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Left and Right and the Middle East: Notes on the Social Construction of Race

Jonathan Zasloff*

Introduction

The Israeli/Palestinian conflict churns out irony as prodigiously as violence. In late 2003, Israelis found themselves receiving support and a solidarity visit from Gianfranco Fini, the leader of the Italian political party that is the successor to Mussolini's fascists—a visit that they pointedly did not reject.[1] Meanwhile, European social democrats took pains to honor Yasir Arafat and support the Palestinian Authority, which under his direction maintained a brutal human rights record.[2]

These ironies usually go unnoticed because they reflect perhaps the conflict's only uncontested political fact: generally speaking, the Left backs the Palestinians and the Right supports the Israelis. There are, of course, exceptions, but the overall pattern is clear.

The American Right's support for the Jewish state has become a commonplace. Conservative politicians such as Tom Delay and Sam Brownback addressed the Knesset, and religious Christian support for Zionism fits nicely into their sometimes-apocalyptic worldview. But it is broader than a contemporary American phenomenon, and stems from more than religion In the early 1980's, Ronald Reagan cemented a close relationship with Israel's Likud government, even though then-Prime Minister Menachem Begin was often difficult to deal with and Reagan himself did not share the religious views of his conservative Christian supporters. (The President who at the time who identified himself as born-again, Jimmy Carter, had consistently poor relations with

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[1] See "On Visit to Israel, Italian Official Denounces Country's Fascist Past," Int'l Herald Tribune, Nov. 25, 2003, at http://www.iht.com/articles/118909.html (visited Sept. 28, 2004)

[2] See, e.g., http://www.hrw.org/reports/2001/pa/isrpa1101.pdf; http://www.hrw.org/reports/1997/palestina/ ("The first three years of Palestinian self-rule have been characterized by widespread arbitrary and abusive conduct by the PA and its mushrooming security agencies. Hundreds of arbitrary detentions were carried out that violated defendants' most elemental due-process rights. Those who were interrogated were commonly tortured. Physical abuse caused or contributed to many of the fourteen deaths that occurred in custody."); The Amnesty Int'l 2004 Report on PA: http://web.amnesty.org/report2004/pse-summary-eng; The Freedom House 2004 Report on PA: http://www.freedomhouse.org/research/freeworld/2004/countryratings/israel-palestinian.htm; The State Department Country Reports on Human Rights Practices, 2003, on PA: http://www.state.gov/g/drl/rls/hrrpt/2003/27929.htm#occterr

Jerusalem). And across the Atlantic, the pattern holds, although not to the same degree. In England, Margaret Thatcher moved London much closer to Israel. More recently, Israelis applauded the EU Presidency of Italian Prime Minister Silvio Berlusconi.

The Left (as always) is somewhat more complicated, mainly because of pro-Israel American liberals,[3] and the Democratic Party's staunch support for the Jewish state. But here, too, the pattern is clear. In the late 1970's Jesse Jackson spearheaded the American Left's embrace of Arafat--both literally and figuratively. Even such pre-eminent and non-radical voices as Thomas Franck accused the Bush Administration of going to war purely to satisfy the desires of Ariel Sharon's government.[4] Ralph Nader echoed this argument, calling Israel the "puppeteer" of the US government[5] and called for ending American aid to the Jewish state.[6] The left-liberal *New York Review of Books* has become the central address of respectable anti-Israel opinion, regularly publishing such voices as Tony Judt, Henry Siegman and Robert Malley—all of whom squarely blame Israel for the current negotiations impasse.[7] For decades, *The Nation* gave prominent and valuable column space to the late Edward Sa'id—and not because of Sa'id's reputation as a literary critic.[8] The New Republic, which The Nation dwarfs in circulation,[9] is often accused of being "neoconservative" on Middle East policy precisely because it is staunchly pro-Israel.[10]

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[3] It is not unreasonable to explain a large portion of American liberal support for Israel on the grounds that many of the most prominent and articulate American liberals are Jewish. Al Franken, Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right **pin cite** (2003).

[4] Thomas Franck, Presentation at Princeton Conference on Unilateralism and Multilateralism in U.S. Foreign Policy, Dec. 6, 2003 (on file with author).

[5] See Ralph Nader, "The Muslim Vote in 2004," June 28, 2004, at http://www.cnionline.org/hearings/muslims/transcript.htm (visited Feb. 9, 2005). Nader's speech was given before the "Council for the National Interest," an explicitly anti-Israel pressure group. See http://www.cnionline.org/about/ (visited Feb. 9, 2005).

[6] See Paul Sperry, "Ralph Nader: The Unchallenged Hero to U.S. Muslims," FrontPage Magazine, Mar. 26, 2004, at http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=12737 (visited Feb. 9, 2005) ("While no anti-Semite, Nader has publicly deplored Israeli retaliation for Palestinian suicide attacks and recommended suspending U.S. aid to Israel.")

[7] See, e.g., Henry Siegman, "Sharon and the Future of Palestine," N.Y. Rev. Books, Dec. 2, 2004, at 7; Tony Judt, "Israel: The Alternative," N.Y. Rev. Books, Oct. 23, 2003; http://www.nybooks.com/articles/16671 (visited Nov. 27, 2004); Robert Malley & Hussein Agha, "Three Men in a Boat," N.Y. Rev. Books.

[8] Sa'id's major political focus--and a chief cause of his celebrity--was in advocating for the Palestinians. See Edward Sa'id, The Question of Palestine (1979); Edward Sa'id, The End of the Peace Process (2001).

[9] The New Republic's circulation is 60,000 (http://www.tnr.com/ad-policies.mhtml) (visited Jan. 4, 2005), whereas The Nation's circulation is 185,000 (telephone interview with Ellen Bollinger, circulation director, The Nation, Jan. 4, 2005)

[10] See, e.g., Lewis H. Lapham, "Mythography," Harper's, Feb. 1, 2002 (describing TNR editor-in-chief Martin Peretz as "neoconservative); David Remnick, "Target: Commentary Magazine under Fire From a

Indeed, the more that suicide bombers succeeded, the more that left-wing intellectuals attacked the Israelis.[11] It finally got to the point that Michael Walzer, whose progressive credentials could not be questioned by anyone, had to criticize his ideological compatriots for what he saw as a blind anti-Israel bias.[12]

Walzer might have also pointed to an equal and opposite bias on the right. But it is more than just bias; the ideological pattern itself makes little sense. Closer examination of the Israeli and Palestinian positions on key issues reveals that in fact the positions should be somewhat altered: the left should identify more closely with the Jewish state, and the right should see in the Palestinian position important aspects of its own ideology. Powerful arguments exist for a substantial complexification in current political alignments. The current, nearly-lockstep positions make little sense.

The persistence of these anomalies derives from the powerful influence of race on the debate. Racial politics has moved both left and right into taking positions that sit uneasily with their ideological commitments. This racial thinking, however, relies not on facts but rather on an elaborate social construct--a construct that, I argue, may stem from long-outdated Cold War and inter-Arab rivalries. Partisans of both sides may see themselves as engaged in a pressing struggle, but just as much they are echoing the battles of the past.

How did all of this happen? And why should lawyers care? This Article suggests that legal theory provides a particularly incisive prism through which to view the

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New Journal," Washington Post, June 13, 1986. (noting that "Under Peretz, The New Republic has taken on a more conservative tone and frequently criticizes the leftist politics of The Nation.")

[11] Paul Berman has discussed this trend in detail, linking it to antiwar socialism in the 1930's. See Paul Berman, Terror and Liberalism 128-44, and especially at 134-35 (2003).

[12] See "The United States in the World – Just Wars and Just Societies: An Interview with Michael Walzer," in Imprints: A Journal of Analytical Socialism," online content from Vol. 7 No. 1 (2003), at http://eis.bris.ac.uk/~plcdib/imprints/michaelwalzerinterview.html (visited Nov. 27, 2004). Walzer commented:

> Since I have often been a critic of Israeli governments, I am reluctant to call such criticism anti-Semitic. But it does seem to me that there is an oddly disproportionate hostility toward Israel on the European left, which requires some explanation. I know, for example, people my own age who indignantly refuse even to consider a visit to Israel, but who had no trouble visiting France at the height of the Algerian war and have no trouble visiting China today despite its brutal policy in Tibet (which includes a far more massive settlement program than Israel has attempted in the West Bank). Indeed, much of the criticism directed at Israel has more to do with the existence of the state than with the policies of any of its governments – which was, again, never the case with France or with Germany after World War Two or with China today. Something is seriously wrong here.

ideological conflict and its racially-inflected origins. In it, I consider three prominent areas of legal theory and attempt to show how they reveal both the ideological contradictions of the Israeli-Palestinian conflict and the roots of those contradictions. The affirmative action debate helps illuminate the controversy over Israel's Jewish character and the "Law of Return", which grants Israeli citizenship to Jews but not to other groups.[13] The controversy over the Takings Clause sheds light on the Palestinian claim of a "right of return".[14] And the contributions of critical race theory, particularly its insight into how the very notion of race is socially constructed, helps us to understand more fully the political alignments (and misalignments) that comprise the Middle East debate.[15] Legal theory, of course, cannot solve the conflict. It can, however, help us understand its roots in a more profound way.[16]

This Essay proceeds in three parts. First, I examine the "Law of Return," which entrenches Israel's status as a Jewish state. Second, I consider the Palestinian claim of the "Right of Return," which torpedoed the Camp David and Taba negotiations in 2000-2001. Finally, I argue that race has structured this conflict, and suggest that in the Middle East, race is more precisely defined as a geopolitical construction: world politics has pressured Israelis, Palestinians, and their external supporters to view them in ways that comport little with the facts on the ground.

II. The Law of Return

Israel defines itself as a Jewish state,[17] and takes special care to maintain itself as the preserve of a particular ethnicity. It is virtually impossible to immigrate to Israel[18] unless you are a member of a specific ethnic group: the Jews. But if you are Jewish, it is

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[13] See Section II infra.
[14] See Section III infra.
[15] See Section IV infra.
[16] In this regard, it is useful to note that while some scholars have mentioned in passing that the politics of the Israeli-Palestinian conflict create strange ideological bedfellows, they seem puzzled by it and do not dwell on the issue. See Alon Harel, "Whose Home Is It? Reflections on the Palestinians' Interest in Return," 5 Theoretical Inquiries L. 333, 334 (July 2004) (noting that "the politics surrounding the right of return are not passionate; they are enigmatic.").
[17] Cite to appropriate Basic Law, Israeli Declaration of Independence.
[18] See http://www.kedma.co.il/MiddleEast/states/israel/israel%20immigration/immigration_low.htm (visited Oct. 28, 2004), which states that, aside from Jews, the spouses, children and grandchildren of Jews, "Israeli law does not grant residency or citizenship status to anyone, regardless of how long they have stayed in Israel as tourists or on working visas."

easy to immigrate: Israel's "Law of Return" explicitly grants automatic citizenship to anyone deemed under the criteria set forth in the law to be Jewish.[19]

A. Zionism, Racism and Affirmative Action

For Arabs, the Law of Return is tantamount to official racism. Their reasoning is simple: racism is a means privileging one racial or ethnic group over another.[20] The Law of Return privileges Jews over other groups. Therefore, the foundation of Israeli population policy—and thus of Zionism itself—is racism.[21]

Such an argument might find many sympathizers within the west, and particularly the United States. But these sympathizers would be of the right, not the left. Indeed, the Palestinian argument resembles nothing so much as the views of affirmative action opponents, who argue that group preferential policies are illegitimate and effectively amount to discrimination.[22] More generally, it resembles the arguments of those conservatives who hold that group cultural rights undermine individual rights and thus must be rejected in a free society.[23]

In a similar fashion, advocates of the Law of Return—and Zionism generally—would find congenial echoes in the arguments of affirmative action supporters, for the

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[19] See Law of Return, 5710/1950, as amended, at http://www.jewishvirtuallibrary.org/jsource/Immigration/Text_of_Law_of_Return.html (visited Sept. 28, 2004).

[20] Henry Cattan argues that the point is self-evident. See Henry Cattan, Palestine and International Law 222 (2d ed. 1976) ("Does not her [Israel's] refusal to allow the return of the Palestinian refugees to their homes while under the Law of Return she treats all the Jews in the world as potential citizens who can freely immigrate to Israel and acquire instant citizenship on arrival constitute racism and racial discrimination?"). See also Seminar of Arab Jurists on Palestine, The Palestine Question 54-59 (Edward Rizk trans. 1967) (noting the "Anti-Arab Racialism of Israel in Colonial Thinking"); W.T. Mallinson & S.V. Mallinson, An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question 41 (1979) ("The Zionist 'Jewish People' concept was developed by the Zionist Organization/Jewish Agency prior to the establishment of the State of Israel . . . 'The Jewish people' concept within the State of Israel accords its members certain privileges and rights on a discriminatory basis which are denied to other [non-Jewish] Israelis. (. . .) Because of the discriminatory characteristics of the 'Jewish people' concept, it would constitute a violation of Articles 55 and 56 of the Charter of the United Nations if the General Assembly recognized it.") Mallinson and Mallinson's report was prepared for a United Nations body, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, and is reprinted as UN Doc. ST/SG/SER.F/4, 1979.

[21] This was the underlying sentiment behind the United Nations General Assembly's "Zionism-as-Racism" resolution. See UNGA Res. 3379 (Nov. 10, 1975) ("The General Assembly . . . determines that Zionism is a form of racism and racial discrimination.").

[22] See Article XXX, Cal. Const. of 1879 (Proposition 209)(enacted by initiative, Nov. 4, 1996). This is the universal understanding of the initiative. Hi-Voltage opinion. Volokh article on interpreting it.

affirmative action analogy works quite well in the case of Zionism and the Jews. We can see this by examining the justifications for affirmative action.

Affirmative action policies are routinely justified on the basis of compensation for past discrimination. Alternatively, affirmative action is defended as a way to promote diversity.[24] Political theorists have explicitly extended these principles to create an international sphere for affirmative action. James Anaya notes that

> groups with distinctive cultural attributes, whether branded ethnic or other, are properly regarded differently from other groups to the extent there is a widely shared interest in securing the integrity of diverse cultures. . . . Furthermore, among the world's many cultural and ethnic groups, some require extraordinary protection because of certain conditions often related to minority status, or are entitled to remedies for historical or continuing patterns of discrimination.[25]

In other words, equality often requires a more complex definition than simple antidiscrimination: "[n]ot all groups, or types of groups, are the same."[26]

These justifications—if accepted on their own terms--work well in defense of a Jewish state. In terms of historical discrimination, it is hard to argue with Justice Frankfurter's observation that the Jews represent "the most persecuted and vilified minority in history."[27] Since there is no other state of the Jewish people, Zionism-as-diversity also makes common sense. And best of all for diversity advocates, it in no way implies the lack of a Palestinian state--just the opposite. It suggests instead that there should be "two states for two peoples", the formulation proposed by the Barak government and rejected by Yasir Arafat.[28]

The most sophisticated defenses of affirmative action acknowledge that it is not a perfect solution, and that it carries important costs. A similar argument appears in much early Zionist writing. In late 1945, before a joint Anglo-American Committee of Inquiry, Chaim Weizmann confessed that the Palestine issue was not one between right and

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[23] See, e.g., Chandran Kukathas, "Are There Any Cultural Rights?", 20 Pol. Theory 105-139 (1992)(answering no).
[24] See, e.g., Patricia Williams, The Alchemy of Race and Rights
[25] S. James Anaya, "On Justifying Special Ethnic Group Rights: Comments on Pogge," in Nomos XXXIX: Ethnicity and Group Rights 222, 229 (Will Kymlicka & Ian Shapiro eds. 1997).
[26] Id.
[27] Barnette v. West Virginia Bo. Of Educ., 319 U.S. 624 (1943) (Frankfurter, J. dissenting).
[28] See Dennis Ross, The Missing Peace (2004); see also "Interview with Dennis Ross" on Fox News Sunday, Apr. 21, 2002, at http://www.foxnews.com/story/0,2933,50830,00.html (visited Sept. 29, 2004).

wrong, but rather between the greater and the lesser injustice. He conceded to the Committee that "there may be some slight injustice politically if Palestine is made a Jewish state."[29] But "Palestine is to the Jews what Baghdad, Cairo and Damascus all rolled together are to the Arabs, and I think the line of least injustice demands that we should be give our chance."[30]

To this affirmative action argument, Palestinians have a ready answer: the Jews have suffered horrific oppression in years past, they might concede, but this experience was at the hands of Christians, not Muslims. After all, the Holocaust happened in Germany, not Palestine. This is a long-standing position: the Saudi delegate told the United Nations in 1947 that "the Arabs regretted the suffering that [the Jews] had met at the hands of Hitler. But that suffering should not be used as a weapon for encroaching on the rights of others."[31]

Such an argument is a staple of the modern conservative position. Justice (then-Professor) Antonin Scalia famously expressed his contempt for the notion of "the evils that 'we' whites have done to blacks and that 'we' must now make restoration for. My father came to this country when he was a teenager. Not only had he never profited from the sweat of any black man's brow, I don't think that he had ever seen a black man."[32]

Palestinians might still contend that the situations diverge because Arabs themselves are the victims of western imperialism; it is a cruel irony, they claim, for disadvantaged groups to become victims again. Once again, they find themselves echoing Scalia, who noted in the same speech that many of those disadvantaged by affirmative action are not the elite, but rather working-class white ethnics who had also suffered discrimination.[33]

These similarities are not cosmetic. They derive from the deep conceptions of justice held by both sides. In particular, they turn on the familiar question of whether

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[29] Weizmann's testimony is reprinted in a pamphlet entitled The Right to Survive (1946). This line appears on page 16.
[30] Id. at 17.
[31] United Nations, Official Records of the Second Session of the General Assembly, Ad Hoc Committee on the Palestinian Question, at 94 (15th Meeting, Oct. 16 1947). The strength of the Arab "regret" might be stronger, depending upon the language used. The French translation reads that "les Arabes *deplorent* les souffrances endurees par les Juifs aux mains d'Hitler." (emphasis added).
[32] See Antonin J. Scalia, Disease as Cure: "In Order to Get Beyond Racism, We Must First Take Account of Race," 1979 Wash. U. L. Q. 147, 152.
[33] Id. (put in quote).

national or ethnic groups can have rights.[34] The progressive, and in this case the Israeli, position is yes; the conservative, and in this case the Palestinian, position, is no. For Israelis, the Law of Return is the recognition of the Jewish people's group right of self-determination; for Palestinians, it is the privileging of one group over another based upon ethnicity.[35]

B. Group Rights and Self-Determination

It is not quite so simple, of course. Simply because we might acknowledge the legitimacy of group rights, even group political rights, does not necessarily imply that these rights must be exercised in the context of a state. American advocates of affirmative action argue that their preferred policy is to integrate racial minorities into the American mainstream, not serve as a prelude for separatism.[36] More recently, several major scholars have argued against a right to statehood; peoples have the right of self-determination, they argue—but only within the states in which they currently reside.[37]

Reviewing these arguments, however, demonstrates that this prominent brand of self-determination scholarship hardly applies to Israel and Zionism—at least in its current context. The central theme of the anti-right-to-statehood argument centers upon the right

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[34] Jacob Levy had made this analogy explicit, although not in the Middle Eastern context. See Jacob T. Levy, "Classifying Cultural Rights," in Kymlicka & Shapiro, supra note --, at 22, 25 (defining affirmative action and self-government as two forms of group rights.).

[35] See, e.g., David Clayman, "The Law of Return Reconsidered", at http://www.jcpa.org/jl/hit01.htm (visited Oct. 28, 2004)(noting that the Law of Return is a "cardinal principle of Zionism"). This was the understanding of the founders of the state. See David Ben-Gurion: Statement of Introduction of the Law of Return before the Knesset, July 3, 1950, Knesset Debates, Vol. 6 (The Law of Return is one of the fundamental laws of the state of Israel. It embodies a central purpose of our state, the purpose of ingathering of exiles. This law states that it is not this state which grants Jews from abroad the right to settle in it, but that this right is inherent by virtue of one's being a Jew, if one wishes to settle in the country.").

Self-determination might be advanced for the purposes of promoting individual well-being or even individual rights, see, e.g. Avishai Margalit & Joseph Raz, "National Self-Determination," 87 J. Phil. 439, 448, 450 (1990)(noting that "the key to [explaining the value of self-determination] is in the importance of these groups to the well-being of their members . . . the moral importance of the group's interest depends on its value to individuals."). But this does not vitiate the nature of the self-determination right (however extensive) as a group right. See Vernon Van Dyke, "The Individual, the State, and Ethnic Communities in Political Theory," 29 World Pol. 343, 360 (April 1977)(observing that self-determination "is essentially the moral right of a group.").

[36] Cites.

[37] See, e.g., Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (1995); Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory (1990); Iris Marion Young, Justice and the Politics of Difference (1990); Arend Liphardt, Democracy in Plural Societies; **more**

to *secede*. Donald Horowitz worries about the instability caused by a general right of secession: secession, he contends, could create endless irredentism and disrupt the current configuration of states which, no matter how imperfect, at least provides a somewhat reasonable baseline.[38] Similarly, Allen Buchanan argues that secession usually "provoke[s] massive violence and cause[s] political instability."[39] Lea Brilmayer emphasizes another problem with a right to statehood: any secession movement seeks not merely self-determination, but control over a particular territory. She contends, however, that there is little justification for necessarily connecting the two. Thus, a right to self-determination can only imply a right to statehood if there also exists a collective right to territory: a general right to statehood cannot exist.[40]

The logic of these arguments, however, actually militates in favor of the Law of Return: enforcing it preserves stability of current international boundaries by preserving the current nature of Israel. Similarly, since it is essentially an instrument for preserving the status quo of international boundaries, the Law of Return hardly runs afoul of territorialist concerns.

Anti-Zionists might immediately object that the Law of Return only overcomes the anti-secessionist and territorialist claims because of the alleged illegitimacy of the creation of Israel in 1948. Whatever the historical accuracy of such an argument, it does not go to the anti-secessionist objections. When the British government decided to give up the League of Nations mandate for Palestine, it was clear that new states were going to be formed; and both Jews and Arabs initially claimed the whole of the territory. The Jews eventually agreed to partition, but it hardly seems just to criticism Zionism on anti-secessionist grounds for agreeing to compromise with a competing nationalism.

A potential territorialist challenge to Zionism is more serious. The argument would run that since Jews never had any territorial claims to Palestine to begin with, their claims for self-determination in Palestine were wholly illegitimate historically. Thus, justifying contemporary Zionism on territorialist grounds is just as illegitimate.

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[38] This description is based largely upon two recent influential articles: Donald Horowitz, "A Right to Secede?", in Secession and Self-Determination: Nomos XLV 50-76 (Allen Buchanan & Stephen Macedo eds. 2003); Donald Horowitz, "Self-Determination: Politics, Philosophy, and Law," in Ethnicity and Group Rights: Nomos XXXIX 421-63 (Ian Shapiro & Will Kymlicka eds. 1997).

[39] Allen Buchanan, Justice, Legitimacy and Self-Determination 369-70 (2004).

Upon closer inspection, however, such a potential argument ultimately fades away. Territorialism challenges groups to make a plausible claim to a territory; it does not require them to show that they are the *only* group with a claim to the territory.[41] In order for Zionism to have legitimacy under a territorialist conception, it need not claim that the Palestinians have no territorial claims. It need only make a good case that the Jews also have legitimate territorial claims as well, and thus that a Jewish right to statehood can exist as long as the benefits and burdens of such a state are equitably adjusted with the Palestinians' legitimate claims. Such, essentially was the judgment made by the United Nations under the 1947 partition plan,[42] and is now advocated by the by the "People's Voice" campaign, led by former PLO Jerusalem representative and current Al-Quds University President Sari Nusseibeh, and former Israeli Navy and Shin Bet chief Ami Ayalon.[43] The campaign seeks to attract hundreds of thousands of signatures to its "Declaration of Principles", which call for an Israeli return to the 1967 borders, a division of Jerusalem based upon demographics and a "right of return" for Palestinians only back to a Palestinian state, not to Israel itself.[44] The principle is straightforward enough: two states for two peoples based upon competing and legitimate territorial claims.[45]

Little wonder, then, that even those political theorists committed to cosmopolitanism are reluctant in the Israeli-Palestinian context to remove national group

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[40] See Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 16 Yale J. Int'l L. 177 (1991).

[41] See, e.g., Buchanan, Justice, Legitimacy and Self-Determination, supra note --, at 337 ("Unless a theory can provide a plausible account of the validity of the claim to territory by those to whom it ascribes the right to secede, it fails.").

[42] See UNGA Res. 181 (Nov. 29, 1947) (partitioning Palestine into Jewish and Arab states).

[43] A complete description of the People's Voice initiative can be found at http://www.mifkad.org.il/en/index.asp. As of October 2004, the People's Voice initiative had attracted more than 240,000 Israeli and 150,000 Palestinian signatures.

[44] The complete People's Voice Initiative Declaration of Principles can be found in the Appendix.

[45] The skeptic could claim that even with these conditions, Zionism fails because the Jews have ***no*** plausible territorial claim in Palestine. This has been a long-standing position of some Arabs, as well as Marxist anti-Zionists. See, e.g., Seminar of Arab Jurists on Palestine, supra note --, at 16-28 (arguing, inter alia, that the "Jewish people" does not exist and that modern-day Jews are descendants of Khazars and other European peoples). It is fair to say that this position does not attract many adherents, even among the European Left.

rights altogether.[46] For example, Iris Marion Young, who explicitly argues for a non-state concept of self-determination, observes that

> [m]any Jews of the world consider themselves America, or Australian, or South African, etc., as well as Jewish. For many of them, however, the existence of place that is associated with the Jewish people, Israel, is an important vehicle for the retention of their hybrid identities. On my argument, however, the right to a place to exercise self-determination does not entail exclusive rule of the bounded territories Israel now claims. Because Palestinians also have legitimate claims to self-determination, certain vital resources, such as water, must be fairly shared, and certain spaces, such as the city of Jerusalem, must also be shared jurisdictions.[47]

Consider what Young does not claim. Despite the gravamen of her argument, she pointedly refuses to contend that the contrasting claims of two peoples for Palestine implies a one-state solution. Just the opposite: although she insists that certain economic and cultural resources be shared, she assumes the existence of two states based upon the principle of self-determination.

Similarly, Jeremy Waldron, who at times has veered toward a pure cosmopolitanism,[48] has acknowledged that the historical and political circumstances surrounding the Israeli-Palestinian conflict means that pure individualism might not respond to the demands of justice.[49]

Even Buchanan, who is at pains in his most recent book to deny that the right of self-determination implies a right to statehood,[50] qualifies his own thesis when it comes to the Middle East. Buchanan sharply rejects the case for a *general* international legal right to statehood, refuting the traditional arguments in favor of such a right. But he concedes that in specific cases, the right to statehood might be justified on self-defense grounds. His critique is telling:

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[46] Levy does note that "self-government claims are ordinarily treated as distinct from other cultural-rights claims" and asserts that [t]he link between rights of cultural practice and self-government rights are not easy to draw." See Levy, supra note --, at 33. In my view, this overstates the matter considerably, and is effectively answered by Yael Tamir. See Yael Tamir, Liberal Nationalism **pin cite** (1993) (arguing that public sphere is necessary for cultural expression).

[47] Iris Marion Young, Inclusion and Democracy 252 (2000)(emphasis added).

[48] See Jeremy Waldron, "Minority Cultures and the Cosmopolitan Alternative," in The Rights of Minority Cultures 93-119 (Will Kymlicka ed. 1995).

[49] See Jeremy Waldron, Settlement, Return, and the Supersession Thesis, 5 Theoretical Inquiries L. 237, 259 (July 2004).

[50] See Buchanan, Justice, Legitimacy, and Self-Determination, supra note --, at 331-394.

> The difficulty with [the] assumption that nations need their own states to protect their interests and ultimately the interests of their individual members is that it is an overgeneralization from a limited historical sample. 'Stateless peoples'—including, perhaps most prominently the Jews—have sometimes suffered because they lacked their own state. But there are also many cases in which less powerful nations feel prey to domination or annexation because they insisted on maintaining their independence rather than coalescing into a larger, more defensible political unit.[51]

In other words, even the difficulties with the right to statehood do not undermine the legitimacy of the Jewish claim.

To be sure, Palestinians do not deny the validity of group rights: indeed, the entire claim of Palestinian nationalism is based upon the right of group self-determination.[52] But this only points to an instability at the heart of the Palestinian position, which for years has argued that statehood flows from the right of national self-determination,[53] but has rejected it for Jews.[54]

C. The Neoconservative Predicament

Zionists should hardly chortle at the ideological predicament that Palestinians find themselves in, for defending the Jewish state as an affirmative action plan threatens the Israeli political base in the United States. We can see this by examining American neoconservatism, a key piece of that base. Neoconservatism first emerged in the 1970's as a reaction to what its advocates said were the excesses of 1960's liberalism; no excess stood out more strongly in their minds than affirmative action, which they claimed was a betrayal of civil rights.[55] Although at times his criticism was more nuanced, prominent neoconservative Nathan Glazer devoted a whole book to attacking the program, and

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[51] Buchanan, Justice, Legitimacy, and Self-Determinations, supra note--, at 386.
[52] Cite to Khalidi. "Reflections," and perhaps the Palestinian Identity book as well.
[53] Anthony D'Amato piece in Yale. Etc.
[54] Some Palestinian advocates argue that there is no contradiction here because the Jews are not a people, but rather a religion. Cites. It is hard to give such an argument much purchase. If we use what one commentator calls "a relatively straightforward set of criteria", Hurst Hannum, "Rethinking Self-Determination," 34 Va. J. Int'l L. 1, 36 (1993-1994), a set developed outside the Middle Wast context, this becomes clearer: "a people consists of a community of individuals bound together by mutual loyalties, an identifiable tradition, and a common cultural awareness, with historical ties to a given territory." Robert A. Friedlander, "Proposed Criteria For Testing the Validity of Self-Determination as it Applies to Disaffected Minorities," 25 Chitty's L.J. 335, 336 (1977).
[55] See Peter Seinfels, The Neoconservatives: The Men Who Are Changing America's Politics 225-30 (1979)

concluded that it represented the abandonment of the "first principle of "liberal society."[56] Peter Steinfels notes that "[w]hen New York's school system, after a finding of discrimination, was required to assign new teachers by race, so that blacks and Hispanics would be represented throughout the city's schools and not disproportionately in certain neighborhoods, Daniel Patrick Moynihan compared the procedure to nothing less than Hitler's Nuremberg statutes."[57]

This hardly forms a promising basis upon which to support Jewish ethnic nationalism. So, like pro-Palestinian advocates, they simply ignore the problem.

D. Conservatism and Immigration

To be sure, conservatives do have a history of excluding immigrants on racial bases.[58] Jurisprudentially, conservatives more often find themselves defending the "plenary power" doctrine, which gives Congress the right to exclude immigrants on any ground it wants,[59] than progressives.[60] Currently, conservative voices can be heard more frequently than progressive ones in defending racial profiling, particularly in the homeland security area.

Yet these analogies bear less relevance than it might initially seem. It is one thing to defend the power of Congress to restrict immigration in whatever way it sees fit; it is quite another to argue that it should exercise that power in a racially discriminatory manner. Racial profiling is a better fit, but it essentially concerns appropriate law enforcement measures, and the best way to distribute the burdens of heightened security. More importantly, virtually no author overtly advocates racial profiling: it may part of the hidden agenda, but it is still hidden.[61] It hardly constitutes a key piece of conservative ideological furniture.

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[56] Nathan Glazer, Affirmative Discrimination: Ethnic Inequality and Public Policy 220-21 (1975)
[57] Steinfels, supra note --, at 225. New York Times, Sept. 24, 1977, p.9.
[58] Higham, Send These to Me; Higham, Strangers in the Land. Chinese Exclusion Acts. Katherine Trisolini paper.
[59] The most exhaustive history of the plenary power doctrine is found in Sarah H. Cleveland, Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs, 81 Tex. L. Rev. 1 (2002).
[60] Cites to articles, both from conservatives (Bradley?) and progressives (Aleinikoff?).
[61] Daniel Pipes is a rare exception. See Daniel Pipes, "The Enemy Within," N.Y. Post, Jan. 24, 2003 (arguing for "the imperative of focusing on Muslims. There is no escaping the unfortunate fact that Muslim government employees in law enforcement, the military and the diplomatic corps need to be watched for connections to terrorism, as do Muslim chaplains in prisons and the armed forces. Muslim visitors and

Affirmative action, however, played a central role in the development of modern conservative ideology, allowing the Republican Party to pursue a southern strategy to attract disaffected southern whites from the Democrats,[62] and knitting them together with blue collar ethnics in the north. Conservative politicians from Pete Wilson in California[63] to Jesse Helms in North Carolina[64] have centered major electoral campaigns on the issue, and the prospect that Lani Guinier might be a "quota queen" effectively sunk her nomination as President Clinton's Assistant Attorney General for Civil Rights.[65] One could hardly imagine a similar public campaign for a candidate promising to engage in racial profiling; indeed, President Bush claimed that he is "the first President of the United States to ban racial profiling in Federal law enforcement."[66] Indeed, during the 2000 presidential campaign Governor George W. Bush emphasized his antipathy to "secret evidence" being used against Arab-Americans in immigration cases.[67] Although in the wake of September 11 his administration vastly increased the use of such evidence in the context of terrorism prosecutions and Guantanamo detentions,[68] the President hardly made a political issue out of it. Those who dismiss Bush's policies as hypocrisy only acknowledge the point: for a politician as conservative as Bush to claim that he has banned the practice demonstrates its political toxicity--unlike attacking affirmative action.

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immigrants must undergo additional background checks. Mosques require a scrutiny beyond that applied to churches and temples.").

[62] Nixon's response to the Philadelphia plan; Phillips, The Emerging Republican Majority.

[63] Proposition 209; use by Wilson.

[64] For details on the use of the ad in the Helms-Gantt race, see Steve Daley, "TV Holds Power in Politics: 'Tool of Enlightenment Dims During Hard Campaigns," Chicago Tribune, Nov. 19, 1990; Michael Kinsley, "What's Really Fair," Time, Nov. 19, 1990.

[65] See, e.g., Anthony Lewis, "The 'Demonizing' of Lani Guinier," N.Y. Times, Sept. 28, 1993. Guinier recounts the episode in The Tyranny of the Majority.

[66] Advocacy groups argue that this rhetoric masks a discriminatory reality. For both the quote and the criticism, see "Amnesty International: Racial Profiling Undermines U.S. National Security," U.S. Newswire, Sept. 13, 2004. The Department of Justice's statements and guidance on the racial profile ban can be found at: http://www.usdoj.gov/opa/pr/2003/June/03_crt_355.htm, http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm, and http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf (visited Jan. 5, 2005).

[67] This was widely seen as an attempt to gain Arab-American votes in the contested state of Michigan, which eventually went to Al Gore. For Bush's statement and its political implications, see "U.S. Muslim Coalition Endorses Bush," The Christian Century, Nov. 8, 2000; "U.S. Muslim Community Claims Bloc Vote Delivered for Bush: Survey," Agence France-Presse, Nov. 17, 2000.

[68] See, e.g., Dan Eggen, "U.S. Uses Secret Evidence in Secrecy Fight with ACLU," Wash. Post, Aug. 20, 2004; Toni Locey, "Detainees' Cases Show Another Side of Gitmo," USA Today, Nov. 4, 2004

III. The Right of Return

Advocates for Palestinians might argue (in response to Part II) that all the talk of affirmative action ignores how Israel was born in the first place. The Jewish state, they contend, was conceived not in liberty but rather in something more akin to original sin. Between 600,000 and 700,000 Palestinians were displaced in the 1948 war, an exodus that Palestinians say was a premeditated campaign of ethnic cleansing.[69] Such a narrative underlies one of their central and most passionately-held claims: the "right of return" of Palestinian refugees who fled during the 1948 war and their descendants.

Allowing this right completely would enable close to 4 million people to move to Israel, thereby destroying the Jewish state's demographic basis. No matter, say the Palestinians. The right of return is fundamental and inalienable: if Zionism is liquidated in the process, then so be it.[70] The 2000 Camp David and the 2001 Taba talks broke up over this very issue, as Palestinians refused to give up what they consider a sacred principle and Israelis refused to commit national suicide.[71]

a. What the Right of Return Is Not

Here, too, left-wing supporters of Palestinians and right-wing supporters of Israel find themselves in an ideological funhouse mirror. To see why, we need to consider what

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[69] A typical Palestinian view can be found in the statement of activist Salman Abu Sitta:

> There is nothing like it in modern history. A foreign minority attacking the national majority in its own homeland, expelling virtually all of its population, obliterating its physical and cultural landmarks, planning and supporting this unholy enterprise from abroad, and claiming that this hideous crime is a divine intervention and victory for civilization. This is the largest ethnic-cleansing operation in modern history.

Salman Abu Sitta, The Return of the Refugees; the Key to Peace, at http://www.arts.mcgill.ca/mepp/prrn/papers/abu-sitta (Nov./Dec. 2000)(visited Dec. 18, 2004)

[70] Palestinian negotiators at Taba made this position quite clear. See Miguel Angel Moratinos, EU Non-Paper Summarizing Discussions at Taba, at http://www.mideastweb.org/moratinos.htm (visited Nov. 13, 2004) (noting that the "Palestinian side stressed that the [any solution to the refugee issue] shall be subject to the individual free choice of the refugees, and shall not prejudice their right to their homes in accordance with its interpretation of United Nations General Assembly Resolution 194."). This remains the Palestinian position in the wake of Yasir Arafat's death. See, e.g., Danny Rubenstein, "Abu Mazen's Minimum," Ha'aretz, Nov. 29, 2004, at http://www.haaretz.com/hasen/spages/507208.html (visited Nov. 29, 2004) ("Mahmoud Abbas (Abu Mazen) presented the main features of his political doctrine at a closed meeting held this weekend of the Revolutionary Council of the Fatah movement, which selected him as the movement's candidate for chairman of the Palestinian Authority. He emphasized, of course, that he would follow Yasser Arafat's national last will and testament to the letter, and specified the following: creation of an independent Palestinian state within the 1967 borders, with its capital in Jerusalem, and a just solution of the refugee problem, in accordance with UN Resolution 194.").

sort of a "right" the right of return is. In one sense, this question cannot be answered because of the diversity of opinions. As Rashid Khalidi has noted, "there is no authoritative Palestinian definition of what constitutes the right of return."[72] And this, of course, only includes the Palestinian side: several opinions also contend in Israel, other Arab states, and the entire breadth of the international community.

One possibility is that the right of return is a collective political right of the Palestinian people. The land of Palestine serves as the essential prerequisite for Palestinian political identity, self-determination and sovereignty. On this understanding, without the land of Palestine, there is no Palestinian people; thus, the right of return is not a replacement for collective identity but rather its ultimate fulfillment.[73] This interpretation equates the right of return with the insistence of many Indian groups on maintaining ancestral lands and refusing to be compensated for them: you cannot sell a nation's patrimony, they argue.[74]

This contention, however, immediately runs into ideological and political problems. First, to acknowledge the collective rights to nationhood, and connecting it to a people is essentially equivalent to the Zionist claim, which is precisely what Palestinians seek to deny. To base their own claim on the connection of a people to a land would force them at base to say that they have a claim and the Jews do not--an explicitly inegalitarian and hierarchical strategy not likely to win many supporters among progressives. Indeed, the claim that Palestinians have exclusive political rights to the land resembles nothing so much as right-wing religious Zionists, who insist that God gave them "Eretz Yisrael," or Greater Israel, and thus that there is no Palestinian right to self-determination whatsoever.[75]

Second, to make the right of return a collective right implies that it can be negotiated by a collective leadership, such as the Palestinian Authority.[76] Such was the

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[71] See Ross, Missing Peace, supra note --.
[72] Rashid Khalidi, "Observations on the Right of Return," 21 J. Palestine Stud. 29, 29 (1992) (hereinafter Khalidi, "Observations").
[73] I am indebted to my colleague Devon Carbado for suggesting this line of argument.
[74] Cites on Indian groups taking this stance.
[75] For background on the religious settler movement, see Jeffrey Goldberg, "Among the Settlers: Will They Destroy Israel?," The New Yorker, May 31, 2004.
[76] See, e.g., James W. Nickel, "Group Agency and Group Rights," in Shapiro & Kymlicka, supra note --, at 235, 236 ([A] right might be considered a group right because it is the group, acting through its leadership, that has the legal power to invoke or waive the right. For example, a group's right to the its land may be

position taken by Arafat and accepted by the rest of the Palestinian leadership.[77] The strategy of right of return advocates is to maintain the claim regardless of what deals the Palestinian leadership might strike. They thus insist that it is an individual right.[78]

Third, to the extent that international law backs a right of return, it does so as an individual right. General Assembly Resolution 194, regarded by Palestinian advocates as providing legal touchstone of the right of return, explicitly gives Palestinian refugees the choice as to whether they wish to return or whether they would prefer to receive monetary compensation.[79] Indeed, this individualized aspect led Arab nations and Palestinian advocates to initially reject it (a position that they have since abandoned).[80] Similarly, other bodies of international law offering protection for Palestinian refugees—such as law relating to stateless persons, humanitarian law and human rights law—all do so by protecting individuals, not collectivities.[81] Little wonder, then, that virtually no Palestinian spokesperson makes the argument.

Other Palestinians argue that the right of return reflects the collective right of self-determination. Rashid Khalidi reports that

> [a]cknowledgement of the right of return is seen as an acceptance in principle of the fact that the Palestinians are a people with national rights . . . and that a wrong was done to them as a people in preventing them from doing so. On the other hand, rejection of the right of return is seen as a

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considered a group right because only the group acting through its leadership has the power to make decisions about the disposition of that land.").

[77] See Menachem Klein, "From a Doctrine-Oriented to a Solution-Oriented Policy: the PLO's Right of Return, 1964-2000," in The Palestinian Refugees: Old Problems – New Solutions 46, 51 (Joseph Ginat & Edward J. Perkins eds. 2001).

[78] See, e.g., "An Issue of Conflicting Rights: An Interview with Ingrid Gassner Jaradat," at http://www.bitterlemons.org/previous/bl270904ed35.html (Interview web published Sept. 27, 2004) (visited Nov. 5, 2004). Jaradat is the director of the Badil Resource Center for Palestinian Residency and Refugee rights. legal issues related to human rights. In the interview, she argued that "the problem with [both the Nusseibeh-Ayalon Accord and the Geneva accord] is that they suggest a political deal that should be made by the leaderships on both sides, and in both cases, refugee rights, which are individual rights, are massively ignored and violated."

Closer to home, the American-Arab Anti-Discrimination Committee argues that "Palestinian refugees have an absolute, inalienable and individual human right to return to their original homes and country." AADC press release of Sept. 14, 2000, which goes on to ground the right not only in GA Resolution 194 but also the Fourth Geneva Convention and the Universal Declaration of Human Rights. For a persuasive demonstration that this is not the case, see Benvenisti & Zamir, supra note --.

[79] UNGA Res. 194 (III), Dec. 11, 1948.

[80] See Rashid Khalidi, "Observations on the Right of Return," 82 J. Palestine Stud. 29, **pin cite** (1992).

[81] See the magisterial summary in Lex Takkenberg, The Status of Palestinian Refugees in International Law 175-273 (1997).

> denial of the Palestinians' peoplehood and rooted-ness in their homeland, and thus of the injustice they have suffered.[82]

While this argument may have substantial purchase as a general matter, it hardly implies that Palestinian refugees and their descendants would have a right to return to Israel. It might very well imply a right of Palestinian self-determination alongside the Jewish state. Such a formulation of the "right of return" has been adopted by the "People's Voice" campaign (discussed earlier), which advocates a "right of return" for Palestinians only back to a Palestinian state, not to Israel itself.[83] But right-of-return advocates—and the Palestinian Authority--rejects this very "two states for two peoples" formulation. Self-determination, then, cannot constitute the basis of the right of return.

At times, the Palestinian argument has advanced the notion that the right of return derives from corrective justice. Only the right of return, they say, can make up for what they call the Jewish ethnic cleansing in 1947-48.[84] But such an argument encounters philosophical problems even if we assume the veracity of the Palestinian historical narrative. Taken together, these factors may not necessarily undermine the right of return itself—but they pose formidable obstacles to grounding it on corrective justice.

Consider the basic notion of corrective justice. Essentially, it involves restitution for theft, plus any additional injuries in the meantime: "they are simply seeking to right past wrongs by means of returning to them what they conceive of as rightfully theirs."[85] John Simmons provides a simple example:

> If you steal my bicycle, say, I have a right to the rectification of this wrong – usually assumed to amount to a right that the bicycle be returned to me, along with compensation for any damage to it and for any loss suffered as a result of being temporarily deprived of its use. The idea seems to be that, in order to rectify a past rights-violation (injustice), we must, as far as

[82] Khalidi, Reflections, supra note --, at 31-32. It should be noted that Khalidi's work, written in 1992, was not intended to justify the specific right of return currently advocated, i.e. the right of Palestinians to live in Israel. Khalidi at this stage was merely trying to outline the various intuitions, beliefs, and philosophies behind the notion of the right of return.

[83] The complete People's Voice Initiative Declaration of Principles can be found in Appendix A infra.

[84] This is the argument of George Bisharat. See George Bisharat, "The Power of Apology," Ha'aretz, Jan. 2, 2004, http://www.haaretz.com/hasen/pages/arch/ArchSearchEngArt.jhtml (visited Feb. 11, 2005).

[85] Tamar Meisels, "Can Corrective Justice Ground Claims to Territory?," 11 J. Pol. Phil. 65, 69 (2003) (answering yes).

> it is within our power, make it now as though the injustice had not happened.[86]

So far, so good. But what happens, Simmons asks, "if instead of just stealing my bicycle, you the melt it down and turn it into cufflinks, various parts of which are bought by innocent third parties and later left to their grandchildren as family heirlooms? What if I die or you die before rectification occurs?"[87] These rhetorical questions point to several underlying conditions that should apply for the ideal corrective justice justification to apply.

First, corrective justice presumes that the guilty party himself pay the actual cost of the damage that he has done. Yet none of the alleged perpetrators of the 1948 actions is alive. David Ben-Gurion, Israel's founding father, died more than three decades ago, and he outlived virtually every other member of Israeli Cabinet in power during 1948.[88] Israel's senior military commanders are also gone.[89] No one still exists who could be held responsible. This is highlighted by the fact that neither current Israeli Prime Minister Ariel Sharon nor Labor Party Chairman Shimon Peres, who have justified their new unity government on the supposed responsibility as Israel's founding generation to guide the new state through its most recent crisis,[90] played anything more than a bit part in the 1948 war.

The second difficulty follows directly from the first. Corrective justice makes little sense if those paying the costs of injustice were not its perpetrators. Yet the vast majority of contemporary Israelis had no involvement in the 1948 war. Most were either born in what is now Israel, came there as children, arrived as political refugees, or came as immigrants. Even those who came freely as adults cannot be equated with the original perpetrators of crimes unless they knew or should have known the facts, which qualifies the corrective justice justification: after all, negligent receipt of stolen property may be

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[86] A. John Simmons, "Historical Rights and Fair Shares," 14 L. & Phil. 149, 153 (1995) (internal quotations and citations omitted).
[87] Id. at 154.
[88] The last surviving member of the first Israeli Cabinet was Labor Minister Mordechai Bentov, who died in 1985. Only one other member outlived Ben-Gurion: Justice Minister Felix Rosenbleuth, who died in 1978. For the members of the first Israeli government and their dates of death, see http://www.mfa.gov.il/MFA/MFAArchive/1900_1949/The%20Governments%20of%20Israel-%20Provisional%20Government (membership) and http://www.knesset.gov.il/index.html (dates of death) (visited Dec. 20, 2004).
[89] The IDF's 1948 Chief of Staff, Yigael Yadin, died in 1985.
[90] Ha'aretz, December 2004.

bad, but it is hardly the same thing as theft. All in all, only a very small number of Israelis would fit in under the ideal corrective justice scenario.

Third, the beneficiaries of corrective justice should be those who suffered the original crime. The vast majority of the right of return's projected returnees are not actually the victims of the original crime. They are instead the descendants of the original victims. Out of the nearly 3.5 million whom the Palestinians say are refugees, only a small percent are old enough to have lived through the 1948 war. The others, according to some scholars, are not technically "refugees" at all.

Finally, corrective justice presumes that the object in question still exists and can actually be restituted. The physical and social landscape of Israel, however, has dramatically and fundamentally changed since 1948. Indeed, this is part of the Palestinian indictment, viz. that Jewish forces obliterated hundreds of Arab villages during the war. But a central notion of corrective justice is returning to parties to their previous positions, and this is impossible in the case of the Palestinian refugees. Neither they nor anyone else create the life and social structure their grandparents had before 1948. Even Palestinian leaders who strongly advocate the right of return have recognized this. PA Chairman Mahmoud Abbas warned a group of refugees several years ago that "you won't be going back to your home, nor to the neighborhood or the village. The houses, neighborhoods, and villages are all gone. New cities have been built on your lands, and in your houses, Jewish babies have been born."[91] PA Foreign Minister Nabil Sha'ath, who headed up the refugee negotiations under Arafat, delivered a similar message to the Rashadiyeh refugee camp in Jordan. "I told them that if anyone tells them it is their duty and not only a right, they should slap them back. I told them they won't find their homes in Sheikh Munes, and that nowadays it's called Ramat Aviv."[92]

None of this means that corrective justice is irrelevant to understanding the right of return. But it casts severe doubt on the propriety of the ideal, "bicycle theft" example. And that, in turn, casts doubt on whether the remedy for the original violation can or should be a simple matter of returning the object in question to the original aggrieved

[91] Quoted in Akiva Eldar, "Marwan Barghouti's New Year's Wishes," Ha'aretz, at http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=205265&contrassID=2&subContrassID=5&sbSubContrassID=0&listSrc=Y (visited Dec. 11, 2004).
[92] Quoted in id.

party. Even Simmons, whose account of historical rights is the most sophisticated,[93] recognizes the difficulty of applying corrective justice in cases with problems similar to what has just discussed. He acknowledges the "impossibility of retributive justice in cases where offenders die before they can be punished."[94] He also notes "the problems of conflicting claims by current generations of (largely) innocent third parties . . . whose expectations are firmly based on an assumed continuation of current distributions of land and resources."[95] Simmons would seem less concerned that the beneficiaries of the right of return were not the ones who originally left Palestine in 1947-49, because he believes that "children have rights against their parents";[96] but that would only constitute "the receipt of property (including in this case 'property' parental rights to the return of stolen property) that is needed by those children for a decent life."[97] In other words, it could well be the equivalent of real property—in other words, cash.[98] In all, corrective justice might demand something from Israelis to Palestinians, but it probably does not demand actual return even if we assume the complete veracity of the Palestinian narrative.

We can see this more clearly if we examine other instances of historical claims based upon corrective justice. For example, tens of thousands of Japanese Americans lost their homes and property as a result of the World War II internment. But even their

[93] This is why I focus on Simmmons' conception of historical rights and corrective justice. Indeed, there are many theorists who argue against the entire notion of historical rights, especially in light of changed conditions brought about by the passage of time. Waldron, The Supersession Thesis. Simmons' article is the strongest arguing for such a conception; I thus focus on it here.

[94] Simmons, supra note --, at 177.

[95] Id. At 176.

[96] Id. At 179-80.

[97] Id. At 180.

[98] Simmons argues that victims of historical injustice maintain rights to "particularized shares" of the wrongdoers' property, which he describes as a "certain-sized share of a particular set of holdings." Id. at 162. A particularized share "is neither a right to just any fair share [of the wrongdoers' property] nor a right to a particular piece of land or property. It is rather a right to some appropriate share of the specific original just holdings." Id. at 165. Simmons recognizes the vagueness of these terms, but argues that they are specific enough to provide real content and guidance in historical rights claims: "the best rectification in cases of theft will be that which returns the victim to the closest possible approximation of the conditions that would have obtained in the absence of the theft." Id. at 167. If someone steals my bicycle, they cannot keep it and just pay cash. Thus, while particularized shared are cut and dried, they "will normally be claims to something in a relatively narrow range of options." Id. at 168.

This language could suggest a stronger emphasis on the actual right of return. But if so, it would not be on corrective justice grounds. It would rather be on the basis of the argument that the *land* where Palestinian villages formerly existed—apart from the village, the community life and social formations now long-since perished—is in and of itself so critical as to be the central aspect of the "conditions that would have obtained in the absence of the theft." But if that is case—as many Palestinians argue that it is—then

most vigorous advocates have pushed for compensation, not an actual return of property because actual restitution would require the uprooting of those who have lived there for the last six decades.[99]

Does any of the foregoing argument imply that there is no right of return? No. It merely argues that that right cannot be grounded on corrective justice. Corrective justice is clearly highly relevant to the moral intuition behind the right of return. The same goes for the self-determination: undoubtedly, the desire for the right of return is animated by this collective right. The point, rather, is that they cannot do the work in and of themselves: their underlying moral considerations are overinclusive because they imply many things apart from an actual right of return.

b. Property and Sovereignty

What sort of right, then, is the right of return? The core of the right makes the most sense as a *property* right. In terms of legal theory, this is literally true: because the advocates of the right of return reject monetary compensation, they insist that their homes be protected by a property rule, not a liability rule.[100] One could style this merely as a remedy, but of course it reflects the substantive right at stake: perhaps most precisely, it reflects the level of property right demanded by the Palestinians. But it is a property right nonetheless.

This should be unsurprising, given the right's legal basis and the justifications offered by its supporters. UN General Assembly Resolution 194, which Palestinians say is the legal basis for the right of return, talks of the refugees returning to "their homes."[101] In similar fashion, the leading Palestinian organization advocating return, Al-Adwa (the Palestinian Right of Return coalition), justifies the right of return by emphasizing "the

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that strongly suggests that the right of return is essentially a property right. I would agree, and make a similar argument in the following subsection. See infra.

[99] The most exhaustive scholarly treatment of Japanese-American redress claims fails to mention a single instance of an internment victim demanding the return of his or her actual property. See Eric K. Yamamoto, Margaret Chon, Carol l. Izumi, Jerry Kang, & Frank H. Wu, Race, Rights and Reparation: Law and the Japanese American Internment 389-443 (2001)(discussing and analyzing theory and practice of claims). Japanese-American Compensation Act, secondary sources explaining what the advocates wanted. If there is any discussion about rejecting actual claiming of property, please include it.

[100] This distinction, of course, derives from Guido Calabresi & A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," 85 Harv. L. Rev. 1089 (1972).

[101] A persuasive account of this point can be found in Eyal Benvenisti & Eyal Zamir, *Private Claims for Property Rights in the Future Israeli-Palestinian Settlemen*t, 89 Am. J. In'tl L. 295 (1995).

sanctity of private ownership."[102] The same holds true for Israeli advocates. David Enoch holds that "the right of return, if there is such a right, is derived from . . . the right to live peacefully on one's land, the right not to be expelled forcefully from it, the right to return to that land immediately after showing the desire to return, and all other relevant property (and other) rights violated at that time."[103]

Once we see that the right of return is a property right, it once again disrupts the ideological alignments in the Middle East--or at least their European and American advocates, for it is conservatives who have traditionally been far more sympathetic to property rights than progressives.[104] In fact, adherence to the Palestinian position on the right of return puts them far to the right of most on the American ideological spectrum, the nation that currently maintains the greatest respect for private property.

Consider the basis for most American property rights activism: the "takings clause" of the United States Constitution, which famously forbids private property being taken for public use without just compensation.[105] The plain meaning of the clause does not forbid the taking of property, but only taking it without paying for it.[106] And indeed, the heated controversies surrounding American private property law revolve around whether compensation is required or not. No one contests that the government might take the property in the first place, because the famously conservative US Supreme Court has held that "public use" can mean just about anything that is rational for the government to do.[107] The touchstone is compensation.

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[102] Statement by the Right of Return Defense Committees, http://www.al-adwa.org/old/ror_defense_committees.htm (dated Feb. 9, 2002)(visited Oct. 22, 2004).

[103] David Enoch, "Whose *Right* Is It? Reflections on Harel's Reflections on the Palestinians' Interest in Return," 5 Theoretical Perspectives L. 367, 372 (July 2004). Those "other rights" in this case are most logically the right to corrective justice and the right to self-determination, discussed earlier.

[104] Margaret Jane Radin notes that absolutist protections of private property rights represent a "radically conservative position." See Margaret Jane Radin, "Problems for the Theory of Absolute Property Rights," in Reinterpreting Property 98, 98 (1993).

[105] See U.S. Const. Amdt. V ("…nor shall private property be taken for public use without just compensation.").

[106] See Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985)("The Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation.").

[107] See Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984). Midkiff has been challenged by those who believe its elastic interpretation of public use vitiates the Takings Clause. See, e.g., Richard Epstein, Takings 161-81 (1985). Such an argument, however, only underscores the point, for Midkiff's harshest critics are those on the far right of the political spectrum. See also http://www.professorbainbridge.com/2005/02/will_leviathan_.html (visited Mar. 3, 2005) (supporting Epstein's arguments). The United States Supreme Court recently granted certiorari on a case to consider how far Midkiff goes. See Kelo v. City of New London (2005). Predictably, those who object to a broad

Now consider the Palestinian position: compensation is an inadequate remedy even if the Israelis acknowledge that they took Palestinian property in 1948. Throughout the Camp David and Taba negotiations, Palestinian delegates dismissed the idea of compensation, and repeatedly rejected President Clinton's offers of multibillion dollar international compensation funds to provide it.[108] In short, the Palestinians argue that their private property cannot be taken for public use even *with* just compensation--a notion of property rights that might even make Justice Scalia blush.

It also makes the Palestinian negotiating position far more protective of private property than of Palestinian Authority law. The Basic Law of the Palestinian Authority not only allows for the taking of private property for public use if just compensation is provided, it also permits taking of private property *without* compensation "pursuant to a judicial order."[109] Furthermore, the section of the Basic Law dealing with private property provides that "[t]he economic system in Palestine shall be based on the principle of free market economy."[110] Such a principle, in turn, suggests a principle of alienability because the point of property is not personhood but rather productivity.

Such a position does not place the Palestinian Authority alone in the Arab world, for not a single Arab country enshrines property as an inalienable possession. More typical are the laws of Jordan, which allows for takings with just compensation.[111] Similarly, "Egyptian law, like United States law, requires just compensation for takings."[112] The issue in Egypt has been whether and how much compensation is

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"public use" definition are located firmly on the right. See, e.g., George F. Will, "Despotism in New London," Wash. Post, Sept. 19, 2004, at B7, at http://www.washingtonpost.com/wp-dyn/articles/A30314-2004Sep17.html (visited Mar. 3, 2005).

[108] See Bill Clinton, My Life (2004); Ross, Missing Peace, supra note --.

[109] The Basic Law of Palestine can be found translated at http://jurist.law.pitt.edu/world/palestbasic.htm (visited Oct. 27, 2004). Article (21) § 3 discusses private property and eminent domain powers and states:

> 1. The economic system in Palestine shall be based on the principle of free market economy. The Executive Authority may establish public companies which shall be organized in accordance with law.
> 2. The freedom of economic activity is guaranteed. The law shall organize its supervising rules and limitations.
> 3. Private property shall be protected and, shall not be expropriated except in the public interest, and for a fair compensation in accordance with the law, or pursuant to a judicial order.
> 4. Confiscation shall be in accordance with a judicial order.

[110] Id.

[111] See Jordan Civil Code, Bk. III, Div. 1, chap. 1, § 1020, quoted in The Jordan Civil Code of Moslem Jurisprudence 155 (Hisham R. Hashem trans. & ann. 1990).

[112] John Henry Merryman, "From U.S. v. McClain to U.S. v. Schultz," SH046 ALI-ABA 749, 754 (2003).

required for takings: no one, least of all the Egyptian government, has argued that private property rights are inalienable.[113] Adherence to actual return also puts the Palestinian position to the right of international law norms[114] and of emerging EU law.[115]

To be sure, progressive political thought has not ignored the right to private property. Important theorists have eloquently argued that having private property is necessary to human flourishing;[116] indeed, many progressives contend that having private property is so important that we need a wider distribution of it.[117] But these are not the views that underpin the argument for the right of return. In fact, they contradict that argument, for the Palestinians' position derives most deeply from a contention that they were *first in time*. They bear particular contempt for the popular Zionist slogan that Palestine was "a land without a people for a people with a land".[118] The land had plenty of people in it, they retort, but they were simply ignored.[119]

Whatever the merits of this argument, it is one that progressives usually reject, because progressive theories of property insist that a *just* distribution of property has little or nothing to do with its *initial* distribution.[120] Justice does not mean distributing goods based upon native strength or intelligence, liberal thinkers argue: similarly, it does not mean distributing property based on who had it first. This is why, among other reasons, progressives have little moral trouble with progressive taxation, or exactions of property in exchange for building permits. If diversity, or economic equality, or environmental protection, or a host of other social goals require the state to take property from A (or a

[113] See Southern Pac. Properties (Middle East) Ltd. V. Arab Republic of Egyprt, 22 I.L.M. 752 (Int'l Comm. Arb. 1983). ICSID case No ARB/84/3, May 20, 1992, reprinted in 25 ICSID Rev. Foreign Inv. L.J. 264 (1993).
[114] See Vicki Been & Joel C. Beauvais, "The Global Fifth Amendment? NAFTA's Investment Protections and the Misguided Quest for an International 'Regulatory Takings' Doctrine," 78 N.Y.U. L. Rev. 30 (2003)(noting the absence of taking provisions in current international law).
[115] See John A. Usher, General Principles of EC Law 88-99 (1998) and especially at 99 ("The overall conclusion . . . is that although Community institutions and Member States acting within the scope of Community law are required to respect property right, the exercise of those rights may be subjected to considerable restrictions if they are justified in the general interest.").
[116] Margaret Jane Radin, Property as Personhood.
[117] Akhil Reed Amar, Forty Acres and a Mule: A Republican Theory of Minimal Entitlements (at one point Amar argues that "private property is so good that everyone should have some of it.).
[118] Discussion of where the quote came from.
[119] Edward Sa'id was particularly insistent on this point. See Sa'id, The Question of Palestine
[120] See John Rawls, A Theory of Justice ("The initial distribution of primary goods in neither just nor unjust. What is just or unjust is how social institutions deal with such inequalities." Or some such.).

group of As) and give it to B (or a group of Bs), then in and of itself that does not qualify as a problem.

But an important strand of thought does provide important potential support for Palestinians: that of libertarian-leaning conservatives. Most famously, the late Robert Nozick contended that "there are things that people can just *have*, not illegitimately."[121] Possession of property, he argued, "does not have to be justified all the way down."[122] And for this reason Nozick--and many conservatives--state that it is totally unjustified for the state to take A's property and give it to B. This is not relegated to ivory tower theorizing: it served as the principal justification for the Supreme Court's invalidation of a host of social reform statutes in the late 19th and early 20th century. Laws that took from A to give to B were "class legislation" and thus both unconstitutional and immoral.[123]

As in the case with the group rights/individual rights distinction mentioned in Part II, the close resemblance of the Palestinian position to Nozick's theory is not coincidental, because it is based upon the same overall framework regarding the justice of claims. Both the Palestinian and the Nozickian claim are historical; that is, they argue that the justness of a property distribution derives from its historical pedigree. If each person (or set of persons) acquired property legitimately, says Nozick, it makes no difference if others are excluded. To consider the overall distribution would be "patterning" and would be an infringement on existing rights.[124] On the basis of the Nozickian entitlement theory, the Palestinians have a point, since virtually no mainstream Zionist argues that the Palestinian refugees originally acquired their property illegitimately. From a libertarian standpoint, then, the claims of the Palestinian refugees look much stronger than when viewed through a progressive lens.

And in fact, the conservative case for the Palestinians is even more robust when we consider that most of those who demand to "return" to their homes are not refugees at all, but rather the descendants of refugees. They have never lived in Palestine but rather

[121] Robert Nozick, Anarchy, State and Utopia **pin cite** (1975).
[122] Id. at **pin cite.**
[123] See Michael Les Benedict, Laissez-Faire and Liberty: A Re-evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism," 3 L. & Hist. Rev. 293 (1985). Wiecek; Howard Gillman.
[124] See Nozick, supra note --, at 155-64.

in other nations, one of which—Jordan—has given them full citizenship.[125] For many observers (and international law), descendants of refugees are not themselves refugees, and the property rights that refugees might have do not pass onto their offspring.[126] For Palestinians, such an argument is anathema: they insist that the children of refugees are refugees as much as their parents or grandparents, and refuse to recognize any such distinction.

The Palestinians' closest ideological allies in this fight can be found in the Republican Party, which has dedicated itself to abolishing the inheritance tax.[127] The GOP's struggle for the preservation of large estates might seem far removed from crowded refugee camps, but the principle is the same: parents have the right pass property on to their children, and the state does not have the right to intervene. Republicans contend that this is, in fact, a matter of high principle: the government does not have the right to tax death.[128] For the Palestinians, the principle is framed slightly differently but is essentially the same: no one can take the refugees' rights away from their children. And nothing can be guaranteed to bring thunderous approval from an audience of either Palestinian refugees or conservative activists than the call to maintain that principle intact.

IV. Race Matters

Powerful considerations, then, militate in favor of progressive support for Israel and conservative backing for the Palestinians. While not airtight, these considerations should at least complexify the situation. But even when left and right cross political lines on the Middle East, they do not claim that doing so fulfills their ideological commitments. Instead, it is a matter of supporting "democracy" (in the case of liberal support for Israel) or adhering to the "national interest" (in the case of conservative

[125] Article 3 of the Jordanian Nationality of 1954,as amended, includes among those who shall be considered Jordanian nationals, "Any person with previous Palestinian nationality except the Jews before the date of May 15th, 1948, residing in the Kingdom during the period from December 20, 1949 and February 16, 1954." UNHCR, Centre for Documentation of Refugees, REFLEG database (DOCID 3878).
[126] See Eric Schechter, "Redefining the Refugees," Jerusalem Report.
[127] A superb discussion of the GOP effort is detailed in Michael J. Graetz & Ian Shapiro, Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth (2005).
[128] See id.

support for the Palestinians)--both of which we can fairly say are values held by both left and right.

Why should such anomalies exist? It might be best to see the problem through the eyes of an astute observer who is also unquestionably a great man. Nelson Mandela told Newsweek in 2002 that he opposed US policy in Iraq because "what we know is Israel has weapons of mass destruction. Nobody talks about that. Why should there be one standard for one country, especially because it is black, and another one for another country, Israel, that is white."[129] In a similar vein, John Zogby, President of the Arab-American Institute, objected to an advertising campaign focusing on the "shared values" and "shared visions for peace" of Israel and America by contending that the message is "We're like you and they're not. That has at its core a sort of racist edge."[130] This is not merely a pro-Palestinian perception. A senior Israeli diplomat with extensive experience in Washington once provided a succinct analysis of congressional Republican support for Israel: "Dick Armey and Tom Delay do not like Third World people. They do not like brown people. And they do not like Yasir Arafat."[131] UCLA historian Gabriel Piterberg makes a similar point, although he extends it to the American electorate: "why are we not concerned about the human rights of the Palestinians? Because they are brown."[132]

Notions of race have powerfully influenced American and European perceptions of the Middle East. This trend has not increased clarity. Simply stated, both progressives and conservatives have attempted to fit the Israeli-Palestinian conflict into misleading racial categories. For their own reasons, both progressives and conservatives constructed Israelis as white and Palestinians as brown: once both sides constructed this alignment, they chose sides accordingly. This political-racial paradigm then became self-reinforcing: we now see this social construct as a natural and inevitable way of understanding the conflict.

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[129] See "Nelson Mandela: The U.S.A. is a Threat to World Peace," Newsweek web-exclusive interview, Sept. 10, 2002, at http://msnbc.msn.com/id/3070095/ (visited Feb. 7, 2005).

[130] See Mark Jurkowitz, "A Reminder of US-Israel Links," Boston Globe, Sept. 19, 2002, at http://www.acj.org/Daily%20News/Sep_02/Sep_19.htm#3 (visited Feb. 8, 2005). Zogby repeated this charge a few days later in his newspaper column, at http://www.aaiusa.org/wwatch/092302.htm (visited Feb. 9, 2005).

[131] Personal communication with the author, August 2001. For obvious reasons, the identity of the diplomat cannot be disclosed.

A. Constructing Race

There is, in fact, little reason to see the Israeli/Palestinian conflict as a racial one. A majority of Israelis, known in Hebrew as "Mizrahis", or "easterners," trace their descent not to Europe but rather to the Middle East, North Africa, Iran, or even Ethiopia. Indeed, much of the Palestinian argument relies on the idea that this majority of Israeli "Jews" are, in an old phrase repeatedly used by Arafat, merely "Jewish Arabs:" the implication is that there is no Jewish "people" and thus no Jewish right to self-determination. But even if we consider the Israeli Ashkenazi elite, the point still holds. Arabs can pass for Europeans: suicide bombers have often been able to infiltrate into Israeli society—whether it is as an ultra-secular clubgoer or as an ultra-Orthodox yeshiva student—precisely because with a change in clothing or hairstyle they are indistinguishable from Israeli Jews. Conversely, Arabic-speaking Israelis have been able to infiltrate Arab organizations because there is no physical basis to tell that they Jewish.[133] **(Insert photos: Israeli Defense Minister Shaul Mofaz, former Palestinian PM Mahmoud Abbas, Israeli President Moshe Katsav, Syrian President Bashar Assad, former Israeli Interior Minister Eli Yishai, Iranian Foreign Minister Kamal Kharrazi. Caption: "Find the 'person of color'").** Images of prominent leaders on both sides hardly reveal any conspicuous (or even minor) differences of appearance.[134]

Yet racial assignments are very common, even if biology does not require them. As scholars in many disciplines have argued, race is not something that exists prior to social life: it is, rather, a construct, something created by social institutions, popular culture, ideologies, legal structures etc. These forces can change as society does. Thus, the literature has seen a series of monographs with such titles as How the Irish (or the Jews, or the Italians) *Became* White.[135] People are not born white, or black, or anything else: society constructs their racial identity. For some scholars, whiteness is even a form

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[132] Statement to undergraduate forum on Iraq, Spring 2003.

[133] The most spectacular example of this was Elie Cohn, an Israeli spy who was a member of the highest circles of the Syrian government until he was discovered (and executed) by the Syrians in 1965. See generally Eli Ben-Hahn, Our Man in Damascus: Elie Cohn (1969).

[134] The reader is recommended to view the television advertisements located at http://www.geneva-accord.org (visited Jan. 15, 2005), which have statements by prominent Israeli and Palestinian leaders, to test this statement.

[135] Noel Ignatiev, How the Irish Became White (1995); Brodkin; Possessive Investment in Whiteness.

of property, a commodity that groups use to advance in society.[136] The flip side comes up as other groups are denied "whiteness" and thereby subordinated.

Since “whiteness” has signaled elite status, racial identity—even if socially constructed—carries strong political implications. Progressives tend to sympathize with the claims of subordinated groups. Social inequality, they argue, derives from oppression by elites. On the international stage, they thus tend to agree with the arguments of Third World countries that the problems of the developing world derive in large part from the legacy of western colonialism. Conservatives, on the other hand, tend to be skeptical of such claims. They more frequently argue that inequality derives from cultural problems in subordinated communities. On the international stage, they contend that social problems in the developing world derive from the failure of indigenous leaders or (during the Cold War) Soviet subversion.

Indeed, it does not go too far to say that this split represents a central fissure in American foreign policy over the past several decades, as well as divides in Europe over the proper attitude toward the Third World. What causes poverty in the developing world? Conservatives say flawed institutions and poor domestic leadership;[137] progressives blame western international economic policies.[138] Should the United States support the anticommunist Nicaraguan *contra* rebels, or overthrow regimes in Guatemala[139] and Chile? No, said progressives: this was brute US imperialism, undercutting democratic regimes in the service of American corporate power.[140] Yes, said conservatives: these regimes were merely stooges for Soviet influence. Europeans debated the same issues in other guises. Should Britain and France condemn imperialism relinquish their overseas possessions? Yes, said those on the Left: imperialism constituted systematic oppression against other peoples and (for socialists) represented illegitimate capitalist domination. No, said those on the Right: imperialism actually brought civilization to underdeveloped peoples and provided the basis of national power and interest.

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[136] The seminal work in this vein has been done by my colleague Cheryl Harris. See Cheryl I. Harris, “Whiteness as Property,” 106 Harv. L. Rev. 1709 (1993).
[137] See, e.g., Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else (2000); Timur Kuran in Fall 2004 JEP
[138] See, e.g., Cardoso & Faletto, Dependency and Development in Latin America.
[139] For background, see Richard H. Immerman, The CIA in Guatemala (198?).

Race played a crucial role in framing the debates, providing for both sides a powerful heuristic for understanding the issues involved. Race was plastic but not formless: it could not be denied that, as a general matter, imperial masters were lighter and imperial subjects were darker. Thus, race became a useful proxy for the broader ideological disagreements between Left and Right: progressives sympathized more with people of color, and conservatives more with whites. This was not necessarily because of their supposed racial status, but rather because race carried a series of critical ideological meanings.

B. Geopolitics and the Arab World

So how did Palestinians become brown and Israelis become white? The answer is complex, but a good place to start might be in examining the "geopolitical construction of race." By this phrase, I mean to make more specific the general notion of social construction, which at times can be somewhat vague. Interstate political conflict not only provided Israelis and Palestinians with powerful incentives to cast themselves in particular racial terms, but also led the rest of the world to perceive them in these racial terms. Without the Cold War and the fierce inter-Arab rivalries aptly referred to as the "Arab Cold War," [141] the world would not see Israelis as white and Palestinians as brown. *Aussenpolitik* was not the only cause of this racialization: other ideological and domestic political factors entered into the equation as well. But it was a fundamental cause, without which the racialization would not have occurred.[142]

Essentially, racialization derived from the political alliance between the Arab world and Africa, expressed most consistently at the United Nations, and benefiting from the midwifery of massive Soviet economic and military backing. Africa and the Arab countries created a shared discourse on themes of anti-imperialism and anti-colonialism, allowing them to argue for their essential connection and identity; Soviet assistance and support (and later assistance of petrodollars) made this discourse into the political interests of the states involved. But the discourse was not inevitable; it did not result

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[140] See, e.g., Walter LaFeber, Inevitable Revolutions: The United States in Central America (1984)
[141] Malcolm H. Kerr, The Arab Cold War: Gamal 'Abd al-Nasir and His Rivals, 1958-1970 (3rd ed. 1971).

necessarily from facts on the ground. Instead, it was an artifact of state strategies. To see why, we must examine more closely the Byzantine rivalries of postwar Arab politics, and the way in which US-Soviet conflict inserted itself into the Middle East.[143]

As with so much in the postwar Arab world, the story begins with Gamal Abd Al-Nasir. After seizing power in 1953, Nasir began as a relatively non-ideological leader,[144] but then attempted to gain leadership of the Arab world through secular pan-Arab nationalism. Nasir's immediate targets were the British and French colonial empires, and soon the Cold War came to the Middle East in the form of Czech and Soviet arms shipments. Soviet influence accelerated by the middle 1950's, as Moscow developed close relations with the B'ath regime in Syria. Damascus attempted to outflank Nasir on his left, accusing him of toadying to the west and being insufficiently willing to destroy Israel. Nasir responded by developing his ideology "into a yet more radical blend of socialism and nationalism."[145] Eventually this ideology took its leader's name and became known as Nasirism. The abortive union of the two countries only heightened the rivalry and drove Nasir more strongly in his desire for radical leadership of the Arab world.

Conservative Arab monarchs, such as Saudi Arabia's Feisal and Jordan's Hussein rightly saw Nasirism as a threat to their power. Nasir had already used all of this influence to undermine the pro-British Hashemite monarchy in Iraq,[146] which eventually fell in a 1958 coup. By the end of the 1950's what one scholar has aptly called the "Arab Cold War" had begun. Nasir worked harder against conservative Arab regimes than

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[142] I take this notion from standard tort doctrine. See, e.g., Zuchowitz v. United States, 140 F.3d 381 (2d. Cir. 1998)(Calabresi, J.)(holding that substantial increase in the chance of something happening meets requirement of "but/for" causation).

[143] Strictly speaking, all *aussenpolitik* is not "geopolitics." The notion of geopolitics derives from a series of thinkers who focused on the control over global resources as the driving force behind international rivalries. The classic example is found in Nicholas Spykman, America's Strategy in World Politics (1942). For contrasting geopolitical views, see Paul G. Kennedy, "Mahan Versus Mackinder", in Strategy and Diplomacy. A good history of the geopolitical school is found in Jonathan Haslam, No Virtue Like Necessity (2002). I use the term "geopolitical" construction of race for two reasons: 1) it succinctly expresses the central importance of international *state* rivalry in racial construction; 2) it is less awkward and more precise than "international political construction of race"—which itself could be misunderstood as arguing that race was constructed by an international "epistemic community." Sikkink.

[144] See Kerr, supra note --, at **pin cite.**

[145] Michael B. Oren, Six Days of War: June 1967 and the Making of the Modern Middle East 13 (2002).

[146] See Peter Woodward, Nasser 43-44 (1992) (noting that Nasir pour[ed] forth a tirade of propaganda against the rulers who appeared ready to bend to the British wish" and noting his "bitter struggle" with

against Israel; the Palestine issue, his aides insisted, would be kept "in the icebox." The Kennedy administration originally tried to engage Nasir, but the Egyptian invasion of Yemen, which attempted to overthrow the conservative monarchy and replace it with a pro-Egyptian secular government, brought Cairo into direct conflict with Riyadh.[147] The invasion forced the administration to take sides, and it chose the Saudis, who controlled vital oil supplies and were more firmly anti-Soviet.[148] This choice brought Nasir, and thus secular Arab nationalism, closer to Moscow.[149]

In the meantime, Nasir had brought Arab nationalism closer to anti-imperialist movements in Africa and Asia. Africa had long held a special place in Nasir's thinking because he believed that Egypt held a unique global strategic position between three "circles"—the Arab world, Islam and Africa.[150] In the late 1950's and through the 60's, Nasir attempted to fuse Egyptian interests with those of emerging African nationalist movements. Most publicly, he arranged the 1961 Casablanca Conference, where Arab countries supported African nationalist goals, and African countries agreed to condemn Israel as "an imperialist base."[151] Nasir was never able to achieve full Arab-African solidarity in practice because African nations preferred Israeli economic and technical assistance to Nasir's charisma, but at the level of rhetoric, the link was formed: Nasir successfully created an ideology connecting Arabs to peoples of color throughout the Third World.

By 1967, Nasir could argue that the Arab world's three principal enemies were the United States, Israel and conservative Arab states. They were, he said, "the enemies of liberation everywhere, the advocates of counter-revolution against all aspirations to liberty, progress and welfare . . . in the whole of the Third World" in order to keep it

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Iraq's pro-British Prime Minister, Nuri Said). The coup itself, however, appears to have come as somewhat of a surprise to him. Id. At 67.

[147] For background, Kerr, supra note --.

[148] For an outstanding demonstration of this point, see Warren Bass, Support Any Friend: Kennedy's Middle East and the Making of the U.S.-Israeli Alliance 98-143 (2003); see also Abraham Ben-Zvi, Decade of Transition: Eisenhower, Kennedy, and the Origins of the American-Israeli Alliance (1998)

[149] Nasir was never a Soviet puppet; indeed, his insistence on maintaining an independent course consistently frustrated his patrons in Moscow. But in the wake of the Arab Cold War, and the disaster of the 1967 Six Day War, he was forced to rely more and more heavily on the USSR for both economic and military aid. A good survey of the Soviet-Egyptian relationship is found in Mohamed Heikal, Sphinz and Commisar: The Rise and Fall of Soviet Influence in the Arab World (1978).

[150] See Robert Stephens, Nasser: A Political Biography 563 (noting Nasir's "picture of the Egyptian geopolitical position, with its three circles of the Arab world, Islam and Africa[.]").

backward, dominate it, rob it of its wealth, and make it "a market for their wares." America, the conspiracy's leader, "implanted Israel in our territory [and] is supporting reaction and imposing backwardness upon us." Israel could not "live for a day without American military and economic aid," Nasir claimed. (Actually, Israel received little U.S. aid at the time.). The same could be said for the rulers of Saudi Arabia, Tunisia, Jordan, and "other stooges" (to use Nasir's phrase) whose people would overthrow them if they were deprived of U.S. protection."[152]

Thus was formed an alliance between Arab nationalism, Third World anti-imperialism and Soviet foreign policy goals. The alliance deepened after Israel's crushing military victory in the 1967 Six-Day War. The Soviets resupplied Nasir's shattered armies and gave them more sophisticated military equipment. In 1969, Colonel Qaddafi overthrew the Libyan monarchy, creating a new radical Arab state deeply interested in Afro-Arab unity and backed by petroleum wealth: three years later, Qaddafi literally purchased Uganda's and Chad's foreign policies, inducing both to break relations with Israel through massive oil subsidies.[153] Nasir's death in 1970 ironically only accelerated the culmination of his vision: his successor, Anwar al-Sadat, patched up matters with the conservative, oil-rich Arab monarchies—essentially sacrificing the claims of Egyptian leadership of the Arab world in exchange for Saudi diplomatic, political and economic support in recovering the lands taken by Israel in 1967.

This rapproachement facilitated an already-significant deepening of Arab involvement in Africa—particularly through international institutions such as the Organization of African Unity, which (despite its relative weakness), African leaders invested a good deal of their prestige. Relative geopolitical power was crucial: since African states are generally small and weak, they place great importance on international institutions as a way of pooling their influence. And by virtue of geography, six Arab nations are members of the OAU;[154] thanks to the Egyptian-Saudi thaw, by 1974 Arab countries contributed more than one-third of the organization's budget. In 1971, the OAU chairman was Mauritania's Ould Daddah; his successor the next year was

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[151] Id. At 316.
[152] Nasir's speech is quoted in International Documents on Palestine 1967
[153] Sachar, supra note --, at 789.

Morocco's King Hassan. In 1973, General Gowon, who had enjoyed Nasir's support during the Nigerian Civil War, became head of the Assembly of Heads of States and Governments.

The Yom Kippur War of 1973, and its diplomatic aftermath, confirmed the cementing of the alliance. Virtually every African nation severed diplomatic relations with Israel. The break came because of the "brutal pressures of the Arab states in the economic and military spheres;" nations such as Ethiopia and Kenya, who had long enjoyed productive relations with Israel and criticized the pro-Arab tilt, succumbed after just a few days. The Soviet Union extended aid in the same way, and one of the prices was support of the Arab position. Nasirist ideology now achieved concreteness thanks to oil wealth and Soviet assistance: what was once merely rhetoric now hardened into self-interest. The Third World bloc engineered the invitation of Yasir Arafat to speak at the United Nations General Assembly, and the process culminated in the Zionism-as-Racism resolution of 1975.

The whole effort created a critical and undeniable association between the Arab states and African and Asian countries. It seemed logical to construct Arabs with the same racial identity as their strategic allies: after all, they worked together, they voted together, and thanks to Nasir, they shared the discourse of anti-imperialism and anti-colonialism. Although no one would think of Russians as people of color, the Soviet connection was critical because it connected the Arab cause with resistance to American involvement in Vietnam. It just seemed naturally true—the classic hallmark of a hegemonic ideology.

C. The Palestinian Impact

Palestinian nationalism's use of Nasirist ideology was almost inevitable. Nationalism under the PLO always struck a Nasirist pose: secular, modernist, Marxist, autocratic. Nasir himself expressed the interaction of US imperialism, Zionism, and conservative Arab regimes that "would long dominate the PLO's thinking."[155] But while Nasirist ideology played an important facilitating role in driving Palestinian nationalists

[154] These are Egypt, Libya, Tunisia, Algeria, Morocco, and Sudan. Mauritania is also a member of the Arab League, although there is some question as to whether strictly speaking it is an Arab state.
[155] Rubin, Revolution Until Victory?, supra note --, at 12.

toward his position, it was hardly dispositive. Nationalism does not necessarily tend toward either Marxist ideology or anti-westernism (although it is clearly anti-imperialist). Yasir Arafat himself pointedly rejected hitching the Palestinian cause to an ideological camp,[156] favoring instead an eclectic mix of radicalism, traditional Islam, Marxist rhetoric, and Arab nationalism. [157] Palestinian nationalism did not so much embrace Nairism as use it for its own ends.

Most fundamentally, Palestinian Nasirism reflected the concerns of realpolitik: Palestinian nationalists originally embraced pan-Arabism because it promised a plethora of allies in their armed struggle to liquidate Zionism.[158] But the Egyptian leader's political support drove Palestinian nationalism into the Nasirist camp. Nasir engineered the founding of the Palestine Liberation Organization in 1964 in order to set himself up as the pan-Arab spokesman of the Palestinian cause. Nasir had no intention of turning the PLO into an independent force, as evidenced by his choice of its leader: Ahmed Shuqairi, a Palestinian lawyer who had served in the Saudi and Syrian foreign service. Shuqairi "enjoyed the reputation of being an opportunist and a charlatan,"[159] making it clear to insiders "that the organization would remain ineffectual."[160] Nasir's more discreet political goal was the undermining of Syria's B'athists, who also claimed to champion the Palestinian struggle and sponsored smaller groups such as Arafat's Fatah.

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[156] Arafat told a Lebanese newspaper in 1969:

> What meaning does the left or the right have in the struggle for the liberation of my homeland? I want that homeland even if the devil is the one to liberate it for me. Am I in a position to reject the participation of assistance of any man? Can I be asked, for example, to refuse the financial aid of Saudi Arabia with the claim that it belongs to the right? After all, it is with the Saudis' money that I buy arms from China…
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> Everyone asks what our social views are. Aren't we still in the phase of national liberation?

Quoted in Shaul Mishal, The PLO Under 'Arafat: Between Gun and Olive Branch 38 (1986).

[157] See, e.g., Johann Hari, "The Writing on the Wall," L.A. Times Book Review, Jan. 30, 2005, at R8 (review of Anne Marie Oliver & Paul Steinberg, The Road to Martyrs' Square: A Journey Into the World of the Suicide Bomber)(noting "the old nationalist-Marxist model of resistance epitomized by Yasser Arafat.").

[158] See Rashid Khalidi, Palestinian Identity: The Construction of Modern National Consciousness 182 (1997) ("The Palestinians were deeply attracted by the pan-Arabism of 'Abd al-Nasir. Beyond the obvious fact that Arabism had been an important element of the Palestinian self-view for decades, in its potent new pan-Arab form it promised . . . to multiply their limited forces and give them support from outside Palestine against the Israeli foe they knew from bitter experience to be far stronger than they were.").

[159] Malcolm H. Kerr, The Arab Cold War: Gamal 'Abd al-Nasir and His Rivals, 1958-1970, at 115 (3rd ed. 1971).

The Six-Day War radically reshuffled the political deck. Israel's military triumph humiliated Nasir, Syria, Shuqairi—and pretty much every Arab political force. But Fatah itself played a relatively small role in the war, because the war favored conventional battles instead of Fatah's guerrilla strategy. Arafat and Fatah came out of the conflict relatively strengthened.[161]

Nasir jumped at the chance to rehabilitate himself, and offered the Fatah leader both Egyptian patronage and the chairmanship of the PLO. Arafat accepted, giving him a position that he held to his death. More significantly, Nasir also arranged for Soviet patronage of the PLO. The Kremlin had long held suspicions of the PLO and Fatah, seeing them as uncontrollable radicals. But Nasir persuaded his Moscow patrons that Arafat was a good risk, and the Soviet Union was soon supplying weapons to the PLO.[162]

It did not take long for Palestinian nationalists to denounce western imperialism and start lining up on the Soviet side. Moscow reciprocated by supplying arms and training to PLO fighters, and assisting the PLO to become a full-fledged member of the Nonaligned Movement.[163] This was all instrumental, not ideological, a condition particularly true once Arafat's Fatah took over the PLO: as a prominent Palestinian leader remarked, "practice is the first nature of Fatah, analysis second."[164] Instead, ideology functioned as a way of attracting international allies. As Yezid Sayigh notes, because "the Palestinians could not hope to overcome Israeli superiority unless the Arabs were fully committed to the conflict,"

> Fateh developed a more elaborate rationale that regarded Israel as an advanced imperialist base. As such it prevented the countries of the eastern Mediterranean from uniting [and] provided a base for Western

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[160] Id.

[161] See Yezid Sayigh, Armed Struggle and the Search for State: The Palestinian National Movement 1949-1993, at 147 (1997) ([T]he Palestinian guerrilla movement . . . had risen to prominence since June 1967. The defeat had shattered the faith of Palestinians in the 'progressive, nationalist,' Arab governments and prompted a decisive turn among them toward a more explicitly particularistic, nationalist form of patriotism. An attempt by Fateh and other guerrilla groups to organize 'a spontaneous, popular armed uprising' in the Israeli-occupied West Bank and Gaza Strip in the next six months ultimately failed, but their standing was sufficiently enhanced and government controls sufficiently weakened for them to establish sanctuaries in Jordan, Syria, and Lebanon in the next two years.".)

[162] This story of the Soviet-Nasirist-Arafat courtship is accepted by writers both hostile and friendly to the PLO. See Barry Rubin, Yasir Arafat: A Political Biography 38, 42-43 (2003) (hostile); Helena Cobban, Palestine Liberation Organisation: People, Power and Politics 45-46 (1984) (friendly).

[163] For the record of Soviet assistance to the PLO, see Barry Rubin, Revolution Until Victory? The Politics and History of the PLO 38-9, 47, 52-53 (1993).

[164] Quoted in Sayigh, supra note --, at 199.

> military intervention in Africa and Asia . . . This was why the priority should be to destroy Israel, and why the slogan previously raised by Arab nationalists of 'unity is the path to Palestine' needed to be reversed into 'Palestine is the road to unity.'[165]

In short, Fatah had out-Nasired Nasir, co-opting pan-Arabism, socialism and anti-imperialism in order to give the Palestinian struggle primacy in the Third World. But the idea took off, not least because Arab leaders soon recognized that giving the Palestinian struggle a central place in their ideology meant that they could defer political reform at home. The Palestinian cause enabled them to augment their own domestic power. They thus found powerful incentives to continue to stoke the flames of the Palestinian issue.[166]

None of this meant, of course, that other Arab states were willing to make substantial efforts to aid the Palestinians. But if Arafat did not succeed in achieving primacy, he was able to achieve a diplomatic and political alliance. This pattern continues through today. Four years ago, at the summit announcing the formation of the African Union, Arafat was one of the heads of state represented, even though the most generous descriptions of a future Palestinian state would not give it territory in Africa.[167] Arafat was the only non-African head of state invited to address the summits of the OAU and the African Union.[168] Palestinian activists soon joined activists in other Third World causes, creating a shared discourse that had only limited relevance to the facts on the ground.[169] The Afro-Arab alliance had held, and the racialization of Palestinians quickly followed.

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[165] Id. At 198.

[166] See, e.g., Thomas L. Friedman, "The Hidden Victims," N.Y. Times, May 1, 2002, at A25.

[167] See Gamal Nkrumah, "History in the Making?," Al-Ahram Weekly On-line, Mar. 8-14, 2001, at http://weekly.ahram.org.eg/2001/524/in1.htm ("Palestinian leader Yasser Arafat . . . made an appearance and was received with a standing ovation, empathy for the Intifada and moral support for the Palestinian people from the African leaders present. Arafat called on them to stand by the Palestinians at the United Nations and other international forums in the same way that they stood by the Libyans during the Lockerbie Affair."). Arafat is the only non-African leader mentioned in the article.

[168] African Union Admitted as Observer to Committee on Palestinian Rights," United Nations Press Release, Mar. 26, 2003, at http://www.un.org/News/Press/docs/2003/gapal910.doc.htm (visited Jan. 25, 2005).

[169] Arafat's speech to the 1983 United Nations International Conference on the Question of Palestine serves as a typical example of the standard rhetoric. Arafat said:

> All freedom-loving and noble-minded people the world over may rest assured that our people will remain loyal to their common principles and values in their just struggle against injustice and oppression, against colonialism, Zionism, apartheid and racial discrimination. Despite all the conspiracies to which they are exposed and despite all their sufferings and bloodshed, our people will continue to stand together with the

D. The Enemy of My Enemy…

Palestinian leaders were drawn closer to radical nationalism and Nasirism because of their great enemy: the Hashemite Kingdom of Jordan, which served as their greatest political rival for Arab claims to Palestine. Jordan's founding king, Abdullah, claimed Palestine for himself. In 1947, he attempted to persuade Zionist leaders to partition Palestine with him, not with an independent Palestinian state; Jewish leaders, looking for a suitable Arab partner for partition, agreed.[170] The next year, Jordanian forces conquered the West Bank and Amman annexed it shortly thereafter. Jordan was the only Arab country to grant citizenship to Palestinian refugees,[171] and after the 1948 war, Abdullah organized West Bank local leaders to proclaim their fealty to him.[172] Making citizens of Palestinian refugees transformed Jordan's demographic composition: today, more than 65% of the kingdom's nationals are of Palestinian descent,[173] including the current Queen and the heir to the throne.[174]

This all meant that at the most basic level, the sharpest rival to the Palestinian nationalist leadership lay in Amman. And what was in Amman? A traditional Arab monarchy, resting on hereditary, non-ethnic, leadership: Abdullah came not from what is now Jordan but rather from Mecca, where his father was Sherif.[175] Furthermore, it was a monarchy bolstered and created by the western imperial powers. When Abdullah was

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> freedom-loving and struggling peoples in Namibia, South Africa, Asia and Latin America. All of these conspiracies will inevitably be crushed on the rock of this great international solidarity with our people and their just struggle.

Quoted in Uri Davis, Israel: An Apartheid State 117 (1987). This statement may represent merely rhetoric. But that is the point: it is the rhetoric that creates the ideological context.

[170] See Yoav Gelber, Jewish-Transjordanian Relations, 1921-1948 (1997). The exact nature of the Jewish Agency's relations with Abdullah has spawned a heated historiographical controversy. See Avi Shlaim, Collusion Across the Jordan: King Abdullah, the Zionist Movement and the Partition of Palestine (1988) & Efraim Karsh, Fabricating Israeli History: The New Historians (1993).

[171] Article 3 of the Jordanian Nationality Act of 1954, as amended, includes among those who shall be considered Jordanian nationals, "Any person with previous Palestinian nationality except the Jews before the date of May 15th, 1948, residing in the Kingdom during the period from December 20, 1949 and February 16, 1954." UNHCR, Centre for Documentation of Refugees, REFLEG database (DOCID 3878).

[172] See Gelber, supra note --, at 288 ("In December 1948 an assembly of notables from Jericho humbly appealed to Abdullah to undertake the administration of what was left of Arab Palestine.").

[173] Clinton Bailey, Jordan's Palestinian Challenge **pin cite** (1984).

[174] Queen Rania actually defines herself as Palestinian. See, e.g., "Larry King Live," Apr. 16, 2002, at http://www.jordanembassyus.org/speech_hmqr04162002.htm (visited Feb 1, 2005);

defeated for control of the Arabian Peninsula by Ibn Saud (the founder of Saudi Arabia), British Colonial Secretary Winston Churchill gave him Jordan as a consolation prize.[176] Abdullah's claims on Palestine came not from ethnic nationalism but from the traditional power game of competing dynasties: if the Hashemites had a European counterpart, it was the Hapsburgs or the Romanovs.[177] Today, Hashemite power—wielded by Abdullah's great-grandson and namesake--rests on a highly professional army made up mostly not of Palestinians but Bedouin and Circassians.[178] It stood to reason that a Palestinian nationalist leadership would look to whatever models it could find that stood in sharpest contrast to the Jordanian kingdom. And the two sharpest competing models were either Nasirist pan-Arabism and Syrian Ba'thism—both radical Arab nationalist movements stressing anti-imperialism and linking themselves with other Third World nationalisms.

Thus was formed, under the big tent of pro-Soviet anti-imperialism, the coalition between the Third World and the Arab world. This link has never been natural, as can be shown in the current conflict in Sudan, where Arab paramilitaries have slaughtered hundreds of thousands of black Africans. But it worked geopolitically. And thus it worked racially.

D. Israeli Strategy and American Jewish Dreams

Geopolitics pushed Israel in precisely the opposite direction. Israel's founders saw themselves as anticolonialist because they were overthrowing a British mandate. And American policymakers worried that the socialist ideology of Zionist leaders would

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[175] David Fromkin, The Peace to End All Peace (1990). "Sherif" is a hereditary title signifying a local ruler descended from the Prophet Muhammad. Albert Hourani, A History of the Arab Peoples **pin cite** (1991)(defining the term).

[176] This story is well told in Efraim Karsh & Inari Karsh, Empires of the Sand: The Struggle for Mastery in the Middle East, 1789-1923, at 314-25 (1999); **see also** Mary Wilson, King Abdullah, Britain and the Making of Jordan (1988);

[177] See, e.g., Gelber, supra note --, at 4 ("While [Abdullah] represented the old order of the Ottoman era by his descent, and the unpopular post-World-War arrangements by his office, new forces were arising all around him. . . . In addition to the old dynastic feud between the Hashemites and the Wahabis, he also competed with his brother, King Faysal of Iraq, and his descendants for supremacy within his family.").

[178] Cite.

move it into the Soviet camp.[179] But Nasir's 1956 closing of the Straits of Tiran pushed the Jewish state in a tacit alliance with Britain and France. Israel's efforts at making alliances in the Third World were rebuffed, as dozens of developing nations cut links with Jerusalem in the wake of the Yom Kippur War and the threats of Arab oil embargoes.[180] Casting about for international support, Israel found it in South Africa's apartheid government, connecting it closely with the ultimate symbol of white supremacy.[181] And this also connected it closely with conservatives who saw both nations as bulwarks against communism.

Israel also saw the great potential of casting itself as white in order to cement its strategic relationship with the United States. In particular, Israeli leaders created closer bonds with American Jews, who had desperately been working at whitening themselves during most of the 20th century.[182] For American Jews, seeing Israel as a white country not only responded the political imperative of strengthening US-Israel relations, but also to their own desires. Deborah Dash Moore explains that Israel allowed American Jews "to reimagine home and roots in an alternative homeland. Israel even became American Jews' insurance policy, despite its precarious political and economic situation."[183] Alternative, but not *too* alternative: American Jews could imagine themselves living in Israel, but if so, then Israel had to be white. They did not want to spend decades whitening themselves, only to backslide upon making aliyah.[184]

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[179] See Melvyn P. Leffler, A Preponderance of Power: National Security, the Truman Administration, and the Cold War 242 (1992)("[P]rotecting vital interests seemed excruciatingly difficult because Soviet diplomacy appeared wickedly clever. Soviet recognition of Israel and the shipment of arms from Czechoslovakia to the new Jewish state created manifold possibilities for the growth of Soviet influence in the region, especially within the Israeli government. Fears that Jewish immigrants from Poland and Russia might be pro-Communist, plus intelligence reports stressing Soviet influence with the Irgun and the Stern Gang, accentuated U.S. apprehensions.").

[180] See Howard M. Sachar, A History of Israel From the Rise of Zionism to Our Time 572-579, 789-90 (2d ed. 1996).

[181] Cites concerning Israeli-South African relationship.

[182] See Karen Brodkin, How Jews Became White Folks and What That Says About Race in America (1998); Dan Oren, Joining the Club: A History of Jews and Yale (1983)

[183] Deborah Dash Moore, To the Golden Cities: Pursuing the American Jewish Dream in Miami and L.A. 261 (1994). "Aliyah" is a Hebrew word literally meaning "to go up" and signifying moving to Israel.

[184] It is, of course, true that very few American Jews actually emigrated to Israel—to the consternation and shock of Israeli Zionists. See Tom Segev, 1949: The First Israelis **pin cite** (1998). The point, however, is that American Jews could imagine themselves or their families as some day moving there—even if some day never occurred. This made Israel a particularly imaginary form of an imagined community. It may well be reflected in a line concerning aliyah that remains popular in the contemporary American Jewish community. American Jews think aliyah is great, the saying goes: it would be perfect for someone else's children to move to Israel.

What could be better for Israeli leaders, then, in telling American Jews that in supporting a Jewish state, they were supporting a white state? This, of course, meant concealing the fact that the majority of Israeli Jews were not white. American Jews traveling to Israel were shown Yad Vashem, the Holocaust memorial (which by definition was virtually all about European Jews), met with English-speaking Asheknazic Israeli leaders, and lionized Golda Meir, the Russian-born, Milwaukee-raised Prime Minister. They skipped over predominantly Mizrahi development towns and never met with the "Black Panthers," a radical Mizrahi protest movement.

Israeli writer Amos Oz, traveling around his country during the early 1980's, captured the bitterness of the Mizrahi working class at these patterns. Relating a conversation with Mizrahis, who formed the backbone of the Likud's takeover of Israeli politics, he has them saying, "When you were on top, you hid us away in holes, in *moshavim*[185] and in development towns, so the tourists wouldn't see us; so we wouldn't stain your image; so they'd think this was a white country."[186] The Mizrahis exulted that they were no longer political outsiders: "But that's all over now, because we've come out of our holes. You still haven't figured out what hit you, have you?"[187] The image, however, had been set, carefully constructed over 40 years, and useful for American consumption: Israel is a white country.

The foregoing is merely a hypothesis: the dynamics of racial formation in world politics are poorly understood. They vary widely depending upon specific circumstances. But they help to why the Left and the Right spend so much energy drawing attention to an issue that tracks uncomfortably with many of their most deeply-held beliefs.

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[185] In Hebrew, a *moshav* is a farming community where families share tool and equipment, and use cooperative purchasing to lower costs. It is sometimes contrasted with a *kibbutz*, which is a commune run on more socialist and egalitarian principles. The kibbutzim formed the ideological and military backbone of the Israeli founding generation; low-income Mizrahi immigrants were often forced into moshavim and expected to fend for themselves.

[186] Amos Oz, In the Land of Israel 40 (Maurie Goldberg-Bartura trans. 1983) (Originally published as "Here and There in the Land of Israel in the Autumn", 1982).

[187] Id.

Race and Power

Skeptics might wonder whether the emphasis on race obscures a deeper explanation.[188] Left and right are divided on race, they would concede, but at base their sympathies diverge on questions of power: the left gravitates toward those without authority and the right toward those with it. The Left, on this argument, sees the Palestinians as powerless, stateless actors, and the Israelis as the masters of the most powerful military machine in the region. It would stand to reason, then, that it would sympathize with Palestinians, and the Right should do the same with the Israelis.

The strong version of a rebuttal to this argument would essentially challenge the power equation that the skeptic seems to take for granted. The power correlations are anything but clear in the Israeli-Palestinian conflict. The development of the suicide bombing as a normal weapon of war has greatly equalized the balance of terror; the Palestinian effort epitomizes the asymmetrical warfare that has been so successful in so many conflicts. And given that Palestinian efforts have been self-consciously directed at civilians who cannot defend themselves, it could be argued that Israeli victims have less power than anyone. In any event, raw numbers tell a major part of the story: the second intifada represents a major improvement for the Palestinian side over the first. The Palestinian/Israeli death ratio is now something close to 3:1, in comparison to 25:1 in the late 1980's.[189] But if anything, the Left's attachment to the Palestinians strengthened as teenagers throwing rocks were replaced by suicide bombers slaughtered dozens of civilians in an instant.[190] And none of this even considers the military and economic support given to the Palestinian side by Syria, Iran, Saudi Arabia, and other Arab states. It could make just as much sense to see Israel as the powerless actor.

One could also respond by contrasting the response of both left and right to China's Tibet policy, which relies on brutality, repression, settlement, and ethnic cleansing to a far greater degree than anything than any Israeli official has ever contemplated.[191] If the left's and right's positions were essentially about power, then one would expect that on China, the ideological salience would be even more dramatic than

[188] One such skeptic is my colleague Maximo Langer, who originally suggested it and gently challenged me to refute it.
[189] NYT statistics.
[190] Paul Berman, Terror and Liberalism.

in the Middle East. Perhaps the right's position can be explained by alternative factors—the Chinese government is nominally Communist—but its embrace of free-market ideology has ended its status as the darling of the left. The power explanation, then, would predict ferocious left-wing protests over Tibet. Instead, we see relative silence, and the Tibet cause is taken up by the likes of Richard Gere.

In any event, in the end, such an argument is unproductive, because race and power are two sides of the same coin. Race is ascribed to different groups based upon their relative power; power is ascribed to different groups depending upon their race. Whiteness is not just property; it is power. Some groups are perceived as white because of their increase in power; some groups are seen as more powerful because of their whiteness. Arguing about which came first yields about as much light as discussing chickens and eggs.

Colonialism: Square Pegs in Round Holes

A potentially more complex counterargument would hold that the Left-Right split on the Middle East conflict derives from perceptions of colonialism. Israel is seen as a colonial intrusion into the Middle East, similar to the colonnes of French-ruled Algeria. Palestinian political orthodoxy claims Israel is a "typical European colony with a typical European settler minority."[192] Maxime Rodinson, one of the first western analysts to set forth the argument, contended that "[t]he creation of the State of Israel on Palestinian soil is the culmination of a process that fits perfectly into the great European-American movement of expansion in the nineteenth and twentieth centuries whose aim was to settle new inhabitants among other peoples or to dominate them economically and politically."[193] Because the Left so strongly opposes colonialism, it stands to reason that it would be hostile to Zionism.

Such an argument, however, quickly degenerates into circularity. "Colonialism" has many definitions, but surely at the core of any account is that colonists seek to implant the society and values of their home countries into a new land. More Marxist-

[191] Human Rights Watch, Amnesty International.
[192] This characterization is from Roger Owen, Introduction, in Studies in the Social and Economic History of Palestine in the Nineteenth and Twentieth Centuries 4 (Roger Owen ed. 1982).
[193] Maxime Rodinson, Israel: A Colonial-Settler State? 91 (1973).

inflected analyses suggest a relation of dependence between the "core" mother country and the "peripheral" colonies, with the colonies providing raw materials, sheltered trading environments, and regions for the investment of surplus capital.[194]

Yet Israel fits uneasily into the colonial paradigm. The Zionist movement had no interest in replicating the mainstream cultures from which their members came. Jews under the Palestine Mandate spoke not English but Hebrew—a language that they adopted and modernized specifically for the purpose of breaking away from their exilic roots. Indeed, one of their central beliefs was that Jews were *not* members of European polities: they claimed to be a distinctive national group. The Zionist movement had contempt for the traditional culture of European Jews, which they saw as reinforcing the stereotype of the weak, pathetic Jewish wanderer. Ben-Gurion despised Yiddish and hated speaking it. Finally, Jewish settlement in Palestine never served as a nexus for capitalist development.[195] The land was resource-poor, unlike many areas of the Middle East and Maghrib. Israel's socialist founders hardly constituted good candidates to be corporate compradors.

This all puts anti-Israel writers in somewhat of a bind. Many simply ignore the problem. Others, such as the distinguished Marxist historian Perry Anderson, acknowledge that Zionism might be "sui generis" but point out that but for the British Mandate in Palestine, Zionism's chances of success would have been negligible. Thus, Zionist settlement was just a "colony without a metropole."[196]

Such an analysis confuses colonialism with realpolitik. It seems to suggest that if a cause benefits from the actions of a colonial power, then that cause is colonialist itself. On this reading, Jordan would also be a colonialist power—and in fact this was the Nasirist critique. But it would also make Syria and Iraq colonialist, because without the

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[194] The surplus capital thesis derives originally from J.A. Hobson, Imperialism (1902), and later V.I. Lenin, Imperialism: The Highest Stage of Capitalism (1916), available in English online at http://www.marxists.org/archive/lenin/works/1916/imp-hsc/ (visited Feb. 6, 2005).

[195] As Gershon Shafir, hardly an uncritical historian of Zionism, makes clear. See Gershon Shafir, Land, Labor and the Origins of the Israeli-Palestinian Conflict, 1882-1914, at 154-55, 197-98 (Updated ed. 1996).

[196] See Perry Anderson, "Scurrying Toward Bethlehem," 10 New Left Review (July-August 2001) ("The Jewish enclave in Palestine was distinctive in another respect too. From the start it was a settler society without a home country—a colony that never issued from a metropolis. Rather, it had a proxy imperialism behind it. British colonial power was the absolute condition of Jewish colonization. Without the mailed force of the British police and army, the Arab majority—90 per cent of the population—would have stopped the Zionist build-up in its tracks after the First World War.").

Anglo-French carving up of the remains of the Ottoman Empire, and installing local elites to govern these new countries, they would not exist, either. We can look further: Hajj Amin al-Husseini, the Grand Mufti of Jerusalem who led the Palestinian Arabs in their fight against Zionism, was given his powers by the British colonial administration[197]; before that administration, "Palestine" as a political entity did not exist, and a consciousness of a "Palestinian people" (as opposed to other Arabs) did not exist, either.[198] Indeed, it would make virtually all of the last 200 years of Middle Eastern politics colonialist, since the region's history is one of local actors and foreign powers using each other for their own purposes.[199] Pursuing it further yields some truly bizarre conclusions. As Tom Segev has shown, one principal reason why the British supported Zionism was due to their inaccurate and anti-Semitic belief that a powerful worldwide Jewish conspiracy actually existed.[200] If allying with colonialism make one colonialist, it follow that allying with an anti-Semite makes one anti-Semitic. Yet it would be folly to argue that Zionism was anti-Semitic. American intervention in World War II would be "Stalinist" on the same logic.

Anderson does, in fact, concede that the conflict between Jews and Arabs in Palestine represented the clash of "two competing nationalisms." Yet he refuses to conclude that both are legitimate, because nationalism cannot be genuine and colonialist at the same time. How, then, to account for the success of Zionism if it didn't have a metropole? It was, says Anderson, a "remarkable feat of social engineering."[201] Since Zionism is colonialism, false consciousness serves as the only way to explain that none of its adherents were.

Ronen Shamir presents a more subtle attempt to link Zionism with colonialism.[202] It was not simply the actions of the British that enabled Zionist to succeed, he argues: instead, he suggests that two colonial ideologies deeply influenced Zionist thinking.

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[197] See Tom Segev, One Palestine, Complete: Jews and Arabs Under the British Mandate **pin cite** (2000); Naomi Shepherd, Ploughing Sand: British Rule in Palestine, 1917-1948 (1999).

[198] This last point is acknowledged even by advocates of the Palestinian cause. See Rashid Khalidi, Palestinian Identity: The Construction of Modern National Consciousness (1997). Anderson, supra note --, concedes that Palestinian consciousness did not emerge until after the 1948 war.

[199] This is the gravamen of Karsh & Karsh, supra note --.

[200] See Segev, supra note --, at pin cite.

[201] Anderson, supra note --, at.

[202] Ronen Shamir, The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine 6-29 (2000).

First, Zionists embraced "statist" nationalism, holding that their national aspirations could only be fulfilled through a sovereign state.[203] Second, Zionists accepted British common law as "enlightened", identifying themselves with the west and thus western ideology. The British colonial state was more than a brooding omnipresence in the Palestinian sky: its very essence structured Zionist theory and practice.

These observations offer an important and original theoretical framework, but they fail to resonate at a political level because, like Anderson's arguments, they prove too much. If the statist nationalism describes colonialism, then the Israeli-Palestinian conflict is a clash between two colonialisms. A similar principle applies to Zionist adoption of western legal liberalism: all Middle Eastern nations (with the possible exception of Saudi Arabia) have adopted a series of western forms, law and ideologies in the creation of their own nationalisms. Ethnic nationalism such as was pioneered by Nasir and reflected in virtually every Arab country is itself a western construction. Syrian and Iraqi Ba'th socialism derive several core ideas and tropes from fascism,[204] and does much of modern Islamist ideology.[205] We are all colonialists now.[206]

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[203] Shamir attempts to show this through contrasting the statist emphasis of the Zionist leadership with a road not taken: adoption of the "Hebrew Law of Peace," a series of voluntary community dispute-resolution institutions that grew up during the Ottoman period. The Hebrew Law of Peace sought to develop an indigenous, authentic Jewish law emerging from community norms that rejected traditional religious Jewish law. Shamir suggests that it represented a real alternative to both statist Zionist ideology that sought to co-opt British colonial institutions, and traditional Rabbinic law. This non-statist Zionism, he notes, bears strong resemblance to the cultural, non-political Zionism of such major figures as Ahad Ha'am and Martin Buber. Interestingly, although he acknowledges that the Hebrew Law of Peace grew up in the Ottoman period and was actually encouraged by Ottoman authorities, he does not deal with the obvious problem raised by non-state, community-based law, viz., that it could become a cover for ghettoization (in the Christian world) or dhimmitude (in the Muslim world). The first phrase should be clear enough; for background on the second, see Bernard Lewis, The Jews of Islam 35-48 (1984).

[204] See Joseph Joffe, "A World Without Israel," Foreign Policy, Jan./Feb. 2005, at 36, 40 (noting that "the Baathist parties in Syria and Iraq sprang from the same fascist roots...").

[205] This is the central thesis of Berman, Terror and Liberalism, supra note --.

[206] Sa'id himself acknowledged as much. He noted in 1994:

> [W]e have never been as aware as we now are of how oddly hybrid historical and cultural experiences are, of how they partake of many often contradictory experiences and domains, cross national boundaries, defy the police action of simple dogma and loud patriotism. Far from being unitary or monolithic, or autonomous things, cultures actually assume more 'foreign' elements, alterities, differences, than the consciously exclude. Who in India or Algeria today can confidently separate out the British or French component of the past from present actualities, and who in Britain and France can draw a clear circle around British London or French Paris that would exclude the impact of India and Algeria upon those two imperial cities?

Edward Sa'id, Culture and Imperialism 14 (1994).

The most sophisticated equation of Zionism and "colonization" comes from the work of Gershon Shafir.[207] Shafir argues that during the First Aliyah of 1882 to 1904, Zionists desired to emulate the traditional colonial model of using cheap labor. He points out that the leading Zionism benefactor, Baron Edmond de Rothschild, was a Frenchman who looked to French colonial models in Algeria for use in Palestine. The majority of workers in these settlements were Arab, who worked cheaply; Jewish workers retained favored status. By 1900, however, Rothschild tired of pouring money into relatively unproductive settlements, and the farms were rationalized, leading to sharp reductions in wages for their Jewish workers. During the Second Aliyah of 1904 to 1914, the wave of impoverished Eastern European immigrants refused to submit to the low standards of living of the native Arab population and instead insisted on the "conquest of labor", i.e. the development of self-sufficient, wholly Jewish communities. Their response lay in the creation of co-operative farms such as kibbutzim, the exclusion of Arab labor from these farms, and a series of Jewish communal, labor-oriented institutions. Thus, Shafir argues, Zionism's character as self-sufficient ethnic nationalism that avoided the exploitation of native labor originally derived not from the idealism of European socialists, but rather the hard-headed calculation of Jewish workers. "Many of the unique characteristics of Zionist colonization were not rooted in the purportedly non-colonial character of Zionism but were intended to compensate the settler-immigrants for the adverse conditions prevailing in the land and labor markets of Palestine precisely in order to ensure the successful colonization of Palestine and the creation there of a pure, of homogeneous, settlement."[208]

Anyone with a serious interest in Zionism and the history of the Israeli-Palestinian conflict must grapple with Shafir's thoughtful and groundbreaking work. But its contemporary political relevance is much more attenuated and may in fact militate toward the two-state solution. It is not especially clear why, for current political purposes, the intentions of Zionists more than a century ago has much purchase: as Shafir acknowledges, by the Mandate period, Zionism had taken its eventual form and adopted

[207] See Gershon Shafir, Land, Labor and the Origins and the Israeli-Palestinian Conflict, 1882-1914 (updated ed. 1996) (hereinafter Shafir, Origins).
[208] Gershon Shafir, "Zionism and Colonialism: A Comparative Approach," in The Israel/ Palestine Question 81, 85-86 (Ilan Pappe ed. 1999)(hereinafter Shafir, Zionism and Colonialism).

its prevailing ideology, which explicitly rejected the Algerian, "plantation colony" model.[209] As Bernard Avishai notes, "today Arabs and Jews can still be reconciled to each other in historical Palestine precisely because the intended result of Zionist policies has been substantially achieved and class domination of one people by the other avoided."[210]

Shafir explicitly rejects the dominant "Zionism-as-colonialism" ideology advocated by Palestinians and their supporters.[211] To view Israel as colonialist, he writes, is a "simplistic catch-all characterization."[212] Instead, he distinguishes carefully between "colonization", which involves settlers coming from other countries, and "colonialism", which involves the capitalist domination of natives, emanating from a metropole.[213] To elide this distinction, he notes, simply reflects "ahistorical bias", and "produces its own systematic distortion of the picture as a whole."[214]

No serious theory of colonialism accurately reflects the history or ideology of Zionism. It makes little sense, then, for the left to castigate Israel as being colonialist. But of course the same would apply to seeing the conflict through a racial prism. And thus we are left with a similar conundrum to what faced us in the last section: which came first, colonialism or race? Once again, the strong version of the thesis has force because of the political context: intra-race domination (such as the Chinese in Tibet, or the Arabs in Berber lands, or Ashkenazim against Mizrahim) is not considered a major international political issue. Cross-race domination is.

It is useful to recall chronology. Colonial theory (or perhaps more accurately anti-colonial theory) has never lacked for practitioners: J.A. Hobson's influential book appeared in 1902; Lenin's a few years later. But the association of Israel with imperialism, at least outside the Arab world, did not begin to emerge until the Soviet Union decided that its interests were served by aligning with the Arab states. It then abruptly switched sides in the Arab-Israeli conflict and began castigating the Jewish state

[209] See Shafir, Origins, supra note --, at
[210] Bernard Avishai, "Zionist 'Colonialism,' 15 Int'l Problems 13, 21 (1976).
[211] These supporters are most prominently Maxime Rodinson, whom Anderson cites as the best sources on the question, and Sa'id. Shafir, Origins, at 211-13.
[212] Id. At 211.
[213] Id. At 212.
[214] Id. At 213. (quotations omitted).

as an agent of western colonialism.[215] Throughout the rest of the 1950's and 1960's, the European left generally supported the Jewish state, particularly in light of its socialist economy. The end of the 60's and beginning of the 70's, however, saw a turnaround—at just the same time as the racialization of the Arab-Israeli conflict occurred. Tony Judt explains that

> [t]he European Old Left had always thought of Israel, with its long-established Labor leaders, its disproportionately large public sector, and its communitarian experiments, as "one of us." In the rapidly shifting political and ideological currents of the late 1960s and early 1970s, however, Israel was something of an anomaly. The New Left, from Berlin to Berkeley, was concerned less with exploited workers and more with the victims of colonialism and racism. The goal was no longer the emancipation of the proletariat; it was rather the liberation of the third-world peasantry and what were not yet called "people of color."[216]

Similarly, Uri Ram observes that "[t]he notion that Israel is a settlement-colony type of society became a staple of Arab and Palestinian thought, and from there disseminated to Western radical circles, in the late 1960's and early 1970's, against the background of the new sensitivity to Third-World and post-colonial issues."[217]

Colonialism had something to do with the shift, but it was really more about race than colonialism *simpliciter*. And race became salient because of "Third World issues," i.e. the growth of the Arab-African alliance that decolonization made possible. It was disseminated to radical circles in part by consistent Soviet support. The alliance then created the Israel-as-colonizer ideology. It did so not on the basis of theories of colonialism, but rather on categories of race. Those categories—however misleading—persist to this day.

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[215] See Oren, supra note --, at 8. Oren notes that:

> 1954, undistinguished elsewhere in the world, was a Middle Eastern watershed. That year, the Soviet Union, having supported Israel since its creation, having recognized it and armed it, switched its allegiance to the other side. The USSR indeed had nothing more to gain in terms of placating the new, post-colonial governments, securing its vulnerable southern border, and threatening the West's oil supplies. . . . Communist Party First Secretary Nikita Khrushchev . . . accused Israel of plotting with imperialism to 'cruelly ravage the natural treasures of the region.' Short of destroying Israel, the USSR endorsed all and every means of realizing 'Arab rights in Palestine.'"

[216] Tony Judt, "After Victory," The New Republic, July 29, 2002 (review of Oren, supra note --), at http://www.tnr.com/doc.mhtml?i=20020729&s=judt072902&c=2 (visited Feb. 9, 2005).

Conclusion

"The past is never dead," William Faulkner observed. "It's not even past."[218] So it is with race, ideology, and the Middle East. More than a decade after the collapse of the Soviet Union, and more than three decades after the death of Nasir, the twin Cold War geopolitics still exert influence. And in this case, the influence powerfully distorts the way people think about the Middle East.

But the deep contradictions for both the Left and Right, and their strategic causes, are not simply another instance of poorly conceived policy thinking. They point to a previously overlooked cause of the current Middle East impasse. It is a commonplace to observe that although the parties must negotiate any final settlement agreement, such an agreement cannot be reached in the absence of sustained outside pressure. This pressure could take the form of American engagement or perhaps diplomatic efforts by the Quartet.

Outside pressure, however, cannot be productive if it is not coherent--if it is not well thought through and does not point to a realistic and concrete endpoint. And perhaps outside pressure has lacked coherence partially because it lacks intellectual clarity. American conservatives might push for Palestinian compromise on the "right of return", but when pressed, they could not say why without contradicting important political assumptions. European social democrats might insist on Palestinian property rights, but could hardly be expected to advocate for such a position vigorously. And if outside parties cannot push hard, there is little reason to expect Israelis or Palestinians to make concessions. As long as the international view of the Israeli-Palestinian conflict remains in an intellectual morass, we cannot expect to escape the political quagmire.

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[217] Uri Ram, "The Colonization Perspective in Israeli Sociology," in Pappe, supra note --, at 55, 56.
[218] William Faulkner, Requiem for a Nun.

Appendix

Statement of Principles—People's Voice Accord

(Signed by Ami Ayalon & Sari Nusseibeh on July 27, 2002)

1. **Two states for two peoples:** Both sides will declare that Palestine is the only state of the Palestinian people and Israel is the only state of the Jewish people.

2. **Borders:** Permanent borders between the two states will be agreed upon on the basis of the June 4, 1967 lines, UN resolutions, and the Arab peace initiative (known as the Saudi initiative).

    - Border modifications will be based on an equitable and agreed-upon territorial exchange (1:1) in accordance with the vital needs of both sides, including security, territorial contiguity, and demographic considerations.

    - The Palestinian State will have a connection between its two geographic areas, the West Bank and the Gaza Strip.

    - After establishment of the agreed borders, no settlers will remain in the Palestinian State.

3. **Jerusalem:** Jerusalem will be an open city, the capital of two states. Freedom of religion and full access to holy sites will be guaranteed to all.

    - Arab neighborhoods in Jerusalem will come under Palestinian sovereignty, Jewish neighborhoods under Israeli sovereignty.

    - Neither side will exercise sovereignty over the holy places. The State of Palestine will be designated Guardian of al-Haram al-Sharif for the benefit of Muslims. Israel will be the Guardian of the Western Wall for the benefit of the Jewish people. The status quo on Christian holy site will be maintained. No excavation will take place in or underneath the holy sites without mutual consent.

4. **Right of return:** Recognizing the suffering and the plight of the Palestinian refugees, the international community, Israel, and the Palestinian State will initiate and contribute to an international fund to compensate them.

    - Palestinian refugees will return only to the State of Palestine; Jews will return only to the State of Israel.

    - The international community will offer to compensate toward bettering the lot of those refugees willing to remain in their present country of residence, or who wish to immigrate to third-party countries.

5. The Palestinian State will be demilitarized and the international community will guarantee its security and independence.

6. **End of conflict:** Upon the full implementation of these principles, all claims on both sides and the Israeli-Palestinian conflict will end.