliation.

I have suggested the need for a moral reorientation away from a primary emphasis upon justice and rights, and away from a preoccupation with collectivities. But I want to suggest another change as well. It relates to the very way of understanding the ends and goals of each side and the means thereto.

A standard model, whether in personal, domestic, or international affairs, is that of adopting ends and then, with a judicious weighing of costs and benefits, devising means to their attainment. Dating back at least as far as Hume, it has often been thought that the only rational part of this process concerns the selection of means. That selection involves the making of factual judgments. It involves predicting the causal consequences of various proposed actions. Means are those actions that will produce consequences realizing the desired ends. Whether given means will have that effect is an objective matter, subject to scientific confirmation. Ends, in contrast, according to this view, are determined by the emotions.

This makes them impervious to rational appraisal. It gives them a subjective grounding and puts them beyond the proper concern of decision makers. This whole way of thinking makes a sharp distinction between means and ends. Means, being objective, can be debated; differences in opinion over their effec-

tiveness can be rationally appraised. Ends, being subjective, cannot; feelings, rather than intellect, govern their selection. Given this way of conceptualizing means and ends, it readily happens that in situations of conflict, when other means to one's ends prove unavailing, the resort to deception, coercion, force, or violence may be thought appropriate; it being assumed there is no prospect of resolving disputes over ends rationally. In social and political affairs, this has been the predictable conclusion in the long and growing list of disputes leading to violence and war.

In place of this model, I want to suggest a different way of thinking. It is for each side first to commit itself only to nonviolent ways of dealing with one another that are consistent with the ground they share in common—love, caring, concern for family and friends, and a love of life itself—and then to adopt only ends that are consistent with those ways.[9] This is not to say that recognition of this common ground *entails* a commitment to nonviolence. It is, instead, that it is consistent with such a commitment and, arguably, represents the true nature of genuine love and caring (Ruddick 1989). This allows ends, as it were, to grow out of means rather than be set up antecedently. If a major part of the problem in most disputes concerns the means chosen to ends, then a shift in priority from ends to means needs to be considered. And if adopted means have traditionally relied on the use or threat of force—and have failed historically to achieve lasting peace—then perhaps the shift should be accompanied by a commitment to nonviolent means. Ends would then be tailored to what is possible within the framework of nonviolent ways of relating to others, instead of determining which from among the whole range of violent and nonviolent means seem *a priori* most attractive.

A philosophical basis for this reorientation was provided by G.E. Moore, though he did not himself see it as such. It lies in his principle of organic unities. According to that principle, the intrinsic value of a whole does not bear any necessary proportion to the sum of the values of its parts (Moore 1956, 27). Any complex whole that is an organic unity may have an intrinsic value either greater or less than that of the sum of the values of its parts. If entities such as communities, societies, or states (or even the world itself!) should be organic unities in Moore's sense, this suggests that the whole means/ends approach to ethics needs to be transcended.[10] For then whatever particular ends might be realized by certain means—and however good those ends might be—both those ends and those means might be parts of larger wholes that would be organic unities; and accordingly, the values of those larger wholes might be much greater (or less) than the values of the ends and means taken either separately or together. This would mean that one cannot settle for simply assessing the value of ends, but must *always* reckon the value of larger wholes that include both means and ends, thereby placing emphasis on the relationship of part to whole rather than that of means to end.

Thus, for example, if one seeks to promote some social good by means that

impose injustice on a few, the value of the resultant society, considered as an organic unity, may conceivably be negative, even if the policy is successful and the great social good is achieved. Thus, for example, one might argue that Stalin's forced collectivization of Soviet peasants would have been wrong because of the means it employed, even if it had succeeded in realizing a prosperous socialist society, and even if the value of the end had outweighed the disvalue of the means used to bring it about. This analysis, in its practical import, provides a metaphysical grounding for the view of Gandhi and Martin Luther King Jr., and in a more strictly philosophical way, John Dewey, that one cannot properly separate means and ends in one's calculations. It would, moreover, if correct, put an end once and for all to that persistent view of ethics, politics, and war that the end justifies the means.

Returning now to the Socratic emphasis on the importance of establishing a common ground in a dispute, the common ground I am proposing is not one that identifies a commonly held premise from which each side can then proceed to argue its rights-and-justice-based claims against the other. It is instead a common ground of concern and caring for individual human beings, accompanied by a resolve to begin engaging one another—not least of all in the analysis and adjudication of disputes—only in nonviolent ways. Perhaps better even than the metaphor of a common ground is that of a new point of view or perspective. For this accords with the Jainist view that when confronted with seemingly contradictory positions, one should search for a broader point of view from which the contradiction can be seen to disappear. This very likely is what Gandhi had in mind when he spoke of the search for Truth as being the ultimate goal. It is as though there is a Truth (not now in the common philosophical sense, of a property of propositions, but in a broader sense of a characteristic of whole contexts) in every situation of conflict, and one's aim should be to strive to disclose it, rather than simply pursue one's own preestablished ends. Whether there is such a perspective for every conflict, and whether, if there is, it is one in which disagreements either disappear or are transcended, is, of course, problematic. But my suggestion is that there is the basis for such a broader, shared point of view among Israelis and Palestinians—possibly even among the extremists among them—if they can come to see it. It almost certainly is not one that will resolve all the disagreements between them. But it may be one that would enable them to put those disagreements in a new perspective that would allow for the gradual development of understanding and trust and eventually peace.[11]

Stripped of attachments to their respective collectivities, and the social, political, cultural and religious trappings associated with them, there is little difference between individual Israelis and Palestinians. Accidents of birth have given to each his or her position in life. Much of that cannot be changed. But some of it can. It should be up to each to choose, as freely as possible, what he or she most wants for the future, without being controlled by the moral, political, and religious judgments of others, past and present. For there is no freedom in that. And

without freedom of the individual there is no peace and democracy worth striving for.

To be sure, there is no simple formula by which to effect the reorientation I propose. But there are ways to begin. One is for individuals on both sides to commit themselves to nonviolent means in pursuit of their ends. This would, as we have seen, reverse the usual means-ends relationship, in which we set ends first and then seek means to their attainment. Though considered preeminently rational, that way of proceeding invites a resort to violence when the ends are deemed sufficiently important and one's opponents sufficiently obdurate. In so doing it perpetuates behavior that over millennia has proven incapable of bringing lasting peace to the world. An alternative is to commit oneself to means that are consistent with the values you share with others and then to build upon that common ground in search of ends consistent with those means. As Gandhi and King saw, this allows nonviolent ends to grow out of nonviolent ways and means. If it be objected that this is actually to commit oneself to an end of sorts—that of a nonviolent commitment in the fact of that common ground of shared values—then so be it. But in that case it is an end that grounds a new way of conceptualizing means and ends than is found in the traditional view.

A second way is for ordinary persons to reach out in a spirit of conciliation, rather than wait for governments or political leaders to solve problems for them. There are some examples of this already: the Neve Shalom commune in Israel in which Jews, Christians, and Muslims live and work together; the Palestinian and Israeli centers for nonviolence in Jerusalem that promote nonviolent solutions of problems; Interns for Peace, an Israeli organization that brings Jewish and Arab children together in creative, collaborative enterprises; the Gaza Team, a group of Israelis who work for Palestinian rights in the Gaza Strip. The effort must be long-term and on many fronts.[12]

It is one to which supporters of both sides in other countries can contribute. Its aim must be not only to reshape today's attitudes but also to nurture in future Israeli and Palestinian children a more inclusive caring, not merely for those in their respective groups, but for one another as well. For whatever the wrongs of the past, tomorrow's children are innocent of them. To perpetuate division and hatred among them would itself be an injustice, one that could poison the wellsprings of hope for generations.

If much of the past is their common enemy, both sides need to begin to let go of it. There is no better way to do this than by joining together to find creative ways to foster in their children—the hope of the future for both of them—understanding, compassion, and respect for all the people of the Middle East.[13]

Notes

1. As recounted in Plato's *Crito*.
2. Sometimes it is implied that no Arabs inhabited the region prior to the seventh-

century Islamic invasion, as when Joan Peters writes: "Israel had already become a nation about 1220 B.C.—nearly two thousand years before the first Arab invasion began" (Peters 1984, 140). See also Gerner (1991, 4). Curiously, Hourani (1991) limits his treatment to Islamic Arabs from the seventh century on, as though the Arab peoples had no history before that.

3. See, for example, Halpern (1983, 48) and Coote (1990, passim). It is possible also that there was an early admixture of Aryan blood in Palestine via the Philistines. See Childe (1993, 76).

4. By 1996 it was unclear whether Hamas would abandon violence as a means to the liberation of Palestine.

5. I am not, for these purposes, distinguishing sharply between the concepts of right and wrong, on the one hand, and justice and injustice, on the other.

6. Not that the proposed solutions would seem drastic to both sides. Many Israelis would be happy to see Palestinians acquiesce forever to Israeli domination, even under an arrangement that gives the Palestinians some measure of autonomy. And most Palestinians would say that a secular state throughout all of Palestine is an ideal solution.

7. I have sometimes spoken of "macro" ethics to represent what I am here calling a collectivist ethics, as in Holmes (1993, 55–56).

8. I have put this characterization very generally so as to include both legal rights and moral rights, although my primary concern is with moral rights. Needless to say, there are complexities in rights theory that I must here ignore because of limitations of space.

9. This is not to say that caring for family and friends by itself yields anything like the kind of reorientation of which I am speaking. Quite the reverse. Defense of those to whom one feels closest is one of the motives to violence. Instead, it is that when one comes to appreciate the fact that the identical values that animate one's own behavior are often shared by one's adversary, one begins to move to a broader perspective from which the absurdity of killing those who, in these relevant respects, are virtually indistinguishable from you, can begin to be seen.

10. At least for teleological theories, by which I means those that understand right conduct to be that which is a means to some end, which is taken to be good—often the supreme good.

11. Very much in the spirit of the idea of a common ground of which I am speaking, or of broadened perspective that can be shared by both Israelis and Palestinians, Youssef M. Ibrahim has analyzed the aftermath of the Rabin assassination as revealing to Arabs and Israelis alike how much they have in common: that, in particular, Israel is not a "monolithic community in matters of war and peace"; in that Israeli politicians face severe risks in seeking peace; and that recognition that there are terrorists on both sides (*New York Times,* December 3, 1995, E4).

12. On the intellectual front, see, for example, Crow (1990).

13. I am indebted to Tomis Kapitan for helpful suggestions on an earlier draft of this chapter.

14

Zionism, Liberalism, and the State

Milton Fisk

I shall be focusing on the Israeli state and raising a question about it within the framework of political morality. I refer to political morality in order to emphasize that my concern is with matters pertaining to an entire society. For political morality goes beyond moral concern with personal matters of honesty, loyalty, or compassion. It points us instead toward social justice, political and civil rights, and respect for other nations.

Specifically, I focus on the Israeli state as an embodiment of Zionism. As a Zionist state, it is explicitly designed to promote interests of a given ethnic sort, interests widely shared within a given ethnic group: the Jews or some segment of them.[1] I speak then of the Israeli state as an ethnic state. The notion of an ethnic group used here is broad enough to include in its definition reference to both racial, historical, and cultural factors. A single ethnic group is assumed compatible with immigrations that lead to racial mixing and with the growth of cultural dispersion, whether in language or religion.

The question I want to raise is about the legitimacy of the Israeli state considered within the framework of political morality. The general issue is whether the relation between an ethnic state and ethnic groups other than the one promoted by it must deny civil, political, and cultural rights to those other groups. The specific issue concerns the relation between the Zionist state and, primarily, the Palestinian Arabs. I argue that the Zionist state cannot, without ceasing to be Zionist, avoid subordinating the Palestinians. Subordination has taken place both in regard to Palestinian Israelis and in regard to Palestinians in the Occupied Territories. This subordination denies them the legitimate aspirations of an ethnic group. The framework of political morality challenges, then, the Zionist character of the Israeli state.

A number of perspectives within political morality have been used in raising the question of the legitimacy of the Zionist state. Three of them are relevant in what follows.

First, liberal criticisms of Israel as a Jewish state start from an ideal of the political sphere as unbiased in its dealings with different persons. If a Jewish

state cannot be unbiased as between Palestinians and Jews, then from the standpoint of liberal norms it is defective. To purge itself of bias, Israel must cease to be an ethnic state altogether. For liberals this may not be enough, since ethnic bias is only one of many possible biases a state may practice.[2] Thus for the pure liberal, a state must limit itself to protecting individual freedom, which calls for eschewing the imposition of substantive goals as common goods. Is this, though, an attainable ideal? It is difficult to see how any state avoids being a promoter of a society of some quite specific sort.

Second, communitarian views of the political sphere can be expected to be less critical of a state based on and acting for a people, of which an ethnic group would be one example. After all, the communitarian treats the tradition a people share not just as the font of the validity of their values but as a trust to be carried forward by their political institutions.[3] Yet I would claim that in order to provide guidance about the political sphere, communitarians must go beyond the bonds holding a people together. This can be seen just by looking at disputes between peoples who interact in the same area. They should interact fairly and with respect for the rights of others. But the norms for taking land and for relations with other peoples on the land are, according to the communitarian, to be sought inside a people's own evolving culture of political morality. Why, though, should we expect that internally generated norms will call for respect for external groups?

A third perspective is, I argue, needed to avoid the above difficulties. This is what I call the liberationist perspective. Edward Said points out that by adopting this perspective Frantz Fanon went beyond nationalism to advocate a community without internal oppression (Said 1994, 274). Of course, Fanon gave special importance to the liberation of oppressed ethnic communities. But he stressed that the aim of their liberation is not to put the worst off from those communities under the heel of their own ethnic elites. Their own elites would then merely take the place of their erstwhile alien oppressors (Fanon 1968, 139, 155, 203, 238). Instead of judging a state from the perspective of an ethnic group that gets promoted by it, the liberationist judges a state from the perspective of subordinated ethnic groups. State legitimacy comes not from whether those who benefit most from the state or have power within it are willing to accept its continued existence. The voice of the oppressed must also be given considerable weight.

Like liberalism, this perspective provides a critique of the Israeli state understood as a Jewish state. Unlike liberalism, the liberationist perspective attributes political importance to social groups, though in a more discriminating way than communitarianism does.[4] It is not tied to the liberal view that the just state is barred from pursuing substantive common goods. It is, though, committed to the view that a common good must pass muster with the oppressed and not have as its sole justification that its realization will benefit a dominant group.[5] Oppressed groups would, in effect, have veto power over proposed common goods.

The Ethnic State and Equal Citizenship

I begin with a consideration of the status of Arabs in Israel. How can they have equality in a state that defines itself in terms of one ethnicity? If they do not have equality, is this merely a failure from the point of view of the all-too-abstract ideal of liberalism? In this section I am concerned primarily with showing there is a failure of equality. In the next section, I develop the more concrete liberationist position from which to critique both the unequal citizenship of Arab Israelis and the treatment by Israel of non-Israeli Arabs in the Occupied Territories.

As conceived by the Zionist movement and the founders of Israel, the state of Israel was to be a state of and for the Jewish people. The Israeli Declaration of Independence, of 1948, states that "by virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly [we] hereby declare the establishment of a Jewish state in Eretz Israel." The right to form a Jewish state in the biblical Israel is taken here to be grounded in the association the Jews had with that land, an association supposedly made permanent by the covenant in which God gave the land to Abraham and his descendants.

Even though it was a Jewish state that was established, the same document declares that this state shall "ensure social and political rights to all its inhabitants irrespective of religion, race or sex." An assurance of nondiscrimination, for social but not political rights, had been incorporated into the British government's Balfour Declaration of 1917, in which the British favored a homeland for the Jewish people, with the understanding "that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine. . . ." In principle at least, the citizens of the Jewish state, Jews and non-Jews alike, are supposed now to enjoy civil and political equality, immigration being an explicit exception. But we shall see that, because of the tension between Zionism and equality, the practice is less than equal.

This formal commitment to equality distinguished Israel from the now defunct South African apartheid state, where political participation and civil rights were explicitly distributed unequally. Not all Israelis are happy with equality; in 1988, 43 percent of Israeli Jews favored denying the right of Israeli Arabs to vote (Smooha 1990, 403). Yet continuing support from liberal democracies, in particular from the United States, remains tied to Israel's not degenerating into an apartheid state.

The Status Law, enacted by the Knesset in 1952, made it clear that a Jewish state was not simply to be a state with Jewish citizens in the way the French state was a state with French citizens. The Law of Return of 1950 had already granted every Jew the right to come to Israel to settle; the Nationality Law of 1952 states that Jews who return to settle are entitled to citizenship. The Status Law goes beyond these laws to promote the immigration of Jews. Its paragraph 4 states that "the mission of gathering in the exiles, which is the central task of the State of Israel and the Zionist movement in our days, requires constant efforts by the

Jewish people in the Diaspora." This task is a consequence of the ethnic state, which must ensure Jewish demographic predominance.

Clearly there is a tension between this Zionist imperative and the democratic imperative not to prejudice the civil and political rights of non-Jews. The ingathering serves a common good for Israeli Jews, but for Arab Israelis and their conationals in the West Bank it means land development for Jewish use and fewer services for Arabs. Needless to say, there is no parallel state task of gathering in the Palestinian refugees forced or encouraged to flee their lands as Israel established itself and expanded.

This tension between Zionism and equality has evoked a number of responses. According to the memoirs of Martin Buber, "When Max Nordau, Herzl's second in command, first received details on the existence of an Arab population in Palestine, he came shocked to Herzl, exclaiming: 'I never realized this—we are committing an injustice' " (Bober 1972, 37). Humanist Zionists could justify their undertaking on the basis of the myth of a Palestine with no indigenous non-Jewish population (Finkelstein 1988, 33–69). Those who rejected the myth were faced with a choice between, on the one hand, ceasing to be humanists and, on the other hand, giving up their dream of a Jewish state in favor of a binational state, favored by Buber himself, consisting of two federated national republics.[6]

For the nonhumanists, the tension could be dealt with by *realpolitik.* In an interview in 1968 Ben-Gurion said, "It is the Jewish Agency, not the government, that should take care of encouraging a rise in the [Israeli Jewish] birth rate, for, since the government cannot discriminate, money would have to go to big Arab families too. There is equality in everything except immigration" (*Yediot Arhronot,* October 11, 1968). The Zionist imperative to have a state for the Jewish people is itself a rejection of liberalism. So conformity with the liberal idea of the state as equal handed as between members of different ethnic groups is upheld, by Ben-Gurion, only by subterfuge. This solves neither the moral problem of discrimination nor the political problem of discrimination. For, the World Zionist Organization/Jewish Agency is, though not *de jure,* at least *de facto,* an integral part of the Jewish state, being effectively controlled by the government (Mallison 1968, 556–629).

It will be useful to list other instances in which this tension is evident. They serve to make clear that the Zionist nature of the state of Israel is, in the circumstance of ethnic diversity, an impediment to equality. But first a clarification of the Zionist nature of the Israeli state.

In saying that the state of Israel is Zionist in nature, I mean that it is a state designed to provide the Jews with the basic conditions for promoting what the state itself sees as the interests of the Jews as an ethnic group. Under different circumstances the basic conditions for realizing this ultimate end would be quite different. They would be different where there are no ethnic competitors for the land from what they would be where there is ethnic diversity. In the period

immediately after the UN Partition Resolution of 1947, the actual circumstances were that the Jews were not the only people on the land they thought they had a right to. In fact, they were a minority on that land. A process of state formation on the basis of the Jewish community in Palestine—the Yishuv—was already under way. The Jews traced their rule over the land to the time of the Jewish kingdom of David and Solomon, some 3,000 years earlier. Though limited at first by the partition, the state that would promote the Jews' interests would ultimately be extended to include all the land to which Jews thought they had a historic right.

Under the circumstances—a Palestine where Jews were not alone—a Zionist state, with its goal of promoting what it took to be the interests of the Jews, was destined to be a state (1) with citizenship automatically open to any Jew, (2) with the task of maintaining a majority of Jewish citizens, (3) with the aim of securing historic Jewish land, and (4) with no other ethnic group benefiting in any of these ways. The Zionist state had to develop institutions for satisfying these four conditions if, under the circumstances, it was to promote Jewish security and culture. To promote these interests, those institutions would, under the circumstances, have to be institutions for ethnic dominance. Of course, conditions 1–4 called for still other institutions to back them up, creating thereby a state whose every part reflects the promotion of one ethnic group.

With the realization of the perceived interests of the Jews as the overarching common good, the task of the state was to set up institutions that advanced toward this good. These institutions as means to a common good would then be public goods. Immigration, citizenship, property, security, education, and development were to be institutionalized in a way that made them public instruments of the common good. Under the circumstances, each of them would lead to that common good by way of ethnic dominance.

Of course, the interests of the Jews will not be seen as a common good by dominated non-Jewish groups. So calling them together the common good is only presumptive, based on the assumption that what the state pursues as an overarching goal is not explicitly rejected by significant groups within the state's jurisdiction. Likewise, calling those instrumental institutions public goods involves the same presumption. They will not be public goods for those who reject the end for which they are devised as means. Since the state uses its resources to pursue a good that is only presumptively common by means that are only presumptively public goods, it is inevitable that its resources will get used in ways that systematically discriminate against some groups.

Consider first the case of education. Section 2 of the State Education Law of 1953 affirms that the object of state education "is to base elementary education in the state on the values of Jewish culture, . . . and loyalty to the state and the Jewish people." Section 4, though, allows that in non-Jewish institutions "the curriculum shall be adapted to the special conditions thereof." Still, the general object of education remains Jewish, despite this exception noted for curriculum.

This shows up in the fact that the percentage of resources going to Arab education is less than the percentage of Arab children in the state education system (Kretzmer 1990, 19, 118–21).

With the inculcation of Jewish values as its object, the system as a whole cannot be a public good for Israeli Arabs. The object could, instead, have been to promote, along with the value of tolerance, the values of each ethnic group in its respective schools. In this case, the education system could be a public good for both ethnic groups.

There is also the case of politics. Section 7A of the Basic Law of 1985 says that to participate in elections any list of candidates cannot, implicitly or explicitly, deny "the existence of the State of Israel as the state of the Jewish people." This has a chilling effect on anti-Zionist parties, be they Arab or Jewish. Calling for a binational state and thus an end to Israel's exclusively Jewish character or calling simply for a state of citizens could mean sacrificing the right to run candidates. An attempt was made to disqualify the Progressive List for Peace (PLP), an Arab-Jewish party, in the 1988 Knesset elections on the grounds that it denied the Jewish character of the state. In anticipation of such an attempt, PLP had used a formulation that blurred its anti-Zionism. By one vote margins, both the Election Committee Court and the Supreme Court upheld PLP's right to run on grounds of the ambiguity of its position (Smooha 1990, 402).

Landownership is a third consideration. A key means adopted for promoting the goal of Zionism was landownership by exclusively Jewish institutions. This aim was largely realized, within Israel, by 1960, when 90 percent of its land was "Israel lands," that is, either Jewish National Fund (JNF) land or state land, which includes Development Authority land (Kretzmer 1990, 60). Expropriations were a major source of this change of ownership.

Land Day is celebrated by Arabs on March 30 in memory of the six Arabs killed by police on that day in 1976 in the course of a general strike. The lands of Arabs in the Galilee had been expropriated in the 1950s and 1960s to build development towns for Jews in Upper Nazareth. In Old Nazareth, in contrast, no funds were spent on additional housing. There was a housing shortage in the old city, and it became a virtual slum. With the expropriation in 1976 of further lands for the development of the Galilee, Arab resentment came to a boil in the general strike.

Once most of the land came under Jewish ownership, either by the state or by the JNF, which is an organ of the World Zionist Organization, the issue became one of Arab access to land through leasing. Is there equality between Arabs and Jews when it comes to land leasing? JNF land cannot be leased to non-Jews. Nominally a private organization, the JNF is an arm of the government, since by law its lands are administered by the Israel Lands Administration. Non-JNF Israel lands may be leased by Arabs, but institutional, rather than legal, obstacles to their getting leases reduces the amount of land they can use. In some cases the obstacle is that departments of the Jewish Agency and of the JNF must approve a

leasing of non-JNF land. Since both entities want to settle Jews, leasing to non-Jewish applicants is easily denied (Kretzmer 1990, 61–68).

There is, in sum, a tension between the Zionist state and civil and political equality. It shows up in a variety of different ways. Anti-Zionist Israelis are denied political equality with Zionists through election laws; Arabs have separate but not equal education; and in the Jewish state land use by Jews is favored. In an apartheid state, political and civil equality is denied by law to nonwhites. But in Israel, there is no wholesale overt denial of equality by law. The obvious case of statutory inequality involves the Nationality Law, which allows Jews, though not Arabs, to get citizenship by return.

Still, as Kretzmer (1990) points out, there is institutional and covert discrimination even where the letter of the law is evenhanded. Institutional discrimination occurs through the discretion of agencies in implementing the law, as in the case of leasing non-JNF lands to Arabs. Covert discrimination occurs where the criteria for applying a law imply discrimination in fact without explicitly discriminating between Arabs and Jews. This occurs in the case of using the criterion of military service for tax credits, housing assistance, children's allowances, and other benefits. The catch is that Arab Israelis are not called for military service. Though by law every resident has a duty to serve, recruiting officers refrain from calling up Arabs. (However, males in the Druse population requested they be recruited, and they are. In addition, many Bedouins volunteer, and they serve.) In all these cases, discrimination arises not in bureaucratic sabotage or sloth but in the aim of the Jewish state to promote Jewish interests.

The Liberationist Principle and Its Basis

In view of the above, it is reasonable to suggest that a minimum corrective to an unrestricted communitarian political morality should be a principle prohibiting the oppression of groups. If groups, including oppressed ones, were to respect this prohibition on oppression, a liberationist trend would be initiated. I then call the principle prohibiting oppression the *liberationist principle.*[7] As we later see, this principle can be validated by appeal to a consensus among a sizable part of humanity. Since this consensus represents a loose community, one need not abandon community altogether, as the liberal must, to make the needed restriction.

If we are to take seriously the liberationist principle, the claim of a people to have an ancient right to a given land or to have a divine covenant granting them that land must itself be interpreted within the restriction to nonoppression. Whatever the validity of such rights and covenants, the actions taken to effectuate them cannot oppress a nondominant group.

Some remarks on the notion of oppression may be a helpful starting place. Oppression need not be ethnic in nature. There is gender and class oppression as well. The overarching concept here is that a group is oppressed when it is weighed down with burdens so that others may benefit. More exactly, a group is

oppressed when it systematically bears a disproportionate share of the burden of maintaining a social order in which other groups enjoy greater benefits. Its burden is disproportionate when it sacrifices its basic goods and rights while other groups make no comparable sacrifices in their efforts to maintain the social order. The burdens may include not just the sacrifice of leisure and of a decent standard of living but also the sacrifice of a group's cultural and political aspirations. A group that is privileged by not having to bear as much of the burden of maintaining the social order as it would if there were no oppressed group, I call a dominant group. Oppression then implies a double inequality: a greater burden in a society where others enjoy greater benefits.

I am interested here in the special case of the oppression of an ethnic group. In this case the burden borne has the form of sacrificing an ethnic group's cultural, economic, and political interests to sustain a social order in which other ethnic groups make no comparable sacrifices but still have greater benefits. By bearing a greater share of the burden, the oppressed ethnic group has less chance to realize its interests. Its members are too weighed down by their oppression to realize their actual or potential aspirations.

One means of preventing the realization of aspirations is to prevent their development into an explicit program of action. A dominant group can stop the emergence of an ethnic group's aspirations into an explicit program:

> (*a*) by a form of geographic isolation that limits communication between segments of a dominated ethnic group,
> (*b*) by the economic dependence resulting from the denial of land use and development that turns many in the dominated ethnic group into low-paid migrant labor, and
> (*c*) by co-optation that awards favors for the denial of ethnic solidarity. (Ruether and Ruether 1989, 145–47)

Oppression does not, then, depend on thwarting the pursuit of a conscious program to realize certain aspirations.

In ending these remarks on the notion of oppression, I observe that they do not legitimate all the aspirations of the oppressed. It is one thing to be weighed down so others can benefit. It is quite another to have a legitimate liberationist program. The aspiration of an oppressed ethnic group should not be simply to turn the tables so that the dominant group becomes oppressed. Steadfastly following the liberationist principle would, though, lead an oppressed group to reject its aspiration to oppress. But by having such an unwarranted aspiration, an oppressed group does not legitimize the dominant group's oppression of it.

Dominant groups find it convenient, though, to hide their oppression under the guise of security measures. These measures are justified, they say, by self-defense, since the groups subject to these measures aspire to oppress them. There is a test available to determine whether in individual cases this denial of oppression is

valid. The test goes back to the reference in the concept of oppression to a social order in which some groups are more advantaged than others. To apply the test, bracket for a moment the supposition of the dominant group that the alleged oppressed group aims to dominate it. The test is then the following: Could the alleged oppressed group, absent an aspiration to dominate, fit into the given social order without having to bear a disproportionate share of the burden for sustaining that order? If so, then the group is not really oppressed, but bears a disproportionate burden only because it poses a genuine security threat. But if not, then it is indeed oppressed, and bears its burden mainly to help one or more other groups in that order maintain their advantages.

For example, could the Palestinian Arabs of Israel and the Occupied Territories—absent an aspiration to dominate Jews—fit into the Zionist order without having to bear a disproportionate share of the burden of sustaining Zionism? Would their sacrifices of land, education, water, culture, prosperity, and political participation called for by Zionism be disproportionate in respect to the sacrifices such an order would impose on the Jews? If those sacrifices would be disproportionate, then the Palestinians are oppressed; ending that oppression would be an essential first step toward ending any security threat.

What, then, is the status of the liberationist principle? It is not part of the classical liberal tradition with its emphasis on individual rights and equality. Nor is it part of a communitarian political morality that sanctions whatever norms emerge from a people's tradition. To get between liberalism and communitarianism, let me begin by observing that often certain tendencies in a historical period set up critical standards for that period. These tendencies do not establish permanent liberties, yet they are widespread enough to overarch distinct nations and ethnic groups. Precisely such a tendency gives the liberationist principle its legitimacy in political morality.

The tendency I refer to is one that began with anticolonialism, showed itself in labor, race, and gender struggles, and most recently took the form of struggles against communism in Eastern Europe. It has set up a standard of nonoppression of the sort articulated by our principle.[8] The tendency has rarely realized the promise of nonoppression, since, as Fanon warned, the danger of new elites with new oppressions remained. Still it is appropriate to speak of the tendency as a liberationist one because it set up, even if it betrayed, the standard of nonoppression. The record is an extensive one: Gandhi's struggle for Indian independence, the Chinese Communist struggle against the Japanese occupation, the postwar labor upsurge, the Algerian struggle against France, the protracted Vietnamese War against the French and then the United States, the 26th of July Movement in Cuba, the IRA in Belfast, the civil rights and black power movements in the United States, the women's movement, the Sandinista guerrilla struggle against Somoza, the antiapartheid struggle in South Africa, the Palestinian Intifada, the bringing down of the bureaucratic regimes of Eastern Europe and the Soviet Union, and the Zapatista movement of Chiapas. But the thing that was estab-

lished, and that dominant nations and states found they could ignore only at their peril, was that the various forms of oppression—ethnic, national, gender, political—would provoke resistance. Popular support for the resistance in Vietnam grew in the late 1960s even in far-off places, such as Paris, Berlin, and Berkeley. As used against resistance to oppression, reasons of state, civilization, theological tradition, and market universalism all lost their ability to convince. These reasons had been convincing, but now there was a new standard in the light of which significant numbers saw through them to the oppression they were used to hide. The liberationist tendency set this new standard, one that provided a critique of the multiple forms of oppression—from post-fifteenth-century imperialism to age-old patriarchy.

The triumph of neoliberalism has not meant the disappearance of the liberationist tendency. On the one hand, struggles against oppression continue to be organized, and on the other hand, even where struggles have ended in flawed compromises, people come to feel that only an unfavorable balance of forces keeps them from continuing the struggle against oppression (Said 1994, 265–66). The liberationist tendency, though weakened by neoliberalism, is still strong enough to make it risky to flout the standard of nonoppression.

From its inception, Zionism's trajectory was ambiguous in relation to liberationism. It sought nonoppression for Jews through the backing of British and American imperialism. With its dependence on imperialism, Zionism came to reflect its features. For example, it sought to form a settler state in Palestine with an economy that would displace the indigenous agrarian one. And it could not but encourage a racist attitude toward the non-Jews in the land it saw as its right. Israel's dependence on the United States was reciprocated by its becoming "a strategic asset" for the United States. In this role it has served the United States as an obstacle to nationalism from Iran to Egypt. It was thus integrated into the post–World War II American strategy of ensuring U.S. control of the flow of oil and of keeping key Middle Eastern waterways open. Israel separated Egypt from the confrontation states in the late 1970s and destroyed Iraq's nuclear program in the 1980s. It was and still is well paid—$4 billion a year plus another less visible $2 billion in extras—for thwarting nationalist ambitions that impede the global reach of its American patron. U.S. aid has enabled it to build the region's most powerful military force and to build settlements in the Occupied Territories. It also serves its patron outside the Middle East, as an arms conduit through which the United States supports right-wing regimes in places such as Indonesia, Guatemala, and Uganda.

The irony of Israel is that it was formed and grew to be a surrogate for a superpower in the glory days of the liberationist tendency. The imperialism Israel depended on and replicated through ethnic domination and expansion was then being subjected to a global popular critique. The one-sided rejections in the United Nations of Israeli policies on refugees, expansion, and settlements are consistent with the view that there is a widespread acceptance of a liberationist

principle. Many times, though, the votes against Israel are hypocritical, being made by regimes, like Turkey, actively engaged in genocidal conflict with dominated nationalities, in its case the Kurds. Still, these votes against Israel represent a protest against its use as a superpower surrogate to control nationalist aspirations opposed by the United States.

The liberationist principle rejects weighing a people down for the benefit of another people. It rejects oppression by a state not just of a group of its citizens but also of noncitizens under its jurisdiction. This principle is not one that belongs to the liberal tradition, and it also puts a restriction on what is allowable by communitarian standards. Instead, as just noted, the principle is one that is validated by a historical liberationist tendency that has resisted multiple forms of oppression.

The liberationist principle is first and foremost one that expresses the plight of oppressed people. This is its particularist significance. But the liberationist tendency is the organization of the outrage, not just of the actually oppressed, but also of those who by being informed about oppression stand against it. This is the universalist significance of the liberationist principle. With this breadth, the liberationist tendency engulfs narrower communitarian efforts, providing the justification needed by the oppressed in their confrontation with their oppressors.

This popular backing is significant not because it gives a timeless justification of the principle. It is clear from the above that what is being sought is not a timeless justification but one that is the expression of a movement in a particular period. The universality stemming from widespread popular backing is achieved through solidarity with—or in other terms, reciprocal compassion for—others whose situation while not identical is not that of the oppressor. Solidarity as a human emotional response to certain struggles becomes, then, a vehicle for adding to the justification of those struggles and the principles that are their norms.

I am not saying, after the fashion of Kantian ethics, that the universal applicability of the liberationist principle is the key to its justification. Instead, I am saying that popular solidarity with those who adopt the principle out of their own plight is the key to its justification. Universality—or more precisely quasi universality, since oppressors are out of the solidarity loop—is to be seen as a result of this solidarity and not its basis.

Greater Israel and the Limits of the Liberal Critique

A brief survey of the conditions of the Palestinians under the occupation that began with the 1967 war will reveal the extent to which they have been oppressed. Greater Israel—the Israel after the 1948 war and the territories, excluding the Sinai, occupied during the 1967 war (the Gaza Strip, the Golan Heights, East Jerusalem, and the West Bank)—contains both Palestinian citizens of Israel and Palestinian noncitizens of Israel in the Occupied Territories. Though the

liberationist principle has been violated in respect to both groups, the oppression has been deeper for the Palestinians of the Occupied Territories.

Israel has encouraged, from its inception, what its first president, Chaim Weizmann, called a "cleaning of the land" (Lustick 1980, 28). An atmosphere of hostility and harassment led close to a third of the population to flee the territories at the time Israel occupied them in 1967. Confronted with repeated Israeli discussions on how to thin the Palestinian population further, Palestinians responded with a "steadfastness" program of maintaining their culture and refusal to leave.

Zionism called not just for an expansion of Israeli jurisdiction but also for an expansion of Jewish-owned land. Foreign Minister Moshe Sharett had said in regard to the first type of expansion that Israel must "invent dangers, and to do this it must adopt the method of provocation and revenge. . . . And above all—let us hope for a new war with the Arab countries so that we may finally get rid of our troubles and acquire our space . . ." (quoted in Berger 1988, 28).

Once that space was acquired in the 1967 war, land appropriations and settlements, which contravened the Geneva conventions on Occupied Territories, began. Public lands attached to villages were denied Palestinian farmers and made Israeli state land. Well over 50 percent of the West Bank has been appropriated, with the settlements constituting Greater Jerusalem alone making up one-fifth of it. Land for public installations and for settlements continues to be appropriated after the signing of the Oslo Agreement of 1993.

Israel has gained control of the water and the other resources on the West Bank. Israel uses 80–90 percent of the water available to it and the Palestinians. The management of the water supply is in the hands of an Israeli parastatal, Mekorot (Elmusa 1993). Towns with their own electrical generators before 1967 have been forced to be dependent on electricity supplied from Israel.

Israel has come to dominate the Occupied Territories economically. By promoting economic underdevelopment there, Israel has made much West Bank and Gazan labor dependent on jobs inside the Green Line. Through the 1994 Palestinian/Israeli Protocol on Economic Relations, Israel will continue to control the export of produce from the territories and will have a decisive voice over whether and how investments will flow into them.

Due process is not necessary for carrying out house demolitions and other forms of collective punishment by the Israelis. Free speech and assembly is restricted under the occupation. In addition, many cultural and self-help projects of the Intifada that promoted Palestinian historical consciousness and solidarity were closed down. Though the prospect for an expansion of local government is opened up by the Oslo Agreement, Palestinians will not become citizens of Israel and thus will not have representation in the Israeli government, which, at least for a time, would retain ultimate authority. This makes it misleading to say that this arrangement amounts to "autonomy," which in other parts of the world implies citizenship.

The systematic and continuing humiliation caused by the occupation creates a state of advanced oppression. It is thought to be needed to realize the goal of a Greater Israel within which the Jews are in a sizable majority. Though it clearly violates the liberationist principle, one might argue that a liberal perspective is an adequate basis for condemning Israel's oppression of the Palestinians, both within Israel and in the Occupied Territories. The liberal critique is, though, both too strong and too weak. It is too strong and hence goes too far, since it wants to locate the problem in the fact that Israel is dedicated to a substantive goal. It is a state, not of citizens, but of an ethnic group, which is presumed to identify with the Zionist project. Yet there are other goals of a substantive sort that in the circumstances in the Middle East today need not lead to oppression. A binational state, for example, could promote the special interests of both Palestinians and Jews within the framework of a compromise allowing for governing through a federation of autonomous entities. There is no need to rule out such a state, with its substantive goal of promoting the interests of both ethnicities, just on the off-chance that large numbers of a third ethnic group might settle within its jurisdiction. Indeed, had biblical Israel been unpopulated, as Zionist propagandists claimed, all the reasons, based on subordinating another ethnic group, for criticizing Israel would disappear.

But the criticism is also too weak and hence fails to go far enough. A key distinction in the liberal conceptual arsenal is that between the public and the private. The private sphere is protected from state intrusion by various rights. The public sphere is an arena for deciding matters affecting society and includes the actions and institutions implementing these decisions. There is an ongoing battle over where the line between the two is, but that only emphasizes the importance of the distinction. How an employer utilizes labor and a husband uses his wife are supposed to be, within limits, private matters. That labor is exploited and wives subordinated is not supposed to affect the liberal presumption that workers and women are equal to bosses and men in the public, political arena (Pateman 1985, 204–17). So liberalism in practice works beautifully amid oppression.

It might seem that the oppression caused by the Zionist state is squarely in the public arena and thus stands condemned on liberal principles. The matter is, though, more complex. Reality has been constructed by Zionism to yield a third category alongside the public and the private—*the invisible.* In Golda Meir's famous 1969 statement, "There is no such thing as Palestinians," we have a distillation of this new reality (*New York Times,* June 15, 1969). The public is a Jewish public since the state has to be a Jewish state.[9] Those who do not exist as a part of the public cannot have their rights violated, at least not in a way the state is responsible for. If one is part of the public, the state has responsibility for seeing to it that one's privacy, one's right to free speech, and one's right to free enterprise is not violated. But if one is invisible, the state is not responsible for alleged violations of one's rights. The rights of the invisible get violated within the sphere of the invisible, just as in Western republics workers' and women's rights are violated in private enterprise and in the private family.

Liberals, of course, constructed this category of the invisible long ago in the West and used it to a similar, even if a more devious, purpose.[10] Native Americans and African Americans have always been invisible in order to conceal the fact that the American republic was a racial one—a white one. As invisible, the state cannot be charged with oppressing them. And the state did not, until resistance movements were mounted, have to take responsibility for stopping their oppression by white citizens. Cold War liberalism extended this invisibility to people like the Vietnamese. Those in the United States who pursued the Vietnam War to its humiliating end could hold up the heroes of the Six-Day War in 1967 as men who understood how to treat Third World nationalists (Chomsky 1983, 28–29).

The liberal could counter that this category of the invisible is self-serving and fails to avert the liberal critique of the Zionist state. But I think to no avail. The category of the invisible is no less plausible and no more self-serving than the liberal's own category of the private. Thus the Palestinian citizen of Israel is oppressed by the education system and Zionist political restrictions, but this oppression does not take place in the public sphere, which is Jewish. It is not a genuine citizen, but an invisible one, who is oppressed. And likewise the Palestinian in the West Bank who cannot dig a well and who is harassed by an armed camp of nearby settlers is doubly invisible, since he or she is not even a citizen. The liberationist principle, on the other hand, avoids the distinction that allows the liberal critique to fail. The motive of the liberationist principle is to prevent oppression from hiding behind privacy or invisibility.

Security for the Jewish State and Nonoppression

An objection to my critique of the Zionist state will be that it ignores its security problem. We must, then, look at how the need for security can be balanced with the liberationist principle.

A number of political-historical questions are important here. Does the Jewish state oppress because it is insecure, or is it insecure because it oppresses? Just how insecure is the Jewish state in relation to its neighbors? Does insecurity motivate Israel's expansion, or is the motivation a quest for resources? These difficult issues can best be dealt with inside an appropriate framework for political morality. We saw in section 2 how in the context of the liberationist principle we could develop a test for whether a disproportionate burden was oppression or merely a response to a genuine concern for security.

A basic idea in any discussion of the relation of security to oppression is that security needed simply to permit oppression cannot be sanctioned. It is one thing to demand security to protect activities and institutions that do not crush the aspirations of others. It is quite another to demand security to protect activities and institutions that oppress, in which case security is used to thwart actions taken by the oppressed. Yet security for exploitation, subversion, or empire conflicts with the consensus that has grown up around the liberationist tendency.

What are called the security interests of the Israeli state are, in significant cases, interests in land, water, economic development, or political concessions that place a disproportionate burden on the Palestinians, a burden that frustrates their aspirations. Absent an alleged aspiration to dominate the Jews, other aspirations of the Palestinians cannot fit into the Zionist state without the Palestinians making a disproportionate sacrifice. The Jewish state, in virtue of its Zionist nature, oppresses by denying equal rights to Arab Israelis, as we saw in section 1, and by expanding into territory on which Palestinians live, as we saw in section 3. Its current need to defend itself as a Zionist state is in large part its need to defend its continued oppression of the Palestinians. This, of course, is not a flaw limited to ethnic states of the Israeli type. The security interest of a capitalist state of the U.S. type is in large part its need to defend internal economic inequality and to control economic and political processes in other nations. The common factor is that all these states seek legitimacy by expanding the concept of security to hide oppression.

To counter this critique of Israeli security interests, the attempt is sometimes made to ground those interests in the concept of the Holocaust. American Jewish theologian Irving Greenberg does this with the flair of an accomplished apologist, even if the result is more mystifying than clarifying. The Arabs, he thinks, have wanted a repeat of the Holocaust; indeed, a second Holocaust loomed in May and June of 1967.[11] Israel, which for Greenberg is the great affirmation of Jewish existence after Auschwitz, counterposes its state power to such a repetition. This power has released Jews from dependence for their security merely on the liberal values of equality and law (Greenberg 1977, 7–55). In fact, buying into the values of modernity, which include the central values of liberalism, made them vulnerable, whereas state power, he thinks, has enabled them to defeat those who would eliminate them.

The resistance of the Palestinians and the Arab states to the formation of a Jewish state and to its expansion is seen by Greenberg as a genocidal effort. In view of the historical record, one wonders how he was led to such a mystification. Greenberg is blind to the fact that what the record shows is a resistance to expulsion, economic subordination, and the denial of national aspirations. This blindness comes from his exclusive focus on the Jews in their process of redeeming the excesses of modernity that led to the Holocaust.[12] This exclusive focus makes him look for something that is a counterweight to the Holocaust. It suffices that it be a counterweight, whatever its consequences for others. The important thing for Greenberg is that Jews be able to proclaim that God, who covenanted with them, has not abandoned them after all. What is the counterweight to the Holocaust that will give them the assurance to proclaim this? Israeli power and the capture of Jerusalem it made possible provide the needed counterweight to Auschwitz and Treblinka. Anything that would threaten this power, which as a political realist he grants is inevitably brutal and repressive, can legitimately be destroyed.

This exclusive focus on Jewish redemption through their state allows one to interpret Greenberg's notion that the Arabs are genocidal. He wants to say that any serious resistance to the Jewish state is an effort that could prevent Jews from escaping from Auschwitz and Treblinka. Why? Because Israel is the counterweight to the Holocaust. To destroy Israel as a Zionist state is to collapse the distance the Jews have come from the Holocaust. Collapsing that distance sets the Jews back in the genocide of the Holocaust. Resistance to the Jewish state cannot, then, help but be for Greenberg the spiritual equivalent of attempted genocide. As an effort to destroy the Jewish state, it is also an effort to destroy the counterweight to the Holocaust and hence to destroy, not just an ethnic state, but its people.[13]

Here we have a clear example of a communitarian legitimation for the Jewish state based on an inflated sense of its security needs. This is communitarianism run amok. For the redemptive project of the Jewish people is, on Greenberg's reading of it, not constrained by a principle of nonoppression. For him, only when those oppressed by the Jewish state are no longer capable of mounting a serious effort against its Zionist project can the rights of the oppressed to their own nationality be recognized (Greenberg 1988, 19). But any significant resistance of the Palestinians to the Jewish state, to overcome their being oppressed by it, is redescribed by him as genocidal.

The upshot is, then, that interests in securing Jewish redemption take priority over nonoppression. For Greenberg this relationship has the form of a post-Holocaust dialectic of power and morality. To reject ethnic statehood is, for him, to return to the moral purism that could end only in a second Holocaust. Of course, Greenberg admits, there will be cases, like the Intifada, in which there is a tendency to exaggerate the need for Israeli security. Despite the genocidal intent of the rock throwers and tax resisters, they were, for him, not a threat to the Jewish state. In this case the dialectic of power and morality leads him to the conclusion that the military occupation should be ended because its ethical costs outweigh the security interests involved. But he is quite clear that had Israeli sovereignty been threatened by the effort to end the occupation through the uprising, the Intifada should have been suppressed and the occupation continued.

Greenberg's ethic of power fails to address the key issue of the means allowable for ethnic redemption. He upholds Israeli state power, which provides security to carry out the Zionist project. The oppression needed for this security is, for him, legitimate and should not become a platform from which purists can undermine Israel. When asked how he can defend state power of this sort, his answer is merely that it is needed for Jewish redemption in the wake of the Holocaust. But this answer is subject to the following reservations, which Greenberg does nothing to remove:

1. Is Jewish redemption possible through a state that functions for and depends economically and politically on the United States? The power that

the United States uses globally in wars, subversion, and trade is not itself a power that can be justified simply by its support, in one small region, of Israel as a counterweight to the Holocaust. Integration into U.S. imperialism raises normative issues ignored by Greenberg's exclusive focus on the Jews.

2. Another troublesome reservation concerns the importance of Jewish redemption in relation to oppression. Jewish redemption is understood as the re-creation of Jewish confidence, after Auschwitz, that God's covenant with His people still holds. Greenberg gives no reason to accord transcendent importance to Jews regaining this confidence. Thus he gives no reason to claim that trying to bring about Jewish redemption gives Jews the right to oppress others.

In moving from Holocaust theology to the issue of security in a practical sense, we find that security has often been a secondary factor in Israeli policymaking. It is now clear that in 1971 Israel could have had a peace settlement with Egypt, the most powerful of the confrontation states. Israel, with U.S. backing, turned down UN mediator Gunnar Jarring's proposal, to which Egypt's Anwar Sadat had agreed.

The proposal called for full Israeli withdrawal from Egyptian territories—the Sinai and the Gaza Strip—without mention of withdrawal elsewhere. U.S. National Security Adviser Henry Kissinger was in the process of overturning the State Department position of support for withdrawal of Israeli forces from all the Occupied Territories. He was, as he himself said, for stalemate rather than diplomacy or negotiations. The Israel government rejected the proposal because it rejected the idea of withdrawal to the pre-1967 boundaries with any Arab state. The reasoning behind the rejection was not security but that by holding out, Israel could get more. Yet Israel would have to pay the price in 1973 of war with Egypt and Syria for not having accepted peace with Egypt in 1971. Control over the Occupied Territories and their resources, human and natural, was the priority, not avoiding war.[14]

Looking backward and forward from 1971, a similar pattern emerges. In 1947 and 1948, Ben-Gurion was willing to take a chance on having Trans-jordan either control or set up a state in western Palestine. The advantage would be to prevent the formation of the Palestinian state called for in the Partition Resolution. The drawback would be that Israel would be less secure since Trans-jordanian control could afford entry there to other Arab powers (Flapan 1987, 119–152). The Camp David Agreements of 1979, removed Egypt from opposition and allowed Israel to be more aggressive in trying to eliminate the Palestine Liberation Organization. Israel hoped that by invading Lebanon in 1982 it could destroy the PLO, thereby making it easier to absorb the Occupied Territories through settlements. What stands out in such cases is that Israeli security in a practical sense is secondary to thwarting an international consensus on the right of Palestinian self-determination (Rubenberg 1986, 271–79).

How, though, do we deal with the charge that security is still an overriding concern, since the Arabs have started wars against Israel? Within the framework of the liberationist principle, the important thing is not who starts wars, though the Arabs certainly did not start the 1966, 1967, 1978, and 1982 wars. The issue is how to avoid them. Expulsions, denials of civic rights, settlements in Occupied Territories, being a superpower surrogate, and annexations are not strategies for peace in the Middle East. They have systematically shifted a disproportionate burden to the Palestinian people. Where Kissinger's stalemate is the response to oppression, resistance through a variety of means is inevitable. Where oppression continues, the obligation not to resist lapses.

The question about wars with Israel that rarely gets asked is whether either side fought any of them for ending oppression. If this was a major component in those wars, then stopping oppression before they occurred could have avoided them. Those who fought them to end their oppression had a legitimate reason for fighting, apart from who started the hostilities (Moellendorf 1994, 264–86). The need for security on the part of the oppressor, in the sense of the need for the ability to fight and win such wars in order to continue oppression, is certainly not authorized by the liberationist principle. Only desisting from that oppression is.

Can the Jewish State Be Reformed?

As I have presented it, the problem with the Jewish state lies in its very conception. It is not a problem to be overcome by reform efforts. Piecemeal efforts to equalize the rewards of citizenship as between Arabs and Jews do not work. And incremental efforts to give more "autonomy" to Palestinians in the Occupied Territories merely change the description given to oppression.

Of course, it is good that the Israeli government has budgeted more for the Arab sector in Israel over the past few years. But loyal Israeli Arabs still cannot be cabinet ministers, and the Education Ministry still dictates the curriculum for Arabs (*New York Times,* November 24, 1993, A1, A4). And it is good that under the Oslo Agreement of September 1993, there will be more local rule for Palestinians in the Occupied Territories. But Israel continues to rush ahead with the construction of Greater Jerusalem, extending from Ramallah in the north to Bethlehem in the south, in order to have an Israeli "security corridor" around the Old Jerusalem (*Christian Science Monitor,* February 15, 1994). Furthermore, the cantonization of Palestinian areas in the West Bank by Israeli settlements, which control major water sources, will fragment the Palestinian community, making concerted political action on its part difficult. So reform becomes a Sisyphean task, each reform being matched by a reassertion of the Zionist character of the Jewish state.

Recent Israeli theorists have noted that the Jewish state has been able to keep Arab Israeli protests within the law and to keep Arab Israelis from forming a secessionist movement. The conclusion is then drawn that an ethnic democracy

is a viable form of state, and indeed one that can be a model for other nations with ethnic minorities. The key idea here is that one can have a state that, on the one hand, projects and works for an ethnic common good but that, on the other hand, gives citizens who do not belong to the dominant ethnic group, and hence cannot enjoy its common good, basic citizenship rights. To ensure long-term stability, such theorists propose that reforms guaranteeing these basic citizenship rights to non-Jewish citizens must go forward. But it is granted that the ethnicity of Israel will continue to show up in the commitment of Israel to being an instrument of solidifying a Jewish community through cultural, military, and economic means (Peled 1992, 432–43; Smooha 1990, 389–413).

The separation here between citizenship and common good is totally artificial. Citizenship rights cannot be granted to a full extent without granting the right to share in debate over the common good. Yet a state that is going to remain a Jewish state cannot leave the nature of the common good up to a debate that includes non-Jewish groups. If those groups participate in such a debate as full citizens, concessions would have to be made to them, even if they were a minority, that would compromise the ethnic character of the state. To handle this problem without completely barring Israeli Arabs from office, any debate over Zionism is ruled out ahead of time by not allowing parties with anti-Zionist platforms. If non-Jews became a majority, they might well destroy the ethnic character of the state. But it would be difficult to ensure Western support for Israel if a majority were excluded from debate on the common good. This problem was solved by measures that ensure Jewish predominance. Israel refuses to allow the return of refugees who fled in the wars, and in 1989 it arranged, with the United States and the Soviet Union, immigration restrictions that turned Russian Jews in the direction of Israel rather than the United States.[15]

A second problem with this proposal for a reformed Jewish state is that it does not get to the Zionist root of the state. The Jewish state is a state for the Jews in the land they consider theirs by historical right. It will not settle for giving away a significant part of that land as long as there are U.S. billions to fund its expansion and there is the U.S. veto to protect its expansion in the United Nations. It is then difficult to agree with Sammy Smooha that a reformed Israel that accepts self-determination for the Palestinians in the Occupied Territories can remain "Jewish-Zionist." Such a reform would, I suggest, transform Israel into a non-Zionist state, as would the reform that would give full citizenship to Arab Israelis.

My point is that the Jewish state pursues a community project that oppresses Palestinians. To reform the Israeli state in such a way that the oppressive nature of it is avoided calls for a rejection of the Zionist community project on which it is based.[16] Liberals worry that no state can pursue a community project or, in other terms, advance a common good, without oppressing at least some few who do not accept that project. The difficulty is that liberals do not make a convincing case for an alternative. That is, they do not explain how a state can exist without some community project.

My solution goes in a different direction from liberalism. When the project is American capitalism, Soviet communism, or Israeli Zionism, it will indeed be oppressive, though in different ways. We need to call for the transformation of states with such projects in the direction of other projects, without an advance guarantee that such transformations will avoid newer forms of oppression. This is not, then, a liberal critique of the communitarianism of the Jewish state. For, it does not call for doing without community projects, but only for the elimination of those projects that, in the actual circumstances, depend in an obvious way on the misery of others. Rather than take the line of least resistance, which tells us that "our" community project is just fine because it is ours, we need to use the liberationist principle, as the expression of a popular international consensus, to critique our own community project.

In the case of Israel, such a critique leads to the imperative to replace the Jewish state with a state based on another community project. A homeland for the Jews can be realized within a binationalist project that, on the one hand, gives autonomy to Israeli Arabs—Christians and Muslims—and, on the other hand, extends an option of citizenship in this binational state to the Palestinians in the Occupied Territories (Aruri 1989, 46–51). Palestinians would, though, not be denied the right to form their own state. In view of this, agreement to their right to self-determination would have to precede the formation of a binational state. Yet the potential for conflict between a Palestinian state and an only partially reformed Jewish state side by side with it would have to be considered before such a right to Palestinian statehood were to be exercised.

Moreover, such a binationalist project would be incompatible with Israel's continuing to play the role of a superpower surrogate in the Arab world. Such a role would rekindle earlier tensions and make binationalism unworkable. Finally, to avoid minimizing the value of Jewish rights in a binational state, such a state could not be conceived as part of a larger Arab unity, in the way it was conceived by the PLO before it switched in 1974 to its two-state position.

The Oslo Agreement, it might be objected, makes all this talk of transforming the Jewish state unnecessary. The problem of the Palestinians is solved without having to change the Jewish state. True, there has been no change in the Jewish state, but only the misguided will think that the Palestinian problem has been solved. Israel has merely shifted to a more "reasonable" form of control over the Occupied Territories. It can now use the Palestinian Authority to police Arabs and put down future Intifadas. It has not recognized the right to self-determination. It has control of economic development and exports. True, it may have to make a few reforms. For example, workers in Israel from the territories may now have to receive benefits for pay withheld for benefits they did not receive before (*Middle East Labor Bulletin* Fall 1994, 1, 22). But this does not make Arab labor equal.

The needed change in the Jewish state will not be easy. Among other things, it will call for a move against a long tradition. The tradition of autonomy of Jewish communities is reflected in the idea of a Jewish state. The autonomy of

Jewish communities in Europe, given official sanction by Sigismund August in Poland as early as 1551, was something for which many twentieth-century Jews, in the loneliness of modernity, could feel an attachment (Leon 1970, 78, 98, 113, 191, 213, 221). These exclusive communities came to define what was normal for Jews (Shahak 1955, 280–312).

Nonetheless, there have been numerous strands within Judaism that have bucked Zionist exclusivism and have insisted on the importance of a state of citizens. One of those strands is outspoken in its support of modernism and its liberal politics. For example, both Elmer Berger and Israel Shahak have been guided by liberalism in their impressive critiques of Zionism. Shahak rejects the Jewish state as tribalist and premodern. But there is another strand that has been antimodernist, in as strong a way as Irving Greenberg, without locating messianic redemption in an ethnic state. Michael Lowy identifies this strand as the synthesis of German romanticism and Jewish messianism (Lowy 1992, chs. 2, 4, 6). The key component of the romantic strand was opposition to capitalist modernism; that of the messianic strand was redemption through a new future. He finds the romantic and messianic currents coming together in figures as diverse as Martin Buber, Gershom Scholem, Walter Benjamin, and Georg Lukacs. The sociopolitical thought resulting from this blend of currents did not promote redemption through a Zionist state.

We are not then talking about starting from scratch when we talk about the possibility of a shift away from the Zionist ideal toward that of a binational state, of which Buber dreamed. In addition to the liberal and the romantic traditions within Judaism, there is also the fact that the second generation of leaders of the Jewish state are less tied to ideological views of Israel (*New York Times,* January 12, 1995, A1, A7).

The reality of continuing conflict has led many, like Chomsky, to accept the two-state solution, even though their first choice would have been binationalism. With a shift in circumstances, including more flexibility on the part of second-generation Israeli leaders, binationalism could become an important force. Even in present circumstances, it is urgent to rekindle a vision that goes beyond monoethnicity. Given the multiethnicity that exists, a monoethnic Israel will continue to block the way to nonoppression.[17]

Notes

1. For a survey of views on ethnicity and the state, see Thompson (1989, ch. 3).
2. For a survey of liberal Jewish criticism of the Zionist state, see Aruri (1989, 33–61).
3. For an expression of the communitarian justification of states, see Walzer (1990, 509–56).
4. I have used this third perspective in a general criticism of liberalism and communitarianism in my essay "Community and Morality," *Review of Politics* 55, no. 4 (Fall 1993): 593–616.
5. While rightly stressing the importance to ethnic groups of promoting their cultures,

communitarians fail to stress the limits to such promotion. As an example of this failure, see Tamir (1991, 565–90).

6. See Magnes and Buber (1947, 42). For a discussion of binationalism, see Chomsky (1973, 38–55, and 1975, 31–61).

7. Such a principle is formally an instance of the much more general principle that unrestricted freedom is to be corrected by a requirement of noninterference. This does not mean it derives its validity from that more general principle, which classical liberals like John Locke rely on. For, the liberationist principle has to do with only one kind of interference—oppression. Yet certain kinds of interference may well be permissible.

8. Michael Lowy (1993) attributes to the principle a "concrete" universality as opposed to the "ideological" universality of Eurocentrism (pp. 133–35).

9. For this use of the term invisible see Ruether and Ruether (1989, 145–61). They note that "the basic institutions of the State in Israel are built from organizations for immigration, land purchase and settlement, collectivization of labor and markets, and military defense developed by the Zionist movement before the state was founded. All these organizations were, by definition, for 'Jews only.' "

10. Hobbes's view that relations between nations were covered by no compact and hence by no morality has the effect of making those who do not compact together invisible to one another. People of another nation than one's own could, then, be oppressed without moral scruple, since they are invisible. A classical formulation of this form of liberalism is that of Niebuhr (1932, ch. 4), and a recent effort is that of Krasner (1976, 317–47).

11. Prime Minister Begin expressed a different view: "In June 1967, we had a choice. The Egyptian Army concentrations in the Sinai approaches did not prove that Nasser was about to attack. We must be honest with ourselves. We decided to attack him" (*New York Times,* August 21, 1982).

12. Ellis (1990a, 30). Ellis says, in ending a long discussion of Greenberg, "Holocaust theology, like almost any community theology, revolves around the community to which it is addressed. But recognizing self-interest and self-expression as givens, Holocaust theology seems to encourage self-absorption, almost to the exclusion of others."

13. Greenberg writes that "the real point is that after Auschwitz, the existence of the Jew is a great affirmation and an act of faith. The re-creation of the body of the people, Israel, is renewed testimony to Exodus, as the ultimate reality, to God's continuing presence in history proven by the fact that his people, despite the attempt to annihilate them, still exist" (1977, 48).

14. This interpretation of the often ignored 1971 peace proposal is taken from Chomsky (1994, 206–13). Chomsky reports from Yossi Beilin's review of cabinet records between 1967 and 1977 that, in the deliberations of the Israeli cabinet, security considerations were secondary for that decade.

15. In a wide-ranging discussion of membership, Walzer (1983, ch. 2) asserts, on the one hand, that "the distinctiveness of cultures and groups depends on closure," and on the other, that "the process of self-determination through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory." It is not fully clear from his account how the dialectic of closure and openness would work out for Israeli Arabs. For a helpful critical interpretation of Walzer, I am indebted to Norman G. Finkelstein's unpublished essay, "Tribal Rumblings: Michael Walzer's *Spheres of Justice.*"

16. On the shift from a Zionist to a non-Zionist Israel, see Bober (1972, 176–81, 191–205), and Evron (1995).

17. I wish to express my gratitude for helpful comments on a draft of this article to Anatole Anton, Norman G. Finkelstein, Tomis Kapitan, Mudar Kassis, and Justin Schwartz.

15

Tragic Justice

Lynne Bėlaief

In any discussion of the Israeli-Palestinian conflict, there exists some foundational assumptions—and they are assumptions in the philosophical sense—of the meaning of justice. They may remain hidden or become explicit but are always present and guide thinking and judgment.

One central assumption in speaking about justice on the national level is that the description of the conflict will be characterized by tragic elements. As is often noted, tragedy here refers to the clash between two rights, neither of which can be satisfied without harm to the other's self-view of its rights. Justice will have to include the recognition of tragedy and to take into account that any peace arrangement will contain elements of injustice since the tragedy is permanent.

Anyone who conceives a "territorial solution" to the Israeli-Palestinian conflict as an all-or-nothing, zero-sum result—and this is how the propaganda on both sides long portrayed it—is ignoring the existence of tragedy at the heart of the situation and is ensuring that the conflict will never be resolved. Absolute justice in our world, and specifically in this situation, is an impossibility, and one can know immediately that any individual or organization demanding it is not serious about peace. It really is as simple as that.

I am not saying that those individuals who reject compromise and "incomplete" justice are "unrealistic" because this is a relative term, and can be used only in relation to a context of reference. And the context is as follows: to demand one's total "rights," in this case all the territory west of the Jordan as either Israel or Palestine, *is* quite realistic if the individual is, for example, more concerned with the purity of his conscience, national or religious absolutism, or the desire for vengeance than he is with peace. That this stance will ensure the continuation of suffering and death on all sides becomes rationalized as inevitable under any conditions.

I am making this distinction to try to delineate a conclusion I have reached after talking to some with such absolutist goals. The conclusion is that the terms of description commonly used, such as unrealistic or impractical, are ultimately inadequate. Some Israeli Jews have not become less realistic after 1967 or 1977 with the coming of the Likud: instead, their priorities, intentions, and values have become different or have remained the same but are now perceived as available and thus made more public. Similarly, political pundits who constantly gauge the

"sense of reality" of Palestinians or the Palestinian Liberation Organization (PLO), which is said to have gradually become more realistic after 1967, 1970, 1973, 1977, 1982, 1985, 1988, 1991, or 1993 might better judge whether the PLO goals are what have changed, despite the fact that the maximalist position concerning territory still remains in the Palestinian National Covenant.

I prefer this way of describing the situation for two reasons. First, it places the choices in a clearly ethical framework, where they belong, and therefore also decreases our illusion that more knowledge, a higher level of military capacity, another war, or more "facts on the ground" (i.e., settlements in the Occupied Territories), will increase realism. It will not, any more than racism is decreased merely by more information or contact with the other. Such attitudes are not based on faulty information but on faulty, and unethical, intentions, and "facts" are simply manipulated to prove the original prejudice or "unreality." To think otherwise is naive, an illusion, and leads away from any real work toward a better solution, which would require not more and new information but new intentions.

The tragedy at the heart of the Israeli-Palestinian national conflict must in my opinion be recognized and owned if any deep and lasting acceptance of peace—rather than a cold peace, as with Egypt—is to be possible in the future. Otherwise we will continue to encounter calls for "walls" of separation between the two peoples, which is not productive for a stable Middle East and in truth is not achievable. This is not an easy or happy conclusion because it requires that majorities of both populations must reach the level of ethical maturity and honesty where they can accept the fact that the very existence of their state, Israel or the Palestine to be, creates tragedy. And they must trust that this change in understanding has occurred among the others who they have long feared, long fought, and sometimes demonized.

Yet without such monumental and heroic reevaluations, Israeli Jews and Palestinians cannot truly grasp each other's inner reality and smash the bitterness and hatred that attend their present failure of empathy. Moreover, neither can fully understand themselves and the peculiar tragic fate their mutual existence in the area wove for them and their opponents.

The tragedy I am speaking of has nothing to do with 1967, which as any other war produced victors and victims. The beginning and meaning of this tragedy occurred with the birth of Zionism and would exist with or without 1967. It would have existed even if the Arab countries had accepted the 1947 UN partition plan, and no wars had taken place in 1948, 1956, 1967, or 1982. The astonishing result of Zionism, the very existence of a Jewish state in a part of Arab Palestine, was a tragic injustice, whose sole but adequate justification is that not to have allowed Israel to exist would have been a worse injustice and a greater tragedy, for the Jews and the world at large.

Zionist justification has nothing to do with historical rights, religious injunctions, the Holocaust, or other typical arguments. Israel's right to existence, as

many have asserted, arises solely from the right of all who conceive themselves to have a separate national identity to have a sovereign homeland in which that identity can be experienced and secured. This is not an argument but an instinct, which is considered self-evident within that group.

And, of course, exactly the same conclusion applies to the right of Palestinians for a national entity. In neither case, then or now, would a binational state have been permanently acceptable. The world as we know it in the last centuries conceives of independent nation-states as the highest entity of political sovereignty, a right therefore that is universal. This is not also to say that the existence of nation-states will always remain our highest understanding of political and social existence. Indeed, one can only devoutly hope that it will not, since this arrangement often makes war and economic inequality inevitable, and diseased national self-righteousness a virtue, and not just in the Middle East.

In the world as it now exists, however, it is unacceptable to deny national self-determination to any group with a national consciousness because this is a denial of the rights of man as understood and expressed in international law. This is what the United Nations recognized in 1947 concerning Israel and Arab Palestine. Incumbent on the Israeli state, which gave birth to this tragic nationalistic clash, is to cause as little harm as possible consistent with national economic and military survival.

Thus Israel's expansion into the West Bank and Gaza is not a result of the right to national existence but a consequence of conquest that has nothing to do with security or national survival, despite much propaganda of fear to the contrary. Clearly there is no such thing as absolute security, and claims to require it reveal nothing less than expansionist aims hiding behind a shield of reason. Almost certainly Israel's security is far more threatened by holding the territories than not and certainly cannot be justified on ethical grounds, even by the exceptional ethics of tragedy.

It is essential that the right to existence of Israel within the pre-1967 borders be judged in totally different terms than arguments about keeping the Occupied Territories under Israeli control, with or without annexation. This should be quite clear once Israel's existence is understood as an act of territorial aggression that is nonetheless justified from necessity, albeit a tragic necessity, whereas acquisition of territory not necessary for national viability has no justification whatsoever under international law, ethics, or justice as we now define them.

Of course the present boundaries of some the world's nation-states testify to the fact that justice is often a fanciful criterion in the international arena where power creates reality. Boundaries set by power, however, create resentments that are inherited (and nourished) through generations, ensuring instability and escalating conflict. If Israel's right to exist depends, as said, on the right to minimal territory compatible with national continuation, then holding further territory violates this justice in two ways: first, it is a denial of the rights of Palestinians for their own national existence, and second, it puts in jeopardy the right of all

Israelis and Palestinians to live in the promised security that is the fundamental social contract any government makes with its people. Continued occupation *assures* continual unrest, probable war, and possible nuclear destruction in the last war that Israel "cannot afford to lose." These results are *not* inevitable and are not dictated by the original position.

Any value that such observations may come to have rests, however, on the response of the other central party to the conflict, the Palestinians. If Israeli Jews, through their leadership, can come to experience and accept this clearly dissonant and certainly politically complex view of their tragic national origin in the twentieth century, including the complex ethical origins of Zionist meaning, it would be a unique and marvelous achievement. But it will have limited consequences and value for the purposes of justice and a fruitful peace unless Palestinians also can ultimately come to experience Israeli's existence not just as a fact (which of course they now do) but as a right.

Moreover, it is obvious except to a few propagandists on both sides who prefer to manipulate lies and illusions that most Palestinians are by now convinced that the Israeli Jews are not like earlier intruders, from the Crusaders to the British, that they are there to stay as a national rather than a colonial entity, and that *every* Israeli Jew and most Israeli Palestinians confirm this. But the other difficult issue for all of us is why Palestinians should ever accept Israel's *right* to continued existence in addition to the tragic justice of Israel's original re-creation.

I do not agree with some Israeli Jewish analysts that such an acceptance does not matter, that it is enough if Palestinians (and the Arab world) accept Israeli's existence *de facto.* This limited recognition of Israel's factual existence is enough for pragmatically oriented peace negotiations to begin and perhaps even to reach some result. But continued refusal to affirm *de jure* the right to Israel's original and continued existence is self-defeating to everyone and is destabilizing concerning any lasting peace. It is unfair to Israel because, if I am correct, it does have the right to exist as a state, however tragic the results of that right are. It is as unfair to Palestinians because it means they will forever live with a sense that an injustice was done to them that *could have been avoided.*

The key to acceptance would be the recognition that once the Zionist ideology gained reality and power, the resulting Israeli state in a part of Palestine was an inevitability. The general, although not monolithic, Arab rejection of the 1947 partition plan was in part due to the inability at that time for most to recognize the inevitability and to see only the tragic injustice without recognizing the tragic justice as well. In general, especially for those at this early stage who did perceive the Jews as being a religious rather than a national entity, the insult to Arab sovereignty was far too recent and too great to expect that the dual perception could have dominated understanding then. Can it occur now? It would require an astonishing level of empathy with the national aspirations of a group of people who have come to be deeply resented and feared over three generations.

Nonetheless, in my judgment the always surprising realities of the Middle East have begun to prepare the way for a reversal and an understanding of the Jewish passion for statehood. This is taking place because of the parallel drive for national self-determination the Palestinians are undergoing and the constant obstacles they experience.

Here, then, is the hopeful irony: the more the Palestinians come to experience the total unacceptability of their condition, the more they can also come to empathize with why the Jews fought and will continue to fight for their right to national existence. They can also recognize, as many already have, that no other Arab country truly desires the existence of an independent Palestinian state, the rhetoric of Pan-Arab or Islamic unity and the largely self-serving anti-Israeli propaganda notwithstanding. The support for Saddam Hussein by many Palestinians and their leaders before and during the Gulf War was not only politically stupid and self-destructive but pathetically misguided. Saddam's simplistic and unrealistic boasts to destroy half of Israel appealed to some Palestinian's desire for vengeance, and a surge of pride surfaced when Iraqi "Arab" scuds hit areas within a once-again demonized Israel. But also once again the Palestinians had been manipulated by an Arab leader who cared little for their future but desired them as cheerleaders giving him the popular support his own people would not.

It was a terrible time for those Palestinians who, because of their long suffering and actual abandonment, have achieved a very high level of political consciousness and understood the moral and political error of being courted by Saddam. Their own self-knowledge had prepared them for a leap into a higher ethical consciousness rather than regression to earlier rejectionist stances. What they have indeed understood is that a peace with Israel that includes recognition of the national rights of *both* states is more important than maximalist demands that prolong what is now in large part a self-perpetuated misery. This self-confrontation and self-criticism are preliminary requirements to the recognition that if the Jews had listened to their own maximalists, they too would still be stateless. (And if the Israelis or Palestinians listen to them now, they will never have peace.)

Such empathic understanding does not require forgiveness. It requires the insight that forgiveness is irrelevant because the original tragic injustice cannot and should not be forgiven. It has a historical finality that no one can change, and so on this level talk about financial compensation to refugees is not relevant and even insulting, although otherwise important in pragmatic terms. Similarly, the Israeli Jews must understand that there is absolutely nothing they can do to eradicate the tragic aspects of their very existence as a state that required the insertion of a new nationalism into the Arab Middle East. No reparations they can make will cancel that. As with all tragedy, there is no compensation except through rising to a higher ethical level and recognizing the justice that also exists within the tragedy.

In this sense, those who make the issue of the return of the Palestinian refugees of 1948 to Israel a central one reveal both a rejectionist attitude and a refusal

to come to the consciousness of the finality of tragedy. Yes, there can be some adjustment to the suffering, but to demand the total repatriation of all Palestinian refugees is to cancel the existence of Israel as a Zionist state, and that is not a foreseeable possibility. It is as clear as that to anyone willing to acknowledge tragedy *and* its Janus face of injustice and justice. Once this is accepted, the passivity that the overwhelming force of tragedy has on all who experience it (what the Greeks called Fate) can be transcended, and work toward improving what can be improved can begin.

It is the irony of such situations that at a certain point the victim can become responsible for perpetuating his own suffering by failing to rise beyond tragedy into genuinely practical political proposals and actions. At that point the dynamics of the intention toward compromise can begin and replace the paralysis of self-righteous complaining, moving to what Sartre has called "the far side of despair."

In the larger Middle East situation Sadat understood with unique urgency that although he could not change the fact of Israel's existence, he could alleviate some of the suffering of his own people; that although it was not in his power to create a Middle East without Israel, it was possible for him to create a Middle East with less bloodshed and poverty. If I had to make a judgment as to the time, place, and person who came to that far side of despair and became determined to reach the degree of justice still possible in a peace between Palestinians and Israel, it was December 1988, Geneva, and the man was Arafat. In these careful words, he said, "We set out in the Palestinian Liberation Organization to look for realistic and attainable formulas that would settle the issue *on the basis of possible rather than* absolute justice . . ." (my italics).

What is being clearly understood by Arafat is that the conflict is not a zero-sum situation but one in which both sides can profit from the degree of justice still available. As noted earlier, once Zionism gained power, the resulting Israeli state in a part of Mandatory Palestine was an inevitability and a just conclusion to a national struggle. The post-1967 result was not, and that reversal is where the peace process should start *and* end.

Thus the Oslo Declaration of Principles, however flawed, should satisfy at least a minimal degree of enlightened self-interest, in the sense of *realpolitik,* for both peoples. When it does not, I think we do encounter genuine levels of self-delusion concerning the other, aimed toward the continuation of the occupation at any cost by Israeli Jews and the refusal of territorial compromise at any cost among Palestinians, even when for the latter it means that Palestinian self-determination and ultimately statehood is indefinitely postponed. This hard core of what I can only call a mutual, and perhaps mutually inspired, madness is what in the categories of tragedy are called "tragic flaws."

Involved are mirror perceptions, or misperceptions, of the other that are basic, being aimed at the heart of the right to national sovereignty on the political level and identity as a people on the social and psychological levels. Because of the

many wars, terrorism, and the lengthy Intifada, and because both national struggles are relatively young and inwardly conflicted, these insults directed toward mutual delegitimization are serious, severe, and massively experienced. For Palestinians, there is a fierce alertness to any perceived slight to national and individual dignity and sovereignty; for Israeli Jews, to any perceived threat to national and individual security. Each sensitivity was precisely exemplified in Arafat and Rabin, respectively, and nervousness in these dimensions account for much of the balking and slowing down of the peace timetable, a very serious error. But both these leaders had at least transcended their suspicions adequately enough to have negotiated at all and to keep moving, however fitfully and chaotically.

The tragic flaws begin to show themselves in those parts of the larger populations where great segments, although increasingly not a majority, delegitimatize the other in ways that are clearly designed to sabotage any progress toward peace. These Israeli Jews, showing a remarkable lack of bad conscience, guilt, or empathy concerning the injustice of the occupation and its thousand and one humiliations, appear to believe Palestinians have no rights to sovereign existence because they are not perceived as an entity to whom national rights could pertain. They enter consciousness primarily as terrorists, manipulated by one or another Arab state or Palestinian group, much like some Zionists in the Yishuv misperceived Palestinian self-assertion as rioting by random groups of nomadic Arabs.

Of course there is logic here, as there is in all self-delusion; as long as Greater Israel remains the goal of this group of Zionists, then there is room for only one people and one nationalism in the land. Therefore, the logic insists, only one people exist, namely Israeli Jews. All acts against this irrational claim are felt in the mode of victim, and vulgar misuse of the venality of the Nazi experience is projected on to the Palestinians. It is precisely this self as victim that these Jews seek to reproduce, countering the victimization of the Palestinians as if, once again, the world, or at least the Middle East, presented a zero-sum situation. If I am the victim, then you are not. (A personal aside: in hundreds of extended conversations with Palestinians over a decade, I have never encountered the passionate, obscene, and perfect rendition of classic anti-Semitism that was delivered to me several years ago in Gaza City by a volunteer Danish physician.)

Now a quite parallel distortion may be at the core of some Palestinian self-delusion and perception of Israeli Jews. At its inception it was not necessarily a delusion but a possible political analysis, namely, that the Jews in the Yishuv were just the latest group of colonial invaders who could eventually be forced out by changes in the world's balance of power. But with the defeat of Hitler and containment of genocidal anti-Semitism followed by the creation of the state of Israel, such hopes became seriously misplaced. Objections by some Arab states and the Palestinian leadership until recently have not convinced the world community that Israel has no right to exist, that the Jews are merely a religious group that does not require or deserve national expression.

As long as these mirror unrealities maintain their potencies, the justice of territorial compromise remains unattractive to large minorities on each side, and group narcissism, which is the psychological force maintaining these illusions, is encouraged. It is an inevitable result of making the delegitimization of the other the core of one's "foreign policy" and group identity. Daily clashes in the Occupied Territories are the acting out on a micro level of the obsessional, insatiable demands of narcissism's appetite. In a strange way, but one darkly comprehensible to psychoanalysis, these actions are experienced as justified retribution, for in the distorted world of the narcissist, wounded pride or disputed dominance must be restored at almost any price.

One of the most important possibilities resulting from the movement toward peace is that such energies spent on the demonization and containment of the other can now be used to create new, more positive national identities for both groups. Israeli Jews can redraw the now vastly distorted and interrupted Zionist attempt at creating a "normal state" and the "new Jew," under conditions of peace and greater security. Palestinians can begin creation of a national identity, culture, and society under conditions of liberty and autonomy leading to sovereignty. Both can substitute their obsessive identity as victims with the dynamics of healthy self-determination, wherein the principal issue will no longer be knowing who one is by whom one is hated or whom one fears, but how to search freely for self-hood that does not deny another parallel rights because he is perceived as an obstacle to that development.

For large numbers of Palestinians and Israeli Jews to escape the consequences of the self-righteousness of group narcissism and the self-assertion of vengeance that proceed from it on all sides, a new ideological reality must be created if justice is to be seen to prevail. It is not enough to recognize intellectually past errors and evils of intention, perception, action, and inaction as some individuals on both sides are at present doing, although this too is necessary. For a genuine, large-scale understanding and acceptance of the complexity of tragic justice and an imperfect peace to occur, a strong emotional and cognitive experience must be created. At the core of this renewal will be, in my judgment, what in religious language is called *atonement.*

It would have to begin with the leadership on all sides, political, intellectual, artistic, and religious, and would include atonement not just for the suffering, deaths, and anxiety as well as the distorted social, economic and cultural development inflicted on one's own people but on those of the enemy as well. This of course requires that each side allow itself, force itself, to enter the perception or narrative the other holds, and to include it as part of "political reality." This, obviously, the narcissist is unable to do, for to him the other has no independent reality: all meaning is self-referential. Thus there is nothing to atone for, since all are judged by collusion with his self-justification. There is a cumulative loss of decency within each group, as seen by itself. Sensitivity diminishes. Palestinian murders of other Palestinians, or of Israeli civilians, and out-of-control Israeli

Jewish behavior especially during the Intifada begin to seem more normal. Takeover of Arab homes in East Jerusalem, the Old City, or Silwan, receive the blessings of the government and the law, and that always thin reed of decency is not strong enough for self-patrol duty. Yet such actions can in fact call attention to the need for atonement in others, who witness these acts in helpless horror.

Now although I am suggesting that widespread, inner experiences of atonement may be necessary to achieve the willingness to move toward genuine, stable peace on either side, and ultimately a *de jure* rather than a merely *de facto* recognition of the other's existence and right to exist, it is also possible that for reasons of *realpolitik,* some form of a peace may be reached. Such a settlement, however, would lack the joy and conviction that ought to accompany peace when it is affirmed in its dialectical relation to a developing sense of tragic justice.

Moreover, and most important, the Palestinians and Israeli Jews are, in a complex way, psychologically intertwined with each other and occupy very significant places in each other's psyches. Justice here requires the fullest reconciliation, as among feuding family members, and that reconciliation requires atonement to transform the evils of their history together. Complicating the need for an exceptional degree of trust to be developed before any peace moves can be perceived as valuable is the fact that the two nations that will ultimately result will be across the street or valley from each other and interaction will be inevitable. Americans could walk out of Vietnam and never think about the Vietnamese again. This is not acceptable here. A "cold peace," as with Egypt at present, would be thoroughly unstable and impossibly grim.

Atonement would have to reach back before 1948, would include the dreadful understanding of tragedy, and could allow for the possibility of trust so vigorous that no foreign power, however manipulative or strong, could use either sovereign state of the partitioned Palestine as a base against the other. One further concrete result would be that the Israeli and Palestinian understanding could also become the firmest example of the value and possibility of peace between Israel and the front-line Arab states, rather than have the conflict remain a temptation for another war.

Both groups will have to turn to their own universalistic spiritual elements and to humanistic ethics to study atonement, and learn how to live its consequences willingly, and with longing. Nobody else can make this effort for them. Atonement does not imply or require the acceptance of collective moral guilt based on one's being part of the group whose actions have required atonement. Collective guilt is in my opinion not an ethically tenable notion, since within the nation or group requiring atonement are many who did not accept the goals or actions, many indeed who paid with their lives, their careers, or their social comfort by so indicating. But *insofar* as one chooses to remain identified with that body, and can freely cease to do so, there is a collective political *responsibility* for its actions that must be accepted. (This would not be true in the earliest stages of history of closed societies where cessation of identification with one's

group was literally unthinkable, freedom on this level of individuality being as yet unknown. Existence as an alienated self was psychologically equivalent to death, since group identity was the only known "subjective" reality).

Atonement would include deep self-criticism, without which one's future identity and that of one's society is stained and burdened by a past that has not been owned and transcended. This transcendence does not magically annihilate that past but allows energies, individual and public, to respond freely to the new situation. It opens the possibility of mutual trust and genuine listening because one is not blind-sided by an obsessive need to *maintain* a narrow group identity that excludes honesty and feeds on self-righteousness, all of which is inherently conservative. Ultimately such openness can produce changes in both societies that provoke greater pride and postnarcissistic identification and values.

It may be that Israeli Palestinians have a particular role to play here, having the special knowledge of both identities and the special (agonizing) sensitivity that can arise from being suspected by both sides of cohabiting in loyalty with the other. Having been through this internal dragon fight of self-identity, some Israeli Palestinians have already understood the need for atonement between groups and could function as a guide to both sides.

Until then, the problem will not be, as often stated over decades, that there is no one to talk to, but that there is no one in leadership positions whom individuals on the other side believe is worth listening or talking to because the center of the struggle of delegitimization has not yet been deeply addressed, and the processes that enforce it not yet smashed. Trust and hope under these conditions can hurt. Fear of them can hurt more. Neither can change without the empathy that will be inherent in the process of atonement and transcendence of that past.

Transcendence is a dialectical event: it does not destroy the past but transforms its meaning in a manner whereby justice becomes available. And this is one strong motivator for embarking on this arduous self-search we are calling the acceptance of political responsibility for the past of one's society. There is no rational way to *prove* the correctness of *choosing* this path. One can only say that without it nothing can be moved.

Included in this dialectic is the recognition that there is absolutely nothing one can do to repay the suffering, loss, and death and that to think otherwise is grotesque. The very meaning of tragedy is that within its tragic essence all is permanent *except* its meaning for the future. This is a very adult and sobering understanding.

Nor is forgiveness something that can or should be expected through atonement. It may be within my power and my ethical choice to forgive what others have done to me, but it is simply none of my ethical business to presume to forgive what has been done to another. If such an act is available, it is so only to God, about which we cannot speak. Forgiveness for the acts of others, from a finite human perspective, is in truth an ethical posture based on unnatural, perhaps pathological, self-inflation.

Additionally, in a strange but I think valid sense, it is unethical, paternalistic, and condescending to forgive *others* for what they have done freely. We rob them thereby of their need for atonement, without which they cannot, with the pain of ultimate dignity, own their personal and public responsibility. Particularly in the case of the more powerful, in this situation the Israeli Jews, the issue is more strongly determined because, whether one liked it or not, desired it or not, one benefited to some extent through the occupation. Some will say this quite openly, perhaps not so oddly particularly those who argue for the occupation's continuation. Atonement is the recognition of this desire and these benefits as well. Personal confrontation, with no intermediaries, no committee meetings, nothing at all between the individual and his responsibility. This is what Buber called the "line of demarcation," the personal effort to bring as much morality into the given situation as possible, and for everyone it will be different, existentially unique, and thereby real.

The process would require at its inception identification of some particular act or acts of injustice or pain committed by one's own side so that one quite literally goes crazy in the face of that evil. I say it is a particular event that will initiate this atonement process because it is a process that is principally performed by passion, and passion does not relate to the universal arguments of philosophers. This needs to happen only once, if it happens deeply, before the dissonance in the individual's ethical self-image is strong enough to move him toward a restructuring of the entire psychic picture. The desired result is that denial is no longer possible and atonement necessary to restore moral balance. It should be noted concerning Israeli Jews that if this experience leads them to a stance of anti-Zionism, then they have completely missed the point of atonement in its tragic context, and avoided both. And this *is* happening among some on the left in the peace movement and among some revisionist scholars.

The images of the other, particularly those that reinforce the aspects of deepest unreality among Israeli Jews and Palestinians, would require not just excision but replacement by new, healthier myths and new political cultures. An example of what needs to be replaced is a popular song written shortly before the Six-Day War called "Jerusalem of Gold," which contains lines claiming that the Jerusalem marketplace in the Old City and the Jericho Road are "empty," which of course means empty of Jews, as if, in line with the deepest Israeli Jewish narcissism, Palestinians simply do not exist; they are literally invisible.

Post-1967 idolatry of the land of the West Bank, whether supported by religious references or the secular cult of the land that began even before 1948, must be replaced by politically relevant realism. Parallel sentiments occur in much Palestinian writing and poetry that refer continuously to the future return to original homes in Jaffa or Haifa, reinforcing the deepest Palestinian pathology of the removability of Israel as a Zionist state. Such changes will be painful, and it is not my business or ability to suggest the content of the new images that can evolve to replace those potent and highly exciting images of possessiveness, reverence, and a more mundane sentimentality.

Surely it is useless to exhort Palestinians to cease loving the land their forefathers inhabited, or the Israeli Jews the land of their more ancient ancestors, because *it will not happen.* But love need not be possessive, and in its most mature forms it is not. Images of partnership most replace those of owning and blaming, and devotion to the building of the entire land of Israel/Palestine must replace the passion of vengeance and destruction of the other who occupies a part of it.

Atonement, and the capacity to accept tragic justice to replace the lure of vengeance, is what would gradually lead to the trust that walls and fences of separation are not needed, that mutual development is possible and desirable. This would be true because to achieve this level of insight enormous ethical and psychological maturity would be required. Those who have it will recognize and encourage it in the other. For reasons that may not be conscious, such individuals become attractive as leaders—political, spiritual, intellectual, or artistic. A world-renowned example of this achievement, comprehensible to all who look, is Nelson Mandela.

I think it fair to say that those as schooled in suffering as the Israeli Palestinians, Israeli Jews, and Palestinians may be far quicker learners than most. A certain cynicism about how sincerely the other side means its statements signaling the need for new values and new models of understanding will be inevitable for a time. But here again, intentionality behind such changes will be all-important because when genuineness is reached, action will change. Not everything is a public relations stunt, and the frequency with which both sides describe the other's acts or words as such signal at least as much about the judge as the judged. This too must be repaired.

As progressive changes on the ground occur according to the Declaration of Principles, and trust that living alongside the other in what must ultimately be a two state situation produces less violence—if it does—then the justice possible from their original tragic history together will ultimately be called peace. It will produce the first Palestinian independence day and a second independence for Israel, now free of its unjustifiable occupation. At long last, all Israelis, Arab and Jewish, and Palestinians will have one holiday they can celebrate together.

References

Abu-Amr, Ziad. 1994. *Islamic Fundamentalism in the West Bank and Gaza.* Bloomington: Indiana University Press.

Abu-Lughod, Ibrahim, ed. 1982. *Palestinian Rights: Affirmation and Denial.* Wilmette, IL: Medina Press.

———. 1990. "Introduction: On Achieving Independence." In Nassar and Heacock 1990, 1–11.

Al-Azm, Sadik. 1988. "Palestinian Zionism." *Die Welt des Islams* 28:90–98.

Al Haq. 1990. *Punishing a Nation.* Ramallah: Al Haq.

———. 1991. *Protection Denied.* Ramallah: Al Haq.

———. 1993. *Palestinian Victims of Torture Speak Out.* Ramallah: Al Haq.

Alternative Information Centre. 1994. *Partners in Crime: The Collusion of Israeli Authorities in Hebron Settler Violence.* Jerusalem: Alternative Information Centre (April).

———. 1995. *The Other Front.* Jerusalem: Alternative Information Centre (September).

Amnesty International. 1991. *The Military Justice System in the Occupied Territories.* London: Amnesty International (July).

Ang, Swee Chai. 1989. *From Beirut to Jerusalem.* London: Grafton Books.

Antonious, George. [1938] 1965. *The Arab Awakening.* New York: Capricorn Books.

Arab Higher Committee. 1948. *Why the Arab States Entered Palestine.* New York: Memorandum to the United Nations Delegations.

Arendt, Hanna. [1951] 1968. *Antisemitism.* New York: Harcourt Brace Jovanovich.

———. 1978. *The Jew as Pariah: Jewish Identity and Politics in the Modern Age,* ed. Ron H. Feldman. New York: Grove Press.

Arian, Asher. 1991. "Israeli Public Opinion and the Intifada." In *The Intifada: Its Impact on Israel, the Arab World, and the Superpowers,* ed. Robert O. Freedman. Miami: Florida International University Press, 269–92.

Aruri, Naseer H. 1989. "Anti-Zionism: A Democratic Alternative." In Tekiner et al. 1988, 33–61.

Ashmore, Robert B. 1986. "Palestinian Universities under Israeli Occupation—A Human Rights Analysis." *American Arab Affairs* 16 (Spring): 79–92.

———. 1990. "Nonviolence as an Intifada Strategy." *American Arab Affairs* 32 (Spring): 92–104.

Ataov, Turkkaya. 1982. "The Israeli Use of Palestinian Waters." In Abu-Lughod 1982, 152–56.

Ateek, Naim Stifan. 1991. *Justice, and Only Justice: A Palestinian Theology of Liberation.* Maryknoll, NY: Orbis Books.

Avineri, Shlomo. 1971. *Israel and the Palestinians.* New York: St. Martin's Press.

———. 1981. *The Making of Modern Zionism.* New York: Basic Books.

Baier, Annette C. 1991. "Violent Demonstrations." In Frey and Morris 1991, 33–58.

Ball, George W., and Douglas B. Ball. 1992. *The Passionate Attachment.* New York: Norton.

Bassiouni, M. Cherif. 1974. "The 'Middle East': The Misunderstood Conflict." In Moore 1974, 2:175–204.

Bauer, Yehuda. 1990. "Antisemitism and Anti-Zionism—New and Old." In Wistrich 1990, 195–207.

Ben-Gurion, David. [1967] 1973. *My Talks With Arab Leaders.* New York: Third Press.

Benvenisti, Eyal. 1993. *The International Law of Occupation.* Princeton: Princeton University Press.

Benvenisti, Meron. 1984. *The West Bank Data Project: A Survey of Israel's Policies.* Washington, DC: American Enterprise Institute.

———. 1986. *Conflicts and Contradictions.* New York: Villard Books.

———. 1995. *Intimate Enemies: Jews and Arabs in a Shared Land.* Berkeley, CA: University of California Press.

Ben-Ze'ev, Aaron. 1992. "Emotional and Moral Evaluations." *Metaphilosophy* 23:214–29.

Berg, J. 1991. "The Right to Self-Determination." *Public Affairs Quarterly* 5:211–26.

Bergen, Kathy, David Neuhaus, and Ghassan Rubeiz, eds. *Justice and the Intifada.* New York: Friendship Press.

Berger, Elmer. 1946. *The Jewish Dilemma: The Case Against Zionist Nationalism.* New York: Devin-Adair.

———. 1988. "Zionist Ideology: Obstacle to Peace." In Tekiner et al. 1988, 1–32.

Birnbaum, Pierre, and Ira Katznelson, eds. 1995. *Paths of Emancipation: Jews, States, and Citizenship.* Princeton: Princeton University Press.

Bober, Arie, ed. 1972. *The Other Israel. The Radical Case Against Zionism.* Garden City, NY: Anchor Books.

Brenner, Lenni. 1984. *The Iron Wall: Zionist Revisionism from Jabotinsky to Shamir.* London: Zed Books.

Brierly, J.L. 1949. *The Law of Nations: An Introduction to the International Law of Peace.* Oxford: Clarendon Press.

Brilmayer, L. 1989. *Justifying International Acts.* Ithaca: Cornell University Press.

Brownlie, Ian, ed. 1981. *Basic Documents on Human Rights.* 2d ed. Oxford: Clarendon Press.

———. 1983. *Basic Documents of International Law.* 3d ed. Oxford: Clarendon Press.

———. 1990. *Principles of Public International Law.* 4th ed. Oxford: Clarendon Press.

B'Tselem. 1989. "Demolition and Sealing of Houses as a Punitive Measure in the West Bank and Gaza Strip." Jerusalem: B'Tselem (September).

———. 1990a. *The Use of Firearms by the Security Forces in the Occupied Territories.* Jerusalem: B'Tselem (July).

———. 1990b. *Violence Against Minors in Police Detention.* Jerusalem: B'Tselem (June–July).

———. 1991. *The Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure," or Torture?* Jerusalem: B'Tselem (March).

———. 1994. *Law Enforcement vis-à-vis Israeli Civilians in the Occupied Territories.* Jerusalem: B'Tselem (March).

———. 1995. *Neither Law nor Justice: Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service.* Jerusalem: B'Tselem (August).

Buber, Martin. 1963. *Israel and the World.* New York: Schocken Books.

Buchanan, Allen. 1991a. *Secession.* Boulder, CO: Westview Press.

———. 1991b. "Toward a Theory of Secession." *Ethics* 101:322–42.

———. 1993. "Secession and Nationalism." In *A Companion to Contemporary Political Philosophy,* ed. Robert E. Goodin and Philip Pettit. Oxford: Blackwell.

Burrell, David, and Yeheskel Landau, eds. 1991. *Voices from Jerusalem.* New York: Paulist.
Caplan, Neil. 1983. *Early Arab-Zionist Negotiation Attempts 1913–1931.* London: Frank Cass.
Cattan, Henry. 1969. *Palestine, the Arabs, and Israel: The Search for Justice.* London: Longman.
———. 1976. *Palestine and International Law.* 2d ed. London: Longman.
———. 1988. *The Palestine Question.* London: Croom Helm.
Charter of the Islamic Resistance Movement (Hamas) of Palestine. 1993. *Journal of Palestinian Studies* 22, no. 4:122–34.
Childe, V. Gordon. 1993. *The Arvans.* New York: Barnes and Noble.
Childers, Erskine. 1961. "The Other Exodus." *The Spectator,* May 12, 672–75.
Chomsky, Noam. 1973. "Dark at the End of the Tunnel." *Ramparts,* January, 38–55.
———. 1975. "Breaking the Mideast Deadlock, II." *Ramparts,* April, 31–61.
———. 1982. *Towards a New Cold War.* New York: Pantheon.
———. 1983. *The Fateful Triangle: The United States, Israel, and the Palestinians.* Boston: South End Press.
———. 1994. *World Orders Old and New.* New York: Columbia University Press.
Coady, C.A.J. 1980. "The Leaders and the Led." *Inquiry* 23:275–91.
———. 1985. "The Morality of Terrorism." *Philosophy* 60:47–69.
Cobban, A. 1944. *National Self-Determination.* London: Oxford University Press.
Cohen, Herman. 1971. *Reason and Hope,* trans. Eva Jospe. New York: Norton.
Cohen, Morris. [1919] 1946. "Zionism: Tribalism or Liberalism?" In Morris Cohen, *The Faith of a Liberal.* New York: H. Holt, 326–33.
Collins, Frank. 1993. "Israel's Untouchable Entitlement Programs." *Washington Report on Middle East Affairs* 11, no. 8 (March).
Coote, Robert B. 1990. *Early Israel, a New Horizon.* Minneapolis: Fortress Press.
Crawford, James. 1979. *The Creation of States in International Law.* Oxford: Clarendon Press.
Crittenden, Jack. 1993. "The Social Nature of Autonomy." *Review of Politics* 55, no. 1 (Winter): 35–65.
Crow, Ralph E., Philip Grant, and Saad E. Ibrahim, eds. 1990. *Arab Nonviolent Political Struggle in the Middle East.* Boulder, CO, and London: Lynne Rienner.
Cunningham, Sir Alan. 1948. "The Last Days of the Mandate." *International Affairs* 28:481–90.
Dardis, Tony. 1992. "Primoratz on Terrorism." *Journal of Applied Philosophy* 9:93–97.
Davies, W.D. 1974. *The Gospel and the Land.* Berkeley: University of California Press.
Davis, Uri, and Norton Mozvinsky, eds. 1975. *Documents from Israel 1967–1973: Readings for a Critique of Zionism.* New York: Ithaca Press.
Dewey, John. 1920. *Reconstruction in Philosophy.* Carbondale: Southern Illinois University Press.
Dietze, Gottfried. 1963. *In Defense of Property.* Chicago: Henry Regnery.
Eban, Abba. 1956. "The Toynbee Heresy." In *Toynbee and History,* ed. M.F. Ashley Montagu. Boston: Porter Sargent, 320–37.
———. 1972. *My Country.* New York: Random House.
Eddy, William. 1954. *F.D.R. Meets Ibn Saud.* New York: American Friends of the Middle East.
Einstein, Albert. 1967. *Out of My Later Years.* Totowa, NJ. Littlefield, Adams.
Ellis, Marc. 1990a. *Beyond Innocence and Redemption: Confronting the Holocaust and Israeli Power.* New York: Harper & Row.
———. 1990b "The Occupation Is Over: Perspective from a Jewish Theology of Liberation." In Ruether and Ellis 1990, 110–24.

———. 1990c. "Solidarity with the Palestinian People." In Ruether and Ellis 1990, 285–88.
Elmusa, Sharif S. 1993. *The Water Issue and the Palestinian-Israeli Conflict.* Washington DC: Center for Policy Analysis on Palestine.
Emerson, R. 1964. *Self-Determination Revisited in the Era of Decolonization.* Cambridge: Center for International Affairs, Harvard University.
———. 1971. "Self-Determination." *American Journal of International Law* 65:459–71.
Erlich, Avi. 1995. *Ancient Zionism.* New York: Free Press.
Esco Roundation for Palestine, Inc. 1947. *Palestine: A Study of Jewish, Arab, and British Policies.* New Haven: Yale University Press.
Espiell, H.G. 1980. *The Right to Self-Determination: Implementation of United Nations Resolutions.* New York: United Nations.
Etzioni, Amitai. 1992–93. "The Evils of Self-Determination." *Foreign Policy* 89 (Winter): 21–25.
Evron, Boas. 1995. *Jewish State or Israeli Nation?* Bloomington: Indiana University Press.
Fackenheim, Emil. 1988. *A Political Philosophy for the State of Israel.* Jerusalem: Jerusalem Center for Public Affairs.
———. 1994. *To Mend the World.* Bloomington: Indiana University Press.
Fanon, Frantz. 1968. *The Wretched of the Earth.* Trans. C. Farrington. New York: Grove Press.
Feinberg, Nathan. 1970. *The Arab-Israeli Conflict in International Law.* Jerusalem: Magnes Press.
———. [1948] 1974. "The Recognition of the Jewish People in International Law." In Moore 1974, 1: 59–87.
Feldman, Ron, ed. 1978. *The Jew as Pariah: Jewish Identity and Politics in the Modern Age.* New York: Grove Press.
Fernea, Elizabeth, and Mary Hocking, eds. 1992. *The Struggle for Peace: Israelis and the Palestinians.* Austin: University of Texas Press.
Finkelstein, Norman G. 1988. "Disinformation and the Palestine Question: The Not-So-Strange Case of Joan Peters's from Time Immemorial." In Said and Hitchens 1988, 33–69.
———. 1995. *Image and Reality of the Israel-Palestine Conflict.* London: Verso.
Fisk, Milton. 1993. "Community and Morality." *Review of Politics* 55, no. 4 (Fall): 593–616.
Flapan, Simha. 1979. *Zionism and the Palestinians.* London: Croom Helm.
———. 1987. *The Birth of Israel.* New York: Pantheon.
Frankenstein, Ernst. 1944. *Justice for My People.* New York: Dial Press.
Frey, R.G., and Christopher W. Morris, eds. 1991. *Violence, Terrorism, and Justice.* Cambridge: Cambridge University Press.
Friedlander, R.A. 1980. "Self-Determination: A Legal-Political Inquiry." In *Self-Determination: National, Regional, and Global Dimensions,* ed. Y. Alexander and R.A. Friedlander. Boulder, CO: Westview Press, 307–31.
Friedman, Robert. 1992. *Zealots for Zion.* New York: Random House.
Galtung, John. 1989. *Nonviolence in Israel/Palestine.* Honolulu: University of Hawaii, Institute of Peace.
Gandhi, Mahatma. [1938] 1971. "The Jews in Palestine." In W. Khalidi 1971, 367–70.
Gans, Herbert J. 1980. *Deciding What's News.* New York: Vantage Books.
Garfinkle, Adam M. 1991. "On the Origin, Meaning, Use and Abuse of a Phrase." *Middle Eastern Studies* 27: 539–50.
Gellner, Ernest. 1983. *Nations and Nationalism.* Oxford: Blackwell.
Gerner, Deborah J. 1991. *One Land, Two Peoples: The Conflict over Palestine.* Boulder, CO: Westview Press.

Gewirth, Alan. 1981. "The Basis and Content of Human Rights." In *Human Rights: Nomos 23,* ed. Roland Pennock and John Chapman. New York: New York University Press, 119–47.

Ghazzawi, Izzat. 1993. [English Version] *Point of Departure—Letters from Prison.* Jerusalem: Arab Center for Contemporary Studies.

Glendon, Mary Ann. 1991. *Rights Talk: The Impoverishment of Political Discourse.* New York: Free Press.

Glover, Jonathan. 1991. "State Terrorism." In Frey and Morris 1991, 256–75.

Goldberg, David Theo, and Michael Krauz. 1993. *Jewish Identity.* Philadelphia: Temple University Press.

Goldman, Nahum. 1974. "The Future of Israel." In Moore 1974, 2:913–29.

———. 1978. *The Jewish Paradox.* New York: Grosset and Dunlap.

Goren, Arthur, ed. 1982. *Dissenter in Zion.* Cambridge: Harvard University Press.

Gorny, Yosef. 1987. *Zionism and the Arabs.* Oxford: Clarendon Press.

———. 1994. *The State of Israel in Jewish Public Thought.* London: Macmillan.

Gough, J.W. 1957. *The Social Contract A Critical Study of its Development,* Oxford: Clarendon Press.

———. 1973. *John Locke's Political Philosophy.* Oxford: Clarendon Press.

Graff, James (assisted by Mohamed Abdollel). 1991. *Palestinian Children and Israeli State Violence.* Toronto: Near East Cultural and Educational Foundation of Canada.

Graham, Gordon. 1985. "Terrorists and Freedom Fighters." *Philosophy and Social Action* 11:43–53.

Greenberg, Irving. 1977. "Cloud of Smoke, Pillar of Fire: Judaism, Christianity, and Modernity After the Holocaust." In *Auschwitz: Beginning of a New Era? Reflections on the Holocaust,* ed. E. Fleischer. New York: Cathedral of Saint John the Divine, 7–55.

———. 1990. "The Ethics of Jewish Power." In Ruether and Ellis 1990, 22–74.

Griffin, James. 1984. "Towards a Substantive Theory of Rights." In *Utility and Rights,* ed. R.G. Free. Minneapolis: University of Minnesota Press, Minneapolis, 137–60.

Hacker, F.J. 1977. *Crusaders, Criminals, Crazies.* New York: Norton.

Haim, Sylvia G. 1962. *Arab Nationalism.* Berkeley: University of California Press.

Halkin, Hillel. 1994. "Israel Against Itself." *Commentary* 98 (November): 33–39.

Hall, Arnold Bennett. 1915. *Outline of International Law.* Chicago: La Salle Extension University.

Hallaj, Muhammad. 1982. "Israel's Palestinian Policy." In Abu-Lughod 1982.

Halpern, Ben. 1961. *The Idea of The Jewish State.* Cambridge: Harvard University Press.

Halpern, Bruce. 1983. *The Emergence of Israel in Canaan.* Chico, CA: Scholars Press.

Hamilton, W.D. 1964. "The Genetic Evolution of Social Behavior." *Journal of Theoretical Biology* 7:1–52.

Harbour, Frances V. 1995. "Islamic Principles and the Chemical Weapons Convention of 1993." *Journal of Religious Ethics* 23:69–92.

Hare, Richard M. 1979. "On Terrorism." *Journal of Value Inquiry* 13:241–49.

Harkabi, Yehoshafat. 1992. *The Arab-Israeli Conflict on the Threshold of Negotiations.* Center of International Studies Monograph Series No. 3, Princeton University.

Hartman, David. 1990. *Conflicting Visions.* New York: Schocken Books.

Hazony, Yoram. 1996. "The Zionist Idea and Its Enemies." *Commentary* 101, no. 5 (May): 30–38.

Held, Virginia. 1991. "Terrorism, Rights, and Political Goals." In Frey and Morris 1991, 59–85.

Heller, Mark A., and Sari Nusseibeh. 1991. *No Trumpets, No Drums: A Two-State Settlement of the Israeli-Palestinian Conflict.* New York: Hill and Wang.

Hertzberg, Arthur, ed. 1977. *The Zionist Idea: A Historical Analysis and Reader.* New York: Atheneum.

Herzl, Theodor. 1966. "Zionism," reprinted in *Israel Among Nations,* ed. Zvi Zohar. Jerusalem.

———. 1970. *The Jewish State.* New York: Herzl Press.

Hilterman, Joost R. 1991. *Behind the Intifada: Labor and Women's Movements in the Occupied Territories.* Princeton: Princeton University Press.

Hirst, David. 1984. *The Gun and the Olive Branch.* 2d ed. London: Faber and Faber.

Hocking, William Ernest. 1945. "Arab Nationalism and Political Zionism." *Moslem World* 35, no. 3:216–23.

Holmes, Robert L. 1993. *Basic Moral Philosophy.* Belmont, CA: Wadsworth.

Hoskins, Eric. 1992. "Killing Is Killing—Not Kindness." *New Statesman* 17 (January): 12–13.

Hourani, Albert. 1991. *A History of the Arab Peoples.* Cambridge, MA: Belknap Press.

Hourani, George. 1969. "Palestine as a Problem of Ethics." *Middle East Studies Association Bulletin* 3:15–25.

Human Rights Watch. 1993a. *The Human Rights Watch Global Report on Prisons.* New York: Human Rights Watch.

———. 1993b. *A License to Kill: Israeli Undercover Operations Against Wanted and Masked Palestinians.* New York: Human Rights Watch.

———. 1994. *Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied Territories* New York: Human Rights Watch.

———. 1995. *Playing the "Communal Card": Communal Violence and Human Rights.* New York: Human Rights Watch.

Huntington, Samuel. 1993. "The Clash of Civilizations?" *Foreign Affairs* 72 (Summer): 22–49.

Hurewitz, J.C. 1976. *The Struggle for Palestine.* New York: Schocken Books.

Ingrams, Doreen. 1972. *Palestine Papers 1917–1922.* London: John Murray.

Jad, Islah. 1990. "From Salons to the Popular Committees: Palestinian Women, 1919–1989." In Nassar and Heacock 1990, 125–42.

Jansen, G.H. 1971. *Zionism, Israel and Asian Nationalism.* Beirut: Institute for Palestine Studies.

Jewish Agency for Palestine. 1947. *The Jewish Plan for Palestine.* Jerusalem: Jerusalem Press.

Jiryis, Sabri. 1976. *The Arabs in Israel.* New York: Monthly Review Press.

———. 1981. "Domination by Law." *Journal of Palestine Studies* 11, no. 1:67–92.

Kallen, Horace. 1921. *Zionism and World Politics.* Garden City, NY: Doubleday, Page.

Kamen, Charles. 1987. "The Arabs in Israel 1948–51." *Middle East Studies* 23:453–95.

Kapeliouk, Amnon. 1984. *Sabra and Shatila: Inquiry into a Massacre.* Belmont, MA: AAUG Inc.

Kapitan, Tomis. 1995. "Self-Determination and the Israeli-Palestinian Conflict." In *From the Eye of the Storm,* ed. Laurence R. Bove and Laura Duhan Kaplan. Amsterdam: Rodopi, 223–48.

Kaplan, Robert. 1993. *Balkan Ghosts.* New York: St. Martin's Press.

Karp, Yehudit. 1984. *Investigation of Suspicions Against Israelis in Judea and Samaria.* Reprint. *The Karp Report: An Israeli Government Inquiry into Settler Violence Against Palestinians on the West Bank.* Washington, DC: Institute for Palestine Studies.

Kedourie, Elie, and Sylvia G. Haim. 1982. *Zionism and Arabism in Palestine and Israel.* London: Frank Cass.

Khalaf, Issa. 1991. *Politics in Palestine: Arab Factionalism and Social Disintegration 1939–1948.* Albany: SUNY Press.

Khalidi, Rashid. 1988. "Peasant Resistance to Zionism." In Said and Hitchens 1988, 207–33.
———. 1989. "The Palestinian People: Twenty-two Years After 1967." In Lockman and Beinin 1989, 113–26.
Khalidi, Rashid, et al., eds. 1991. *The Origins of Arab Nationalism.* New York: Columbia University Press.
Khalidi, Walid, ed. 1971. *From Haven to Conquest: Readings in Zionism and the Palestinian Problem until 1948.* Beirut: Institute for Palestine Studies.
———. 1984. *Before Their Diaspora.* Washington, DC: Institute for Palestine Studies.
———. 1989. *At a Critical Juncture: The United States and the Palestinian People.* Washington DC: Center for Contemporary Arab Studies, Georgetown University.
———. 1992. *All That Remains: The Palestinian Village Occupied and Depopulated by Israeli in 1948.* Washington, DC: Institute for Palestine Studies.
Khouri, Fred. 1985. *The Arab-Israeli Dilemma.* 3d ed. Syracuse: Syracuse University Press.
Kohn, Hans. 1971. "Zion and the Jewish National Idea." In Khalidi 1971, 807–39.
Korowicz, Marek. 1959. *Introduction to International Law.* The Hague: Martinus Nijhoff.
Kramer, Martin. 1994. "The Jihad Against the Jews," *Commentary* 98 (October): 38–42.
Krasner, Stephen D. 1976. "State Power and the Structure of International Trade." *World Politics* 28, no. 3 (April): 317–47.
Kretzmer, David. 1990. *The Legal Status of the Arabs in Israel.* Boulder, CO: Westview Press.
Lakos, Amos. 1991. *Terrorism, 1980–1990.* Boulder, CO: Westview Press.
Lansing, R. 1921. *The Peace Negotiations.* Boston: Houghton Mifflin.
Lapidus, Ira. 1992. "The Golden Age: The Political Concepts of Islam." *Political Islam, The Annals of the American Academy of Political and Social Science* 524 (November): 13–25.
Laqueur, Walter. 1972. *A History of Zionism.* New York: Holt, Rinehart and Winston.
———. ed. 1976. *The Israel-Arab Reader.* 3d ed. New York: Bantam Books.
———. 1987. *The Age of Terrorism.* Boston: Little, Brown.
Legrain, Jean-Francois. 1990. "The Islamic Movement and the Intifada." In Nassar and Heacock 1990, 175–90.
Leibowitz, Yeshayahu. 1992. *Judaism, Human Values, and the Jewish State.* Ed. Eliezer Goldman. Cambridge: Harvard University Press.
Leon, Abram. 1970. *The Jewish Question: A Marxist Interpretation.* New York: Pathfinder Press.
Lerner, Michael. 1994. *Jewish Renewal: A Path to Healing and Transformation.* New York: Putman's, 1994.
Levenson, Jon. 1988. *Creation and the Persistence of Evil.* San Francisco: Harper and Row.
Lichtenberg, Judith. 1994. "Moral Certainty." *Philosophy* 69:181–204.
Lilienthal, Alfred M. 1982. *The Zionist Connection II: What Price Peace?* New Brunswick, NJ: North American.
Lindholm, Helena. 1994. "Official and Popular Palestinian Nationalism: Creastions and Transformations of Nationalist Ideologies and National Identities 1917–1993." Licentiate thesis at the Peace and Development Research Institute, Goteborg University (Spring).
Litvinof, Barnet, ed. 1978. *The Letters and Papers of Chaim Weizmann,* vol. 14, series A, July 1929–October 1930. Jerusalem: Israel Universities Press.
Lloyd George, David. 1939. *Memoirs of the Peace Conference.* New Haven: Yale University Press.

Lockman, Zachary, and Joel Beinin, eds. 1989. *Intifada: The Palestinian Uprising Against Israeli Occupation.* Boston: South End Press.

Lomasky, Loren E. 1991. "The Political Significance of Terrorism." In Frey and Morris 1991, 86–115.

Louis, W. Roger, and Robert W. Stookey, eds. *The End of the Palestine Mandate.* London: I.B. Tauris & Co.

Lowy, Michael. 1992. *Redemption and Utopia: Jewish Libertarian Thought in Central Europe,* trans. H. Heaney. Stanford: Stanford University Press.

———. 1993. "Why Nationalism?" In *Real Problems, False Solutions: Socialist Register,* ed. R. Miliband and L. Panitch. London: Merlin Press.

Lustick, Ian. 1980. *Arabs in the Jewish State: Israel's Control of a National Minority.* Austin: University of Texas Press.

———. 1993. *Unsettled States, Disputed Lands.* Ithaca, NY: Cornell University Press.

McCarthy, Justin. 1990. *The Population of Palestine.* New York: Columbia University Press.

McGehee, Ralph W. *Deadly Deceits.* New York: Sheridan Square Publications.

MacIntyre, Alasdair. 1988. *Whose Justice? Which Rationality?* Notre Dame IN: University of Notre Dame Press.

———. 1990. *Three Rival Versions of Moral Enquiry.* Notre Dame IN: University of Notre Dame Press.

McMahan, Jeff, and Robert Mckim. 1993. "The Just War and the Gulf War." *Canadian Journal of Philosophy* 23:501–42.

Macpherson, C.B. 1962. *The Political Theory of Possessive Individualism: Hobbes to Locke.* Oxford: Clarendon Press.

Magnes, Judah. 1943. "Towards Peace in Palestine." *Foreign Affairs* 21:239–49.

Magnes, Judah, and Martin Buber. 1947. *Arab-Jewish Unity: Testimony Before the Anglo-American Commission for the Ihud (Union) Association.* London: Victor Gollancz, 42.

Malik, Charles. 1962. "The Near East: The Search for Truth." In Haim 1962, 189–224.

Mallison, W.T. Jr. 1968. "The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/ Jewish Agency: A Study in International and United States Law." *William and Mary Law Review* 9, no. 2 (Spring): 556–629.

———. 1982. "The United Nations and the National Rights of the People of Palestine." In Abu-Lughod 1982, 22–34.

Mallison, W. Thomas, and Sally V. Mallison. 1986. *The Palestine Problem in International Law and World Order.* London: Longman.

Margalit, Avishai, and Moshe Halbertal. 1994. "Liberalism and the Right to Culture." *Social Research* 61, no. 3 (Fall): 491–510.

Margalit, Avishai, and Joseph Raz. 1990. "National Self-Determination." *Journal of Philosophy* 87:439–61.

Marty, Martin, and R. Scott Appleby, eds. 1991. *Fundamentalism Observed.* Chicago: University of Chicago Press.

Mattar, Philip. 1988. *The Mufti of Jerusalem.* New York: Columbia University Press.

Mayr, Ernst. 1988. *Toward a New Philosophy of Biology: Observations of an Evolutionist.* Cambridge: Harvard University Press.

Mendes-Flohr, Paul, ed. 1983. *A Land of Two Peoples.* New York: Oxford University Press.

Mendes-Flohr, Paul, and Jehuda Reinharz, eds. 1980. *The Jew in the Modern World.* Oxford: Oxford University Press.

Metzger, Jan, Martin Oath, and Christian Sterzing. 1980. *This Land Is Our Land: The West Bank under Israeli Occupation.* London: Zed Press.

Mezvinsky, Norton. 1988. "Reform Judaism and Zionism: Early History and Change." In Tekiner et al. 1988, 313–40.

Moellendorf, Darrell. 1994. "Marxism, Internationalism, and the Justice of War." *Science and Society* 58, no. 3 (Fall): 264–86.

Moore, G.E. [1903] 1956. *Principia Ethica.* Cambridge: Cambridge University Press.

Moore, John Norton, ed. 1974. *The Arab-Israeli Conflict, Readings and Documents.* 3 vols. Princeton: Princeton University Press.

———. ed. 1991. *The Arab-Israeli Conflict: The Difficult Search for Peace (1975–1988).* 2 vols. Princeton: Princeton University Press.

Morgan, Michael, ed. 1987. *The Jewish Thought of Emil Fackenheim.* Detroit: Wayne State University Press.

Muslih, Muhammad. 1988. *The Origins of Palestinian Nationalism.* New York: Columbia University Press.

Najjar, Orayb. 1992. *Portraits of Palestinian Women.* Salt Lake City: University of Utah Press.

Nardin, Terry, and David R. Mapel, eds. 1992. *Traditions of International Ethics.* Cambridge: Cambridge University Press.

Nassar, Jamal R., and Roger Heacock, eds. 1990. *Intifada: Palestine at the Crossroads.* New York: Praeger.

Neff, Donald. 1981. *Warriors at Suez.* New York: Simon and Schuster.

———. 1988. *Warriors Against Israel.* Brattleboro, VT: Amana Books.

Neusner, Jacob, ed. 1993. *Israel and Zion in American Judaism: The Zionist Fulfillment.* New York: Garland.

Niebuhr, Reinhold. 1932. *Moral Man and Immoral Society.* New York: Scribner's.

Nielsen, Kai. 1993. "Secession: The Case of Quebec." *Journal of Applied Philosophy* 10:29–43.

Norman, Richard. 1995. *Ethics, Killing and War.* Cambridge: Cambridge University Press.

O'Brien, William V. 1991. *Law and Morality in Israel's War with the PLO.* New York: Routledge.

Ofuatey-Kodjoe, W. 1977. *The Principle of Self-Determination in International Law.* New York: Nellen.

Otsuka, Michael. 1994. "Killing the Innocent in Self-Defense." *Philosophy and Public Affairs* 23:74–94.

Oz, Amos. 1994. "The Israeli-Palestinian Conflict: Tragedy, Comedy, and Cognitive Block—A Storyteller's Point of View." In *The Tanner Lectures on Human Values,* ed. Grethe Peterson. Salt Lake City: University of Utah Press.

Palestine Human Rights Information Centre (PHRIC). 1989. *Children Imprisoned: A Collection of Data Base Case Studies of Palestinian Children Imprisoned by the Israeli Military.* East Jerusalem: PHRIC.

———. 1990. *The Massacre of Palestinians at Al-Haram Al Sharif, October 8, 1990: A Special Report.* East Jerusalem: PHRIC.

———. 1991. "Israel's Use of Electric Shock Torture in the Interrogation of Palestinian Detainees." East Jerusalem: PHRIC.

———. 1993. "Settler Lawlessness in the Occupied Territories: Deliberate Shootings, Racist Attacks and Mob Violence." *Human Rights Update,* November/December, 57–63.

Palumbo, Michael. 1987. *The Palestinian Catastrophe.* London: Faber and Faber.

Patai, Raphael. 1960. *The Complete Diaries of Theodor Herzl.* Vol. I. New York: Herzl Press and Thomas Yoseloff.

Pateman, Carol. 1985. "Feminism and Democracy." In *Democratic Theory and Practice,* ed. Graeme Duncan. New York: Cambridge University Press, 204–17.

Paust, J. 1980. "Self-Determination: A Definitional Focus." In *Self-Determination: National, Regional and Global Dimensions,* ed. Y. Alexander and R.A. Friedlander. Boulder, CO: Westview Press, 3–20.

Peled, Yoav. 1992. "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State." *American Political Science Review* 86, no. 2 (June): 432–43.

Perdue, William D. 1989. *Terrorism and the State: A Critique of Domination through Fear.* New York: Praeger.

Peretz, Don. 1990. *Intifada: The Palestinian Uprising.* Boulder, CO: Westview Press.

Perlmann, M. 1944. "Chapters of Arab-Jewish Diplomacy: 1918–22." *Jewish Social Studies* 6: 123–54.

Perrin, Ronald. 1995. "For Me to Be a Jew You Must Be a Palestinian: Complementarity as the Promise of Pluralism." *Soundings* 78:27–48.

Peters, Joan. 1984. *From Time Immemorial, the Origins of the Arab-Jewish Conflict over Palestine.* New York: Harper & Row.

Picard, Robert G. 1993. *Media Portrayals of Terrorism.* Ames: Iowa State University Press.

Pomerance, M. 1976. "The United States and Self-Determination: Perspectives on the Wilsonian Conception." *American Journal of International Law* 70:1–27.

———. 1984. "Self-Determination Today: The Metamorphosis of an Ideal." *Israel Law Review* 23: 310–39.

Porath, Yehoshua. 1974. *The Emergence of the Palestinian-Arab National Movement 1918–1929.* London: Frank Cass.

———. 1977. *The Palestinian Arab National Movement: From Riots to Rebellion.* London: Frank Cass.

Portugali, Juval. 1993. *Implicate Relations: Society and Space in the Israeli-Palestinian Conflict.* Dordrecht: Kluwer Academic Publishers.

Primoraz, Igor. 1990. "What Is Terrorism?" *Journal of Applied Philosophy* 7:129–38.

Quandt, William B. 1996. "The Middle East on the Brink: Prospects for Change in the 21st Century." *Middle East Journal* 50, no. 1 (Winter): 9–17.

Quigley, John. 1990. *Palestine and Israel: A Challenge to Justice.* Durham, NC: Duke University Press.

Rahner, Karl. 1979. "Towards a Fundamental Theological Interpretation of Vatican II." *Theological Studies* 40:716–27.

Randal, Jonathan. 1984. *Going All the Way.* New York: Random House.

Reinharz, Jehuda, and Anita Shapira, eds. 1996. *Essential Papers on Zionism.* New York: New York University Press.

Rice, Michael. 1994. *False Inheritance: Israel in Palestine and the Search for a Solution.* London: Kegan Paul International.

Roberts, Adam. 1990. "Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967." *American Journal of International Law* 84:44–103.

Roberts, Adam, and Richard Guelff, eds. 1982. *Documents on the Laws of War.* Oxford: Clarendon Press.

Robinson, Jacob. [1947] 1971. *Palestine and the United Nations.* Westport, CT: Greenwood Press.

Rokach, Livia. 1980. *Israel's Sacred Terrorism.* Belmont MA: Association of Arab-American University Graduates.

Rorty, Richard. 1993. "Human Rights, Rationality and Sentimentality." In *On Human Rights: The Oxford Amnesty Lectures 1993,* ed. Stephen Shute and Susan Hurely. New York: Basic Books, 112–35.

Rosenberg, Shalom. 1986. "The Link to the Land of Israel in Jewish Thought: A Clash of

Perspectives." In *The Land of Israel: Jewish Perspectives,* ed. Lawrence A. Hoffman. Notre Dame, IN: University of Notre Dame Press.
Ross, Lauren G., and Nadar Izzat Sa'id. 1995. "Palestinians: Yes to Negotiations, Yes to Violence." *Middle East Quarterly* 2:15–23.
Rostow, Eugene. 1990. "Bricks and Stones." *New Republic,* April 23, 19–23.
Rousseau, J.J. [1762] 1981. *The Social Contract.* Harmondsworth, England: Penguin Books.
Rubenberg, Cheryl A. 1986. *Israel and the American National Interest: A Critical Examination.* Urbana: University of Illinois Press.
Ruddick, Sara. 1989. *Maternal Thinking: Toward a Politics of Peace.* New York: Ballantine Books.
Ruether, Rosemary, and Marc Ellis, eds. 1990. *Beyond Occupation.* Boston: Beacon Press.
Ruether, Rosemary, and Herman J. Ruether. 1989. *The Wrath of Jonah: The Crisis of Religious Nationalism in the Israeli-Palestinian Conflict.* San Francisco: Harper & Row.
Ruse, Michael. 1993. "The New Evolutionary Ethics." In *Evolutionary Ethics,* ed. Mathew and Doris Nitecki. Albany: SUNY Press, 133–62.
Ryan, Alan. 1991. "State and Private; Red and White." In Frey and Morris 1991, 230–55.
Sachar, Howard M. 1969. *The Emergence of the Middle East.* New York: Knopf.
———. 1979. *A History of Israel.* New York: Knopf.
Said, Edward. 1979, *The Question of Palestine.* New York: Vintage Books.
———. 1988. "Conspiracy of Praise." In Said and Hitchens 1988, 23–31.
———. 1994. *Culture and Imperialism.* New York: Vintage.
———. 1996a. "Declaring War on Islam." *The Progressive* 60 (May): 30–32.
———. 1996b. *Peace and Its Discontents.* New York: Vintage.
Said, Edward W., and Christopher Hitchens, eds. 1988. *Blaming the Victims: Spurious Scholarship and the Palestine Question.* London: Verso.
Sakran, Frank C. 1948. *Palestine Dilemma: Arab Rights versus Zionist Aspirations.* Washington, DC: Public Affairs Press.
———. 1976. *Palestine, Still a Dilemma.* Ardmore, PA: Whitmore.
Sartre, Jean-Paul. 1946. *Reflexions sur la Question Juive.* Paris: Editions Morihien.
Schechtman, Joseph. 1961. *Fighter and Prophet: The Vladmir Jabotinsky Story.* New York: Thomas Yoseloff.
Schiff, Ze'ev, and Ehud Ya'ari. 1989. *Intifada: The Palestinian Uprising—Israel's Third Front.* New York: Simon and Schuster.
Schmid, Alex P., and Janny de Graaf. 1982. *Violence as Communication.* London: Sage.
Segal, Jerome. 1989. *Creating the Palestinian State: A Strategy for Peace.* Chicago: Lawrence Hill Books.
Selzer, Michael, ed. 1970. *Zionism Reconsidered: The Rejection of Jewish Normalcy.* London: Macmillan.
Senior, Nassau. 1835. *On National Property.* London: B. Fellowes.
Shahak, Israel. 1988. "Zionism as a Recidivist Movement: Origin of Its Separatist Aims." In Tekiner et al. 1988, 280–312.
———. 1994. *Jewish History, Jewish Religion.* London: Pluto Press.
Shalev, Aryeh. 1990. *The Intifada: Causes and Effects.* Tel-Aviv: Papyrus (in Hebrew).
Shehadeh, Raja. 1982. "The Land Law of Palestine: An Analysis of the Definition of State Lands." *Journal of Palestine Studies* 11, no. 2 (Winter): 82–99.
———. 1985. *Occupier's Law: Israel and the West Bank.* Washington, DC: Institute for Palestine Studies.
Shimoni, Gideon. 1995. *The Zionist Ideology.* London: Brandeis University Press.

Silvers, Robert, and Barbra Epstein, eds. 1991. *A Middle East Reader.* New York: New York Review of Books.

Smith, Charles. 1993. "The Invention of a Tradition: The Question of the Arab Acceptance of the Zionist Right to Palestine during World War I." *Journal of Palestine Studies* 22, no. 2 (Winter): 48–61.

Smith, Charles D. 1996. *Palestine and the Arab-Israeli Conflict.* 3d ed. New York: St. Martin's Press.

Smooha, Sammy. 1990. "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel." *Ethnic and Racial Studies* 13, no. 3 (July): 389–413.

Sonn, Tamara. 1990. "Irregular Warfare and Terrorism in Islam: Asking the Right Questions." In *Cross, Crescent, and Sword,* ed. James Turner Johnson and John Kelsay. New York: Greenwood Press, 129–47.

Sornarajah, M. 1981. "Internal Colonialism and Humanitarian Intervention." *Georgia Journal of International and Comparative Law* 2, no. 1 (Winter): 45–77.

Springborg, Patricia. 1986. "Politics, Primordialism, and Orientalism: Marx, Aristotle and the Myth of the Gemeinschaft." *American Political Science Review* 80, no.1 (March): 185–211.

Stace, William. 1947. "The Zionist Illusion." *Atlantic Monthly* 179:82–86.

Statman, Daniel. 1995. *Moral Dilemmas.* Amsterdam: Rodopi.

Stein, Kenneth. 1984. *The Land Question in Palestine, 1917–1939.* Chapel Hill: University of North Carolina Press.

Steiner, George. 1970. "The Unique and the Universal," *Commentary* 49 (May): 7–12.

———. 1975. "Israel's Failure of Vision." *The Listener* (September 18): 355–57.

Stockwell, John. 1978. *In Search of Enemies: A CIA Story.* New York: Norton.

Stone, Julius. 1980. "Israel, the United Nations, and International Law Memorandum of Law." In Moore 1991, 4:776–820.

———. 1981. *Israel and Palestine.* Baltimore: Johns Hopkins University Press.

Strauss, Leo. 1965. *Spinoza's Critique of Religion.* New York: Schocken Books.

Strauss, Leo, and Joseph Cropsey, eds. 1972. *History of Political Philosophy.* Chicago: University of Chicago Press.

Strawson, Peter. 1959. *Individuals.* London: Methuen.

Suzuki, E. 1976. "Self-Determination and World Public Order: Community Response to Territorial Separation." *Virginia Journal of International Law* 16: 779–862.

Swedenburg, Ted. 1995. *Memories of Revolt.* Minneapolis: University of Minnesota Press.

Swedish Save the Children Fund (SCF). 1990. *The Status of Palestinian Children during the Uprising in the Occupied Territories.* Stockholm: Swedish Save the Children Fund.

Talhami, Ghada. 1990. "Morality and Expediency in the Policies of Zionist Israel." In Ruether and Ellis 1990, 231–49.

Tamir, Yael. 1991. *"The Right to National Self-Determination," Social Research* 58, no. 3 (Fall): 565–90.

———. 1993. *Liberal Nationalism.* Princeton: Princeton University Press.

Taylor, Alan R. 1974. *The Zionist Mind.* Beirut: Institute for Palestine Studies.

Teichman, Jenny. 1989. "How to Define Terrorism?" *Philosophy* 64:505–17.

Tekiner, Roselle, Samir Abed-Rabbo, and Norton Mezvinsky. 1988. *Anti-Zionism: Analytical Reflections.* Brattleboro, VT: Amana Books.

Temperley, H.W.V. 1920. *A History of the Peace Conference of Paris.* 2 vols. London: Oxford University Press.

Tessler, Mark. 1980. *Arabs in Israel.* Hanover, NH: American Universities Field Staff.

———. 1994. *A History of the Israeli-Palestinian Conflict.* Bloomington: Indiana University Press.

Thompson, Richard H. 1989. *Theories of Ethnicity: A Critical Appraisal.* New York: Greenwood Press.

Thompson, Thomas 1992. *The Early History of the Israelite People,* Leiden, Netherlands: E.J. Brill.

Thomson, Judith Jarvis. 1991. "Self-Defense." *Philosophy and Public Affairs* 20:283–310.

Thornberry, Patrick. 1989. "Self-Determination, Minorities, Human Rights: A Review of International Instruments." *International and Comparative Law Quarterly* 38 (October): 867–89.

Trivers, R.L. 1971. "The Evolution of Reciprocal Altruism." *The Quarterly Review of Biology* 46 (March): 35–47.

Umozurike, U.O. 1972. *Self-Determination in International Law.* Hamden, CT: Archon Books.

United Nations Special Committee on Palestine (UNSCOP). 1947. *Report on Palestine to the General Assembly.* New York: Somerset Books.

U.S. Department of State. 1994. *Patterns of Global Terrorism: 1993.* Washington, DC: Office of the Secretary of State.

U.S. House. [1944] 1970. Committee on Foreign Affairs. Reprint. *The Jewish National Home in Palestine.* Introduction by Ben Halpern. New York: KTAV Publishing House.

Vereté, Mayir. 1982. "The Balfour Declaration and Its Makers." In *Palestine and Israel in the 19th and 20th Centuries,* ed. Elie Kedourie and Sylvia G. Haim. London: Frank Cass.

Vetter, Harold J., and Gary R. Perlstein. 1991. *Perspectives on Terrorism.* Pacific Grove, CA: Brooks/Cole.

Vital, David. 1975. *The Origins of Zionism.* Oxford: Clarendon Press.

Walzer, Michael. 1977. *Just and Unjust Wars.* New York: Basic Books.

———. 1983. *Spheres of Justice: A Defense of Pluralism and Equality.* New York: Basic Books.

———. 1990. "Nation and Universe." *Tanner Lectures on Human Values,* no. 11. Salt Lake City: University of Utah Press, 509–56.

Wardlaw, Grant. 1982. *Political Terrorism.* Cambridge: Cambridge University Press.

Weizmann, Chaim. 1942. "Palestine's Role in the Solution of the Jewish Problem." *Foreign Affairs* 20:324–38.

———. 1952. *Excerpts from His Historic Statements, Writings and Addresses.* New York: Jewish Agency for Palestine.

Weitz, Joseph. 1965. *My Diary and Letters to the Children.* Tel Aviv: Massada.

Wellman, Carl. 1979. "On Terrorism." *Journal of Value Inquiry* 13:250–58.

Whitehead, Alfred North. 1939. "An Appeal to Sanity." *Atlantic Monthly* 158:309–20.

Wigoder, Geoffrey, ed. 1994. *New Encyclopedia of Zionism and Israel.* 2 vols. Teaneck, NJ: Farleigh Dickinson University Press.

Wilken, Robert. 1992. *The Land Called Holy.* New Haven: Yale University Press.

Wilkinson, Paul. 1974. *Political Terrorism.* London: Macmillan.

Wilson, W. 1927. *War and Peace: Presidential Messages, Addresses, and Public Papers (1917–1924),* ed. R.S. Baker and W.E. Dodd. 2 vols. New York: Harper.

Wistrich, Robert, ed. 1990. *Anti-Zionism and Antisemitism in the Contemporary World.* New York: New York University Press.

Zohar, Noam. 1993. "Collective War and Individual Ethics." *Political Theory* 21:606–22.

Zuaiter, Akram. 1994. *For the Sake of My Nation.* Beirut: Alasriyya.

Zureik, Elia T. 1979. *The Palestinians in Israel: A Study in Internal Colonialism.* London: Routledge and Kegan Paul.

Contributors

Robert B. Ashmore is Professor of Philosophy at Marquette University and director of Marquette's Center for Ethics Studies. He is the author of *Building a Moral System* (1987), and coeditor of two volumes: *Ethics Across the Curriculum: The Marquette Experience* (1991), and *Teaching Ethics: An Interdisciplinary Approach* (1994). He serves on the national advisory board of the Middle East Policy Council.

Lynne Belaief is Professor Emerita, City University of New York, and has spent several semesters as Visiting Fellow at the Truman Institute of the Hebrew University. She is the author of *Toward a Whiteheadian Ethics* (1984) and has published articles in *Philosophy and Phenomenological Research, Ethics,* and *Philosophy Today.*

David B. Burrell, C.S.C., is the Hesburgh Professor in Philosophy and Theology at the University of Notre Dame. His recent publications include *Knowing the Unknowable God: Ibn Sina, Maimonides, Aquinas* (1986), and *Freedom and Creation in Three Traditions* (1993). He has coedited a book (with Yeheskel Landau) on Jerusalem as an interfaith reality: *Voices from Jerusalem* (1991). He has translated some of the works of Al-Ghazali.

Milton Fisk is Professor of Philosophy at Indiana University. He is the author of *Nature and Necessity* (1973), *Ethics and Society* (1980), and *The State and Justice* (1989). Currently, he is completing a book on health care reform and the public good. He has held visiting positions in Colombia, Mexico, and Russia, and is at present on the executive board of the American Philosophical Association.

Alan B. Gewirth is the Edward Carson Waller Distinguished Service Professor of Philosophy at the University of Chicago. He is a fellow of the American Academy of Arts and Sciences, and a past president of the American Philosophical Association and the American Society for Political and Legal Philosophy. His books include *Reason and Morality* (1978), *The Community of Rights* (1996), *Human Rights: Essays on Justification and Applications* (1982), and *Marsilius of Padua and Medieval Political Philosophy* (1951).

James A. Graff is Associate Professor of Philosophy at the University of Toronto, Victoria College. He is the author of *Palestinian Children and Israeli State Violence* (1991), and of various articles on Palestinian children under Israeli occupation, human rights and self-determination, just war and the Gulf War. He is president of the Near East Cultural & Educational Foundation of Canada.

Hugh R. Harcourt has taught Humanities and Philosophy at Beirut College for Women, American University of Beirut, Portland State University, and Birzeit University. He is now retired and lives with his wife in Cyprus.

Robert L. Holmes is Mercer Brugler Distinguished Teaching Professor, University of Rochester. He is the author of *War and Morality* (1989) and *Basic Moral Philosophy* (1993), and editor of *Nonviolence in Theory and Practice* (1990). Currently, he is the editor of *Public Affairs Quarterly.*

Tomis Kapitan is Professor of Philosophy at Northern Illinois University. Previously he taught at Indiana University, Indiana State University, Birzeit University, and East Carolina University. His published work, focusing primarily on issues in metaphysics and philosophy of logic, has appeared in several journals, including *American Philosophical Quarterly, Analysis, Erkenntnis, Logique et Analyse, Nous, Philosophical Papers, Philosophical Perspectives, Philosophical Quarterly,* and *Philosophical Studies.*

Muhammad Ali Khalidi has taught Philosophy at Columbia University, the University of Chicago, and at the University of Nevada in Reno. He is the author of "Carving Nature at the Joints" *Philosophy of Science* (1993) and "Two Concepts of Concept" *Mind & Language* (1995). Currently, he is working on a book dealing with conceptual change in science.

Erin McKenna is Assistant Professor of Philosophy at Pacific Lutheran University. Her recent publications include "Brief Reflections Concerning Feminist Pedagogy," in *Metaphilosophy;* "Feminism and Vegetarianism: A Critique of Peter Singer," in the *Journal of Philosophy in the Contemporary World;* "Locke's Political Philosophy," in *Survey of Social Science;* "Social Contract Theory," in *Ready Reference Ethics;* and "The Occupied West Bank, Sovereignty Betrayed," in *Contemporary Philosophy.*

Sari Nusseibeh is President of Al-Quds University in East Jerusalem. He received an undergraduate degree at Oxford University and a doctorate in Islamic Philosophy at Harvard University. His most recent publications include *On Freedom* (Al-Saqi, 1995) and "Epistemology" in *History of Islamic Philosophy* (Routledge, 1995). He has written extensively on Palestinian issues, including *No Trumpets, No Drums* (coauthored with Mark Heller, 1991).

Jerome M. Segal is a Research Scholar at the Institute for Philosophy and Public Policy and the Center for International and Security Studies, both at the University of Maryland. He is also president of the Jewish Peace Lobby and the author of *Creating the Palestinian State—A Strategy for Peace* (1989). His articles about the Israeli-Palestinian conflict have appeared in the *New York Times,* the *Washington Post,* the *Los Angeles Times, Ha'aretz,* and *Al Quds.* In 1987 he was part of one of the first American Jewish delegations to open a dialogue with the PLO.

Daniel Statman is Senior Lecturer in Philosophy at Bar-Ilan University. He is the author of *Moral Dilemmas* (1995), coauthor of *Religion, and Morality* (1993) and editor of *Moral Luck* (1993) and *Virtue Ethics* (forthcoming). He has published articles in several philosophical journals including *American Philosophical Quarterly, Philosophical Quarterly, Ratio,* and *Philosophical Papers.*

Yael Tamir is Professor of Philosophy at Tel Aviv University. She is the author of *Liberal Nationalism* (1993) and editor of *Democratic Education in a Multicultural State* (1995). Her articles have appeared in several journals, including *World Politics, Educational Philosophy and Theory, Journal of the Philosophy of Education,* and *Social Research.*

Manfred Vogel is Professor in the Religion Department at Northwestern University. He is the author of *Feuerbach's Philosophy of the Future* (1966), *A Quest for a Theology of Judaism* (1987), *The Constituting of Profane/Sacred History in Franz Rosenzweig* (1996), and articles in various journals, including *Modern Judaism, Harvard Theological Review,* and *Journal of Ecumenical Studies.*

Index