

Yitz and Ishmael¹
A Drama in One Very Long Act
An Annotated Dialogue
Jim Friedberg*

PROLOGUE

Abe: My boys, Yitz and Ishmael, attend an International LL.M. program at a good university in Philadelphia. They also share an apartment. Both received their initial law degrees from Hebrew University in Jerusalem. Ishmael grew up in Arab East Jerusalem and holds an Israeli resident permit, but not citizenship. Yitz was born in Philadelphia but grew up in Tel Aviv after his family immigrated to Israel when he was three

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** The author thanks Katie Hutchison, West Virginia University College of Law, J.D., 2018, for her valuable research assistance. Ms. Hutchison drafted most of the footnotes. She provided a critical eye and useful suggestions on the main text of the dialogue.

*** The author thanks the West Virginia University College of Law and its Posten and Hodges funds for their support of the research that enabled this piece. He also thanks the Truman Institute at Hebrew University and the University of California Berkeley Law School's Institute for Jewish Law and Israel Studies for their support and hospitality.

**** The author thanks Chuck DiSalvo, Joshua Fershee, Emily Marthinsen, Helene Friedberg, Carl Burak, Mark Flicker, Howard Sachs, Sam Rudin, Joseph Hample, Amnon Reichman, and Moien Odeh for their generous time and critical suggestions as draft readers.

***** Generally, the substantive footnotes below relate to the assertions of Yitz and Ishmael. Thus, occasionally, the sources support tendentious opinions, not necessarily subscribed to by the author.

years old. He is an Israeli citizen. Both Yitz and Ishmael are political moderates with liberal tendencies. They are friends. But they don't acknowledge the blood they share.

In their flat, the roommates debate some of the rights and wrongs of the Israel/Palestine. They touch on historical claims to the land, the growth of Zionism, the advent of Palestinian nationalism, violence perpetrated by each side, cultural biases, human rights, and international law. They want to agree on a solution to their country's dilemma—but deep feelings of hurt and injustice make trust difficult. While each of them has real affection for the other individually, their inter-community distrust goes deep. Their dialogue reveals right on both sides, wrong on both sides, and overlapping claims that demand compromise.

So I raised two lawyers—always arguing. And international lawyers, at that! Yeah, partly I'm the proud dad. But, y'know, sometimes I get tired of hearing them go on about self-determination, rights of return, basic laws, proportionality, self-defense, Article two-four, Article 51, UN resolutions, conventions, conventions, conventions . . . Geneva, Rome, the Hague . . . the *headache!* They should only be nice and get along.

So listen to them. Maybe you can talk some sense . . .

As we drop in on their conversation, Yitz and Ishmael sit at a kitchen table in a shared student apartment. A fridge is to the left, a stove and cabinet to the right, a bookcase behind them.

Yitz nurses a beer; Ishmael sips a cup of tea.

Yitz: I'm the underdog.

Ishmael: No, I'm the underdog.

Y: We've been persecuted for 3,000 years—enslaved, tortured, murdered, exiled—you name it. Egyptians,² Babylonians,³ Hellenists,⁴ Romans,⁵ Byzantines,⁶ Mohammed's troops at Medina,⁷ Andalusian al-Mohades,⁸ Spaniards,⁹ Cossacks,¹⁰ Iraqis,¹¹ Nazis¹²—they all slaughtered us.

I: So much less the reason for you to persecute us! Even if all that history is true, the fact is that as Europeans coming to Palestine a century ago, you came as colonists.¹³ You came with superior technology and Western money.¹⁴ You destroyed our culture and stole our land. We had no chance against your

dollars, and pounds, and francs—against your guns.

Y: We did not come as European colonists. We came as refugees *fleeing* Europeans. No land was stolen. It was all purchased from its owners, first under Ottoman, then British law. Only after you ignored the United Nations partition and tried to drive us into the sea in a new genocide—five Arab states invading to help you do so—only then was any Arab land taken by force. And even then, most of that 1948 land was abandoned before seizure.¹⁵

I: By 1948, the UN Charter had outlawed the use of force as a means to acquire territory.¹⁶ So your seizures were illegal. Furthermore, Palestinians did not abandon their homes in 1948. Zionist terror forced them out. Terror like the destruction and murder at Deir Yasin.¹⁷

Y: If anyone first used illegal force, it was the Arab states that invaded Israel.¹⁸ Furthermore, UN treaty law didn't apply to Israel, not yet a UN member.¹⁹ As far as general international law goes, Israel was acting no differently by conquering small additional amounts of territory, in a war of self-defense, than the Allies had done just three years before in seizing much larger amounts of land from Germany and other states.²⁰

I: You avoid Deir Yasin.

Y: Deir Yasin was an aberration. An extreme faction of the Irgun²¹ perpetrated the massacre. Most Jews then and now have condemned the excesses of an otherwise necessary military operation.

I: If mainstream Zionists condemned Deir Yasin, they were willing enough to benefit by the terror it spread, causing Arabs to flee their homes and villages in fear. The classical definition of refugees.

Y: The classic definition of refugee—a person fleeing from persecution based on race, religion or politics²²—fits no group better than the Jews who fled the Russian Empire's pogroms in the nineteenth century and early twentieth century, and then, also, those who fled Nazi Europe in the thirties and forties.²³ And while they wanted to settle peacefully in Palestine, they were met only with Arab hostility and violence.²⁴

I: Many Arabs welcomed them as neighbors, where they came as such. But where they came as evictors, of course hostility followed. And when there was violence, it flowed in both directions.²⁵

They stand and cross in opposite directions, Ishmael to the fridge for a jar of pickles, Yitz to the cabinet for a bag of pita chips. They resume the conversation standing at fridge and cabinet.

Y: We have prior claim to the land. History supports us. The Romans drove most Jews—the ones who survived their genocide—out of Israel 1,800 years ago.²⁶ We had lived there for most of the prior millennium under judges, prophets, and kings. We gave the world a moral monotheism that globally shapes law and human rights to this day.²⁷ Some Jews stayed, despite the Roman devastators. Those who found refuge in Babylonia, Persia, Central Asia, Spain, France, Germany, and Arabia²⁸ never quit their claim to Israel.

I: But we are there now. And we were there a century and a half ago when your Poles and Russians—financed by rich British, French, German and American Jews²⁹—began swarming into Palestine. And before that. Actually, three thousand years. We were the Canaanite villagers that Joshua slaughtered.³⁰

Y: No cultural continuity there . . .

I: We were the Philistine peasants that your glorified kings robbed of their fields.³¹ If we look to history, *we* win the case. But ancient history is not where we should look. At some point a claim becomes stale and unprovable.

Y: Every year at the end of the Passover Seder, we have prayed, “Next year in Jerusalem.”³²

I: Statute of limitations. Laches.³³ No standing to sue for hundredth generation successors to a stale claim. Polish Jews ought not invade land their distant ancestors may or may not have been connected to 2,000 years ago. Where we should look is recent history. And that history establishes a grand theft of Arab land by Europeans.

Y: It was not theft. Both the Balfour Declaration³⁴ and a League of Nations mandate³⁵ gave Jews the right to settle in their historic homeland. And they legally purchased the land they settled. They stole nothing.

I: Neither the British government nor the League of Nations had the right to give away our land.

Y: That's debatable. Your charge that anyone gave anything away is false. The settlers bought the land or houses from the owners. At first, under the Muslim Turks, *not* under the British. Britain was sovereign by a League of Nations mandate. The civilized world had created the League of Nations to enforce peace and to manage the governance of territories freed from fallen empires, in this case the Ottoman.

I: You mean Britain and France carved up the Ottoman Empire as they had already carved up Africa?³⁶

Y: The League assigned Britain that governance over Palestine.³⁷ Both Britain and the League of Nations acted under the international law of the time.³⁸

I: South Africa had laws, as well.³⁹ So did the southern states in America during slavery.⁴⁰ And even Hitler with his Nuremberg statutes.⁴¹

Y: A nasty comparison that doesn't change that facts.

I: The Zionists purchased much Palestinian property from absentee landlords⁴² who were all too happy to take dollars, pounds, francs and marks from rich Jewish sponsors in America and Europe to settle Polish Jews on Palestinian land. No one cared that Palestinian tenant farmers had tilled those fields for generations.

Y: I've heard this absentee landlord story many times without proof that establishes the frequency of these sales. Maybe it happened at times.⁴³ More typically the early Zionists bought from the people that lived there or developed previously unproductive property, often semi-desert or swamp.⁴⁴

I: Colonial invasion . . .

Y: Your continued claim that Zionism is simply a form of European colonialism ignores facts that make the Jewish return to Israel much more complex. Many Jews came from non-European countries, tens of thousands of Yemenis in the early and mid-twentieth century, and Iraqi Jews in the 1930s, 40s and 50s. These refugees were fleeing persecution in Arab lands. Moroccans, Tunisians, Egyptians and others came in the 1950s fleeing their Arab and Muslim persecutors.⁴⁵ And those escaping Europe were victims—hardly agents of European powers.

I: It's not a question of whether individual transactions were technically legal. It's a question of the larger Zionist project behind them—that project aimed to wrest Palestine from Palestinians.⁴⁶

Y: No. Zionism originally envisioned co-existence—Jews and Arabs living peacefully as neighbors.⁴⁷ Only after murders, rapes and pogroms in the 1920s and 30s, by Arab gangs against peaceful Jewish settlers, did the *yishuv*⁴⁸ arm itself for defense.⁴⁹

I: The violence was mutual. Your supposed self-defense militia, particularly Irgun and the Stern gang carried out attacks against innocent Arab civilians.⁵⁰ Even if a few early Zionists did envision co-existence, the majority simply ignored our existence.⁵¹

*They wander around the kitchen-main room for a minute,
tea and beer in hand, scavenging, opening and closing cabinets
and fridge. They again sit at the table but have switched sides.
Yitz hands Ishmael the pita chips as Ishmael hands Yitz the
dill pickles.*

I: You are denying Palestinians the right to self-determination.⁵²

Y: You would deny Jews the right to self-determination. That's what Zionism is—the right of the Jewish people to determine their own fate in their own land, after 2,000 years of persecution.

I: But what gives Jews the right to determine their communal

life at the expense of another community?

Y: Listen, Ish . . .

I: Call me Ishmael. We Arabs don't use cute nicknames.

Y: Okay, Ishmael, my friend. I do acknowledge that Palestinians have a right to self-determination.

I: Then you have to acknowledge that Israel is violating that right under the criteria of the Quebec⁵³ and Kosovo⁵⁴ cases.

Y: Probably, but I'm not sure.

I: What's there to be unsure about? Do you grant that the Canadian Supreme Court accurately articulated the standards for self-determination?

Y: Okay.

I: The Court concluded that a lack of *internal* self-determination—that is, equal democratic participation for a group within a state—supports a demand for *external* self-determination.

Y: Yeah . . .

I: So Palestinians are entitled to independence under international law. Israel has denied them internal self-determination for half a century, so they are entitled to external self-determination—their own state.

Y: I agree, but . . .

I: And Israel has repeatedly broken other international laws.

Y: I'm sure you have a list . . .

I: You have waged war on us in violation of humanitarian law.⁵⁵ You have bombed our schools and slaughtered our children.⁵⁶ You have turned Gaza into the world's largest concentration

camp with your blockade, then turned that camp into a rubble-strewn death trap with your aerial savagery.⁵⁷

Y: No! It is the pseudo-government of Gaza,⁵⁸ the Hamas terrorists,⁵⁹ who have broken humanitarian law by firing their rockets at civilian targets in Israel. At the risk of sounding juvenile: “They started it!”.

I: Oh, please!

Y: And by cowardly hiding their launchers, their ammunition, their weapons and their troops in or near schools, UN facilities, hospitals, and civilian housing in Gaza, Hamas further broke international law.⁶⁰ The Israeli military has taken more than reasonable precautions to limit civilian casualties.

I: Then why have Palestinians died by the thousands, and Israelis only by the handful?⁶¹

Y: Because Hamas has arranged it that way, by attacking from behind the skirts of the innocent.⁶² Human shields!⁶³

I: But there is no denying the numbers. Palestinian deaths have outnumbered Israeli ones by tenfold in the Gaza Conflicts.⁶⁴ Even if Israel does have a right of self-defense against the Hamas rockets (which is debatable considering the strangulating blockade of Gaza)⁶⁵—even if Israel does have that right, humanitarian law requires that it be exercised with proportionality and only to the extent necessary.⁶⁶ The fatality ratio proves gross disproportionality, and the success of your American-financed “Iron Dome”⁶⁷ shows that there was no necessity to obliterate Gaza in order to defend against Hamas’ low-tech rockets.

Y: You misinterpret both doctrines. Proportionality in self-defense is not measured by the ratio of casualties.⁶⁸ It is gauged by asking whether the force used is reasonable to halt the aggression being defended against. Since Hamas continued to fire rockets,⁶⁹ it was reasonable for Israel to continue its efforts to destroy the capability of Hamas to launch those illegal attacks.⁷⁰ As to the necessity doctrine,⁷¹ yes the Iron Dome functioned well, but not perfectly.⁷² It was indeed necessary for Israel to attack Hamas’s launch capacity—not just have its

civilians cower in the basement of a school or a home bomb shelter, behind an imperfect shield, hoping their children would not be slaughtered by a rocket that got through.⁷³

I: What reality are you living in? Have you seen the pictures of Gaza?⁷⁴ Pulverized homes and bleeding kids!⁷⁵

Abe steps to center stage.

Abe: Those *are* horrific images. The Arab kids in Gaza are innocent victims. So are the Jewish kids who must dodge rockets sent from Gaza, though the defenses available to them are considerably better. So, who is to blame for these children under siege? All of us. Both of you. Yitz and Ishmael, you gotta do better. Kids must have homes where they can feel safe.

Abe walks off stage.

I: Of course kids must have safe homes. Palestinian refugees should be allowed to *return* to theirs.

Y: Their homes where?

I: Anywhere in Palestine.

Y: Anywhere in Israel?

I: What you call Israel, yes.

Y: And who are these refugees?

I: Five million Palestinians.

Y: From the War of Independence?

I: From the 1948 Nakba.⁷⁶

Y: Absurd. First, at most a few hundred thousand Arabs left their homes during the 1948 war.⁷⁷ You apparently are including children and grandchildren of those that fled, offspring born elsewhere with no legitimate connection to Israel/Palestine.

I: More legitimate than that of the early European Zionists . . .

Y: Second, only some of the original departing group would have met the legal definition of refugee. Third, they continued to be enemy nationals, given the Arabs' unwillingness to end their state of war with Israel.⁷⁸ Their enemy national status also allowed seizure of their property in line with international law.⁷⁹ Fourth, many of those who might have been refugees resettled elsewhere, ending their refugee status.⁸⁰ Fifth, Israel would cease to exist if all descendants of purported refugees returned to Israel.⁸¹

I: Many reasons—none of them good. First, the United Nations and international law recognize that both the original victims of the Zionist expulsion and their descendants are refugees.⁸²

Y: Votes rigged by the huge Muslim block at the UN.⁸³

I: Second, all those forced to flee in 1948 have been unable to return to their original Palestinian homes because of persecution by the Israelis; therefore, they're all legally refugees.⁸⁴ Third, the international law custom⁸⁵ that allows seizure of property of enemy nationals⁸⁶ does not apply to this situation. The Palestinians dispossessed in 1948 were not foreign nationals—they were natives driven from their homes.

Y: Not driven from . . .

I: Fourth, permanent resettlement might legally preclude an asylum claim in third states,⁸⁷ but it doesn't diminish their claims against Israel. Fifth, Israel could continue to exist, though not with a guaranteed Jewish majority.

Y: Would it be called Israel?

I: If that's what the majority wanted.

Y: The majority, under your right-of-return scenario, eventually becoming Arab (particularly considering the Palestinian birthrate).⁸⁸ So, Israel would become "Palestine" and unite with the other *Palestines*—the West Bank and Gaza—to be one Arab

state from the Jordan to the Mediterranean . . .

I: Do you believe in democracy or not? And your reference to the Palestinian birthrate is racist, with undertones of genocide.

Y: You don't know what genocide is.⁸⁹ It's sending innocent millions to gas chambers and ovens. It is *not* merely stating a fact—that Palestinians have one of the highest birthrates in the world, promoted by their anti-Israel ideologues as a political tool to out-populate the Jews. “Cynically promoted,” I should say, given the economic and social privation such policy foists on the Palestinian poor. As for democracy, look to Syria and Egypt and Iran before you criticize Israel on that ground.⁹⁰

I: The Holocaust⁹¹ should not be your universal trump card in all arguments. Palestinians have the right to produce children and if that creates a majority, then democracy means that they govern.

Y: Do you or don't you accept Israel's existence?

I: Yes.

Y: For now and for tomorrow and for after that?

I: No.

Y: Ahah! You *do* want to see it destroyed.

I: No, not destroyed.

Y: Then what?

I: You ask me if I “accept Israel's existence.” *Accept* is a fuzzy word.

Y: Meaning?

I: I affirm that a state called Israel presently exists. I guess I'd even acknowledge that it legally exists, given its membership in the UN and numerous UN and other decisions,⁹² although many of my brethren would challenge the legality of those decisions.⁹³

As an international lawyer, I recognize their force, if not their justness.

Y: So what *don't* you accept?

I: I don't accept that the creation of Israel in 1948 was just or even legal. I don't accept that Israel has a right to treat its Arab citizens any differently than its Jewish ones. I don't accept that Israel has a right to a continued Jewish majority by barring the return of 1948 refugees. And if "tomorrow" or "after that" an Arab majority prevails, I don't accept that we must call the state "Israel" or have a Star of David on our flag.⁹⁴

Y: So you really don't accept the long-term right of Israel to exist?

I: The state that is presently called Israel has a long-term right to exist as does any currently existing state.⁹⁵ Its residents have the right to stay there as equal citizens.⁹⁶ No Jews or Arabs may be thrown into the sea. But there should be no guarantee that Jews shall always control the reins of government.

Y: Why are Arabs entitled to their own states, many of them, but not Jews? Not one corner of the globe the size of New Jersey?⁹⁷ Pakistanis have their own state, where Islam is the official religion⁹⁸ and minorities are treated much worse than in Israel.⁹⁹ The same for Iran,¹⁰⁰ Saudi Arabia,¹⁰¹ and even Egypt.¹⁰² And many more Islamic countries.¹⁰³

I: I'm not responsible for Saudi Arabia or Pakistan or Iran. They should all be democratic and protect their minorities. But I am Palestinian and am entitled to national rights, to human rights. Saudi Arabia is irrelevant.

Y: Why should millions of Arab children and grandchildren and great-grandchildren¹⁰⁴ be allowed to return to the land that their grandparents¹⁰⁵ abandoned—but not Greeks to Smyrna burned and ethnically cleansed by the Turks in the 1920s?¹⁰⁶ Or Turks and Albanians and Jews to Salonika?¹⁰⁷ Or Hindus to Karachi?¹⁰⁸ Or Germans to Königsberg?¹⁰⁹ Massive population exchanges after lost wars or seismic political upheaval. Just like the Arabs who started and lost the war of 1948.¹¹⁰

I: We just want to return home.

Y: War shifts populations. Karachi and Königsberg in the same half-decade as our 1948 War of Independence, a time when Arabs left Israel and Jews fled persecution in Arab states to come to Israel.¹¹¹ The world has acquiesced in all these other twentieth century population exchanges,¹¹² but not for Israel and Palestine. There are even two separate UN refugee organizations—UNRWA for the Palestinians¹¹³ and UNHCR¹¹⁴ for everybody else.¹¹⁵ UNHCR helps to resettle non-Palestinian refugees.¹¹⁶ UNRWA foments Palestinian frustration by keeping them in squalid camps and fostering hatred of Israel.

I: Two wrongs don't make a right. Even ten wrongs don't make a right. I don't care if Greeks go back to Smyrna or Turks and Jews to Salonika. Let them if they want. I don't care if Germans go back to Königsberg. Let them if they want. I don't care if Hindus go back to Karachi. All I know is that my uncle has a key to a house in an abandoned village east of Jaffa to which he should be able to return before he dies. He never held a gun. He never hurt a Jew. But he was chased from his home in 1948.¹¹⁷ And in violation of the law of war¹¹⁸ and of common decency Israel did not allow him to return when the war ended.

Y: But the war never ended because the invading Arab states refused to sign peace treaties with Israel.¹¹⁹ And continued to call for its destruction.

I: In the seventies, Egypt did sign a peace treaty.¹²⁰ In the nineties, so did Jordan.¹²¹ But my uncle still has his key and may never use it.

Y: I have no problem if your uncle gets his house back and is able to spend his last years on Israeli soil, particularly if he never took up arms or harmed anyone. And thousands like him should be able to return. But not millions of children and grandchildren who have never set foot on this soil.¹²² That's not a "return," it's an invasion. And it would be the end of Israel.

They shift positions on stage and exchange the dill pickles and bag of pita chips. Ishmael pours a tea and Yitz brews a coffee. Abe enters.

Abe: So Trump has recognized Jerusalem as Israel's capital.¹²³ Not a totally unreasonable act from an often unreasonable man. Israel's Knesset, Supreme Court, and Prime Minister's office are all in West Jerusalem.¹²⁴ But it seems there's room, as well, for a Palestinian capital in the Arab part of the city. Come on boys, learn to share.

Abe leaves after munching on a pickle and a few pita chips and pouring a cup of tea.

Y: Jerusalem!

I: Al-Quds!

Y: You have two holy cities—Mecca and Medina.¹²⁵ You don't need a third. And in Mecca, you forbid Jews, Christians or any other non-Muslims to set their feet.¹²⁶

I: It is not a matter of "need." It's a matter of holy history. Muhammed rose from Al-haram Al-sharif—the Noble Sanctuary—on his night visit to Allah¹²⁷ and in all the centuries since, it has been a Muslim city. And for our Christian Palestinian brothers and sisters, the holiness of the city is self-evident. Israelis limit our access to sacred sites and would evict us from the Noble Sanctuary, if we let them.

Y: Your Koran says nothing about a night visit to Jerusalem.¹²⁸ A myth created by subsequent Arab imperial propagandists to justify occupation of the city and undercut Byzantine claims to reconquer it.¹²⁹

I: A Byzantine argument . . .

Y: Your Noble Sanctuary, our Temple Mount, is administered by a Muslim Waqf,¹³⁰ run by the Jordanians. Muslims have primary access—full access when they are not rioting—with only limited, non-prayer visits by Jews.¹³¹ We pray below the Mount, at the Western Wall of the old Temple.¹³² No one intends to change that status.

I: No one? What about your fanatic co-religionists that talk of building a Third Temple?¹³³

Y: A fringe. A statistically meaningless fringe.¹³⁴ You have your fanatics. We have ours. But yours hold more sway within your community. The so-called “Arab street.”¹³⁵

I: We have our street. You have your army. Of the two, who sheds more blood? Every time there is a period of violence, ten Arabs die for one Jew.

Y: But who starts the violence? Is there a police force in the world that would not respond to a wave of unprovoked fatal knife attacks on innocent civilians?¹³⁶

I: I don’t condone the knife attacks. But there have been settler attacks on innocent Palestinians, as well. And these outbursts by Palestinian teenagers have not been “unprovoked.” A half-century of occupation with check-points, blockades, economic privation, and chronic assaults on dignity provokes these teenagers day-in-and-day-out. Most immediately, the push by your Orthodox crusaders to occupy the Noble Sanctuary has lit the fuse.¹³⁷ A few fifteen-year-olds with knives aren’t the problem here.

Y: They certainly *are* the problem for the innocent murder victims and their devastated families.

I: We have many times the victims and many times the devastated families.

Y: Do you acknowledge that international law condemns the targeting of civilians in armed conflict, whether interstate or internal?¹³⁸

I: Okay.

Y: So, why don’t *you* condemn the targeting of Israeli civilians and, for that matter, non-Israeli Jews by Palestinian terrorists?

I: I just said that I didn’t approve of the knife attacks.

Y: Not approving is different from condemning.

I: Listen. The Palestinians don't have F-16s. We don't have the Iron Dome. We don't have billions of dollars a year in American military aid.¹³⁹ What we do have is a half-century of occupation. If humiliated Palestinian youth fail to observe the niceties of the Geneva Conventions (which Israel itself ignores when convenient),¹⁴⁰ if they use the only means at hand to resist overwhelming Israeli force, I will not condemn them. I will not approve the harming of innocents. But condemn our angry youth? No. These evils sit at your doorstep.

Bare stage with overlapping Palestinian and Israeli flags projected rear.

Abe: The simple truth is that we have two peoples wanting the same piece of land. We have two peoples each with some sort of legitimate claim to that land. The only way to end the Conflict peacefully is for both sides to compromise. The Israelis must give up the territorial gains of 1967 and end the Occupation. With a few limited exceptions Israel must pull back from its settlements in Judea and Samaria. Arab Israelis must enjoy equal rights and social benefits. The Palestinians must give up the effort to reverse the establishment of Israel in 1948. That means giving up an unlimited Right of Return. Jerusalem either needs to be internationalized or redivided based on neighborhood choice. The compromise must be permanent—not a stepping stone to an eventual Arab state from the Jordan to the Mediterranean.

I: But that is the compromise of a thief. He has stolen my house and now offers me the basement and attic.

Right hand to his chest, Abe leaves stage.

Y: So, you oppose a two-state solution? You want it all?

I: A two-state solution is an acceptable part of an initial peace settlement.

Y: But "initial" implies you *do* want it all. An Arab state from the Jordan to the sea.

I: I want democracy. I want refugees from war to have the rights guaranteed by law and by the UN.¹⁴¹

Y: So a peace agreement to a two-state solution only guarantees Israel's existence until the returned refugees and their millions of non-Palestinian grandchildren outvote the Jews and create a single, Arab-dominated state?

I: That's exactly what law and democracy demand. Except international law and I both reject your mischaracterization of children of expelled refugees as "non-Palestinian." They are rightful heirs of the legal claims of 1948.

Y: So, you believe that Israel is in a state of original sin.¹⁴² Actually *is* a State of Original Sin.

I: That's Christian dogma. Neither of us grew up on that.¹⁴³

Y: But that's what you're saying. You believe that Zionism was immoral from its inception. That the First Aliyah¹⁴⁴ settlers in the 1880s began the sin and it was perpetuated again and again by every Jew thereafter who came to the Land of Israel—whether to escape slaughter by Cossacks or Arab mobs or Nazis, or to exercise their right to self-determination. All of them, they were sinners in your view. And their children and grandchildren who live there now, sinners all of us.

I: Maybe so. Yes, I think that's accurate.

Y: And there's nothing we can do to purge that sin, right?

I: Well, I'm not going to insist that all six million¹⁴⁵ of you leave Palestine and return to Poland. So maybe that sin can never be fully purged. But partial atonement would at least include giving us real equality in our own land, and letting the refugees return.

Y: And all their millions of children and grandchildren?

I: Of course. They all are refugees.

Y: So Israel will cease to exist?

I: You six million Jews would continue to live there, mostly in

your same homes. You would sit in your cafes, drink coffee and talk too loudly on your cell phones. Your wives and girlfriends would go to Tel Aviv beaches in their same inappropriate states of undress. But you would vote in elections with approximately equal numbers of Arab fellow citizens whose candidates would sometimes win.

Y: Do you really believe that could ever happen?

I: Not in the near future. Not with the politics of Israel.

Y: So what's the point? You're advocating the impossible.

I: I'm merely responding to your question about your State of Original Sin. The only way that Israelis can begin to atone for the sin of Zionism is to fully share the land with us, with *all* of us. Do I think it's likely? No. Not anytime soon. But you asked the sin question and I answered it.

Abe enters in all black with sleeves and pants cuffs shredded.

A: Sin? Sins? Sons? Daughters? I've lost many.

He looks at the audience for ten seconds and covers his eyes for another ten. Two head-covered women, one Jewish one Muslim, also in black, join him. They join hands, then turn and haltingly walk off.

Y: Do you deny the Holocaust?¹⁴⁶

I: Of course not. It was one of the greatest tragedies of modern times.

Y: Do you condemn those who deny it?

I: I condemn both those who would deny it, as well as those who would cynically misuse it to facilitate the oppression of others.

Y: That's obscene. You imply that by remembering the most evil human rights violation in history, Jews are oppressing others. That's the kind of incitement that makes it hard for most Israelis

to trust Palestinians to live in peace with us.

I: Those Jews who use the Holocaust as a justification for stealing our land commit the obscenity against Hitler's victims.

Y: Jews have stolen no one's land. Our settlement here has been mandated by the League of Nations, the British Mandatory Power, the United Nations and the recognition of fellow states. Our return rectifies the Romans' forceful dispossession of our homeland two millennia ago¹⁴⁷ and our mistreatment by Christians and Muslims in every century since.¹⁴⁸ The Holocaust culminated 2,000 years of evil and exile. It's quite relevant to our right to be here—not the only basis of our claim, but a compelling reinforcement of its validity, moral proof that a nearly exterminated people have a historically unique moral case for a homeland.

I: But it was our homeland first.

Y: Not first, but, yes, for centuries after our exile by the Romans.¹⁴⁹ And we expected to share our mutual home, until Arab marauders took up the banner of pogrom in the 1920s and 30s.¹⁵⁰ They learned well from their European anti-Semitic teachers.¹⁵¹ And after Hitler was defeated in 1945, they would have happily finished his genocidal project with the help of five invading Arab armies in 1948.

I: Slander! Bad history!

Y: The history of your Mufti¹⁵² is indeed "bad," but not inaccurate. He was a bad man, welcomed in Berlin by Hitler, and more than willing to contribute to the Nazis' Final Solution by the genocide of Jews in Palestine once Rommel conquered it from the British.¹⁵³ Happily, the Nazi advance through Egypt toward Palestine failed.¹⁵⁴

I: How does any of this support your charge of pogroms?

Y: Because the Mufti was the cheerleader for these gang murders of defenseless Jews.¹⁵⁵ And the Palestinian Arabs loved him as their leader.¹⁵⁶

I: If they loved him, it was because he stood up to the British who would give our land away, and the European Jews who would take it.¹⁵⁷ If Hitler could help with our liberation, well, any port in a storm. The Mufti and his supporters were little different from the Finns who technically allied with the Germans as they fought off Soviet invaders.¹⁵⁸

Y: Weak analogy. The Finns had no particular love for Nazism,¹⁵⁹ but the Mufti heartily embraced Nazi anti-Semitism. And his brand of hate speech continues to this day among Arab leaders and media.¹⁶⁰

I: Come on! This is truly obnoxious. You slander us all as bigots.

Y: Not all of you. But many of your leaders, educators, and media. They indoctrinate “the Street,” particularly gullible youth. They get them to hate Israel and Jews. And that makes peace impossible. The Arab Street will not permit peace with the devil. I have granted that the continued Occupation, and particularly Jewish settlement expansion makes peace impossible, and that it must be stopped. You should admit the same concerning Arab hate speech against Jews.¹⁶¹

I: You oversimplify. Sure there are anti-Jewish images and statements in some Arab media, but most Palestinians, at least on the West Bank and in Jerusalem, are the least anti-Semitic of all Arabs. We live with you. Of course, you annoy us, you often harass us, and occasionally you kill us. But not all of you. Palestinians can make such distinctions because we see each other's faces, each other's children. I even like you, schmuck.

Y: Same here, bro.

I: It's easier to stereotype “the other” from far away.¹⁶² Egyptians, Iranians, Saudis, Malaysians, Pakistanis—they can hate you from a distance. They can lump West Bank settlers and Jewish store-keepers in Paris in a single category. Because they are ignorant. And often their tyrannical and corrupt leaders play on that ignorance to divert attention from tyranny and corruption. But we Palestinians are not ignorant. We know you—you are good and bad, you laugh and you cry, you work and you bleed. Like us. So mostly, Palestinians are not anti-Jewish. Mostly we just want our homes and our liberty.

They shift positions on stage and Abe returns.

Abe: How do you break this malignant stalemate? Recognize Jerusalem both as Israel's and Palestine's capital? Recognize Palestine as a state? Boycott Israel? Are there any suggestions that do not antagonize?

Abe leaves.

Y: BDS¹⁶³ is wrong.

I: How can you say that? It's a lawful, non-violent way to oppose Israel's illegal Occupation¹⁶⁴ and general oppression of Palestinians.

Y: After half a century, you're probably right that by this point the Occupation is unlawful. So is BDS.

I: How?

Y: It punishes the innocent.

I: Israelis, innocent?

Y: Yes. Academics from North America, Europe, and Palestine are the main movers behind the boycott.¹⁶⁵ Therefore, BDS falls disproportionately on the shoulders of professors and researchers at Israeli universities—the people that the boycotters would otherwise collaborate with at conferences, faculty, and student exchanges, and research projects. These folks are the heart of the Israeli moderate and left-liberal opposition to government policy that hurts Palestinians.

I: Can't make omelets without breaking eggs . . .¹⁶⁶

Y: An inhumane cliché of tyrants and fossilized Marxists.

I: I understand that your liberal feelings are hurt, and perhaps some of your travel opportunities curtailed, but how on earth can you claim BDS is illegal? It's non-violent and voluntary.

Y: I said “unlawful,” not “illegal”¹⁶⁷—a somewhat softer claim.

I: And BDS is certainly less harsh than what the Israelis do to the Palestinians in your prisons, at your checkpoints,¹⁶⁸ and from your F-16s.¹⁶⁹ And talk about punishing the innocent! What about the demolition of Palestinian family homes for the unlitigated purported wrongs of teenagers?¹⁷⁰

Y: I oppose collective punishment whether perpetrated by the Israeli military or by crypto-anti-Semites from British universities.¹⁷¹

I: Anti-Semitism is your universal solvent when nothing else can dissolve a rightful accusation against Zionists.

Y: I agree that right-wing supporters of bad Israeli policy sometime overplay the anti-Semite card. But at other times opponents of that policy target Jews as Jews. Buenos Aires¹⁷² and Paris¹⁷³ are but two examples of a widespread and growing phenomenon. And I sincerely suspect the Left—at least the British academic left¹⁷⁴ and a handful of their American colleagues—of a troubling degree of strident glee in attacking Israel for wrongs less evil than those committed by Chinese or Saudis, about which they keep comparatively silent.¹⁷⁵ I sniff the stink of anti-Semitism there. A chance to get the pushy Jews, under the cover of righteous progressivism.

I: You're paranoid, but I do grant that comes with your ethnic territory. You still have not explained well why BDS is unlawful.

Y: It's a general principle of law that punishments should be *targeted* only at the guilty.¹⁷⁶ Granted, those close to a convicted criminal unavoidably suffer indirect harm—emotional, financial, and social harm. But while the child of a murderer suffers such indirect losses, no civilized society would execute the child for a murder committed by the father. BDS *targets* persons that do no wrong. They are not collateral damage. They are *intended* innocent victims.

I: Your “principles” conveniently protect the strong and disarm the weak.

They shift positions on stage.

Y: What about the slaughter at the Tel Aviv market in June 2016?¹⁷⁷ Four innocent dead and many more injured.

I: What about it?

Y: Do you approve?

I: You miss the point.

Y: What point?

I: That the Occupation with its repressive enforcement is the source of all violence here.

Y: So the Occupation justifies the murder of any Jew anywhere? Not to mention the murder of innocent non-Jews who might find themselves in the wrong market or bus station when the terrorists attack.

I: This is the rhetoric game I will not play. Of course, I deplore all killing of innocents, Israelis or Palestinians or anyone else. But you insist on a ritual of condemnation every time a Jew dies in this Conflict, and that values your blood over Arab blood, as well as obscuring the Conflict's root causes.

Y: You conflate separate issues, and avoid moral responsibility in the process. One issue is whether the continued Occupation and its current modes of administration are wrong. You and I agree that they are.

I: Thank God!

Y: A second issue, raised by your "Arab blood" reference, is who bears responsibility for the many deaths of Arabs in the Conflict. Certainly, when a knife-wielding attacker is shot or when Arabs die in a self-defense counter strike¹⁷⁸ by Israeli defense forces, those are not morally equivalent wrongs to the purposeful murder of innocents in a non-military setting like the Tel Aviv market attack.¹⁷⁹ The illegality or legality of the Occupation and the tragic death toll of Palestinians during the Conflict are real

issues—important and complex—but they ought not be conflated with the simple moral truth that it's categorically wrong to purposely *target* and slaughter innocents.

I: Wrongs against you are morally simple and clear. Wrongs against us are complex and thus open to debate. Rather convenient for your conscience. What you characterize as conflating of issues, I would call contextualizing. The Tel Aviv market shootings cannot be understood outside the context of the Occupation and Israeli military propagation of the Conflict.

Y: Contextualizing?! That's a word that left-wing intellectuals like to use when they rationalize immoral acts perpetrated by groups they favor.

I: You're a left-wing intellectual. So am I. What's wrong with that?

Y: The problem is with the many progressives that let their left-wing angel silence their intellectual angel whenever the two disagree. "Which side are you on boys?"¹⁸⁰ and all that crap.

I: So you're against unions now?

Y: Generally, I'm very much for unions. But on any given issue—on most issues—I'll side with them, when they're right and because they're right, not because I'm blindly on their side. It's a hangover from academic Marxism, when too many intellectuals mutated Marx's occasionally useful concept of class conflict into quasi-religious dogma.¹⁸¹

I: Huh?

Y: As a tool for understanding major economic conflict and historical change in society, class theory was sometimes helpful. But as a moral yardstick—identify the underdog, then defend him regardless of his behavior—it eviscerated intellectual honesty.

I: And this has what to do with Israeli bombs killing children? And Palestinian daily life made a misery of checkpoints and collective punishment?

Y: You justified attacks on Jewish innocents by demanding contextualizing. I grant that the continued Occupation is wrong. But murdering civilians in a market or at a tram stop is categorically wrong. No contextualizing changes that. You excuse murder by class preference.

I: I can't believe you're red-baiting¹⁸² me. I'm a progressive Muslim, not a Marxist. I believe in Muhammed as an historic reformer, just as I believe in universal human rights. Your soliloquies grow tedious. The point is that focusing on a few bus stop knifings, while ignoring hundreds of innocent deaths from Israeli bombings is irrational and immoral.

Y: If the bombings are shown to be disproportionate to the military objective of self-defense¹⁸³ against rocket and tunnel attacks on civilians, or if they don't reasonably attempt to distinguish military targets from non-military,¹⁸⁴ then I condemn them. But applying such law of self-defense and its limits to highly disputed facts (including evidence of Hamas using human shields) is difficult. On the other hand, Common Article 3 unambiguously outlaws terror attacks that target non-combatants,¹⁸⁵ attacks which you refuse to condemn.

I: Wrong. I do deplore any attack on any innocent person. But I refuse to accept your hectoring on these issues. Rules of international law developed with the notion that more or less equal states will be fighting each other. Here the warfare is asymmetrical: largely disarmed Palestinians fighting the heavily armed and technically advanced Israeli Army. Laws of war don't make sense.¹⁸⁶

Abe appears.

Abe: War. Terrorism. Blood still flows. Parents still cry.

Abe leaves.

Y: So, just last year a follower of ISIS slaughtered fifty partiers at a gay nightclub in Florida.¹⁸⁷

I: What does that have to do with anything?

Y: Two things, at least. First, the moral acceptance of violence against innocents within some (probably small) portion of the Muslim community, and the toleration of that portion by Muslims generally. Second, the lack of any institutionalized Reform¹⁸⁸ Islam.¹⁸⁹

I: Your first point is familiar and Islamophobic—Fox News. As if I am personally responsible for stopping every violent event, justified or not, by anyone anywhere claiming to act on behalf of Islam. When every Christian takes responsibility for the Crusades, perhaps I'll be more open to your argument. But your second point intrigues me. So what is the connection between Reform Islam, or the lack thereof, and a shooting at a gay nightclub in Orlando?

Y: Okay. Let's set to the side my point about the Islamic community's bland response to violent radicals in its midst, as well as your ridiculous anachronistic comparison to the Crusades. Let's talk about the absence of Reform Islam in the context of the Pulse massacre.

I: Fine. I am curious to hear you connect the two.

Y: Quickly in the wake of the tragedy, a TV reporter interviewed the imam for the Central Florida Islamic Community. He, of course, condemned the shootings, but urged his fellow Americans not to rush to judgment regarding the cause—a code for “don't blame the Muslims.” This was before police had uncovered the murderer's loyalty pledge to ISIS made immediately prior to the slaughter.¹⁹⁰ But more interesting was the Imam's commentary on the gay angle.¹⁹¹ Again condemning the killings and asserting that nothing in Islam justified the horrific event, he affirmed that his religion *did* forbid homosexuality as, he asserted further, did Christianity and Judaism.¹⁹² That's where he got it wrong.

I: No. He's right. Christianity and Judaism do outlaw homosexuality.

Y: Wrong. Only fundamentalist or orthodox versions of those faiths do that. Reform and Reconstructionist Judaism accept homosexuality and even have ordained gay rabbis.¹⁹³ Liberal

and moderate denominations of Christianity take the same position and have many openly gay clergy.¹⁹⁴ Both groups have rejected a literalist, revelation-based reading of antiquated Biblical sanctions against homosexuals.

I: I am not sure where you're going with all this.

Y: A billion Muslims¹⁹⁵ are stuck with a literalist interpretation of the Koran. It encourages reactionary extremism and intolerance. ISIS throws gay men off roofs in Iraq and Syria,¹⁹⁶ and all imams can say is "Well, those queers are sinners, but they probably shouldn't be tossed off roofs." That's not a powerful message. And it allows perverse moral space for events like the massacre in Orlando.

I: You defame a billion people. More representative is the tens of thousands of dollars that Muslims raised overnight to support repairs to a desecrated Jewish cemetery in St. Louis and the community did the same thing when a Jewish cemetery was desecrated a few days later in Philadelphia.¹⁹⁷ You surely know that most Muslims would condemn the Florida killing.

Y: We really don't know that for sure. We don't see into a billion hearts. And the fact that no *institutional* Muslim voice can say, "You know, that particular Koranic verse¹⁹⁸ is outdated and we must reject it—gays and lesbians are simply *not* sinners." No official Reform Islamic voice speaks such words.

I: They would be heresy.

Y: Exactly. Just as a rejection of the Islamic verses that defame Jews and approvingly describe Muhammed's genocide against them in Medina.¹⁹⁹ A foundation upon which it's difficult to construct a Mideast Peace.

I: No different than your Orthodox Jewish claims to all of so-called *Eretz Yisrael*.²⁰⁰

Y: Similar. Except there are official Jewish voices, including rabbis, that can publicly refute such absolutist claims and reject their literalist Biblical underpinning.²⁰¹ There is no comparable established institutional anti-literalist opposition within Islam

today.²⁰²

I: You don't understand Islam. Its power and its goodness lie in the universal and *eternal* nature of its truth. Believe in God, pray, be charitable. Everyone is equal. That simple accessible universal message would be lost if religious leaders indulged themselves in the rejection or revision of sacred text.²⁰³ The nuanced relativism and revisionism of Catholic liberation theology,²⁰⁴ Protestant Unitarianism,²⁰⁵ or Reconstructionist Judaism²⁰⁶ would cripple Islam.

Y: You don't know that . . .

I: However, you do ignore centuries of Islamic scholarship and judicial practice, doctrines of abrogation²⁰⁷ and leniency²⁰⁸ for example, that have mitigated the harshness of law where appropriate. And we have done this without denying the sacred language of the Koran. For Christians, reformation meant wars and the death of millions. For Jews this has meant dilution of your faith and assimilation of your people into a non-descript and degenerate secular Western culture.

Y: You yearn for the Middle Ages?

I: There are fewer Jews in America today than there were fifty years ago.²⁰⁹ Reform is part of the reason. Reform for Jews was merely a step toward secularism. And secularism has been the road to disappearance. So please don't lecture me about dangerous literalism and the need for a "Reform Islam."

Y: You are right that Islam's strength is the simplicity of its basic message of charity, equality and the supreme power of goodness. Rabbinic Judaism's²¹⁰ similar message was sometimes clouded by its elevation of obscure academic dialectic. Though that dialectic also contributed to the intellectual power of Jewish culture. Who knows . . . ?

I: Not me. Your problem.

Y: In any event, you don't necessarily sacrifice the simple power of the Islamic message by acknowledging that the Koran, like the Bible, was written by men with all the prejudices of men of

their era. And that while perhaps inspired by God, not all its words are perfect. Particularly those that justify violence.

I: I believe that every word of the Koran is sacred. But that doesn't mean that every word is applicable today.

Y: I don't know what you're saying.

I: As I said, you don't understand Islam.

Y: What I don't understand is how you can be a serious student of International Law, an advocate of universal human rights, a rational son of the Enlightenment—all of which I know you to be—and still insist that every word of the Koran . . .

I: And every word of the Torah as *originally*²¹¹ given to the Jews . . .²¹²

Y: . . . is God-given and unchallengeable.

I: Again, you don't understand Islam. By the way, I am rational, but not a son of your Enlightenment. The very term is orientalist.²¹³ We Arabs were already "enlightened" while you Europeans were in the Dark Ages.²¹⁴

Y: We digress. The issue is scriptural literalism and the lack of an institutionalized Reform Islam.²¹⁵ As long as a billion Muslims fear to challenge any Koranic language, terrorists will have an easier time justifying suicide attacks as martyrdom,²¹⁶ beheadings as justice,²¹⁷ and rape as "temporary marriage."²¹⁸ And Mideast peace will be further away.

I: Whoa! Prejudice in the guise of reason. The Devil can quote Scripture—the Torah, or the Gospels, or the Koran. Just because terrorists misuse Koranic verse doesn't make that verse less holy. No more than when Jewish or Christian fanatics misuse language from the Bible. Your Heredi crazies²¹⁹ that want to build a third Temple. Christian crazies that perpetrated the crusades.

Y: But our difference of principle is this: Your only argument against Islamic terrorists is "you misinterpret." I am willing to

tell Zionist terrorists: “Not only do you misinterpret, but whatever the Torah says from 3,000 ago, we cannot allow those words to trump basic human rights.” Reform Judaism allows me to do that. You have no Reform Islam to do the same.

I: Reform Judaism is inconsequential within Israel.²²⁰ Not even recognized by the State. A monopoly of fundamentalists control Judaism in Israel. So, don't lecture me about Islam needing reform.²²¹

Y: If you're a believing Muslim, as you say, then you must accept the Jews' right to a state in *Eretz Yisrael*.

I: What?!

Y: Islam accepts the Torah as authoritative record of God's will. The Torah reveals God's gift to the Jews of the land of Israel.²²²

I: Yitz, my buddy, you're secular or reform or agnostic or something, depending on your mood. You don't even believe in revelation.

Y: That's the irony. You do. So, as a believer, you must acknowledge the validity of the Jews' claim to Israel, as recorded in the Torah.

I: Law school games! You're making an argument you don't believe in.

Y: Correct. I'm making one *you* believe in.

I: Anyway, Islam also recognizes that Jews corrupted the Torah in places, and the Koran corrected that.²²³

Y: Sure, the sacrifice of Isaac, et cetera. But nowhere does the Koran contradict God's deeding Israel to the Jewish people.²²⁴

*Abe enters holding the Koran, the Torah, and the Bible
opened in a stack in his arms.*

Abe: Yeah. Some of those fundamentalists—Jewish, Muslim, Christian—want to claim my entire estate. Really prevents

these fellows from getting along.

Abe leaves. Yitz and Ishmael scavenge the cabinets and fridge for more food. "Maybe we should order Chinese?" they muse in unison.

SCENE BREAK

I: So you agree that the settlements are illegal?

Y: Mostly . . . yes.

I: All the post-'67 settlements?²²⁵

Y: That depends.

I: What could it possibly depend on? Isn't it clear to you, as an international lawyer, that all the settlements violate the Geneva Conventions, as well as customary law?²²⁶

Y: It depends on whether you are including Jerusalem, particularly the Jewish Quarter of the Old City.²²⁷

I: Aha! So you believe in international law unless it really touches an emotional nerve?

Y: I *am* considering international law, not emotion. The Jewish Quarter of the Old City had been Jewish for hundreds, if not thousands of years before the Jordanian Arab Legion destroyed it in 1948. That destruction was probably illegal, and certainly immoral. After 1967, Israel had the right to reclaim the Quarter for Jewish residency. I don't think that it should be returned to anyone—Palestinians, Jordanians, whomever.

I: So that particular illegal settlement is okay in your moral calculus?

Y: Not exactly. I simply don't consider the regained Jewish Quarter to be a new settlement. It's an ancient Jewish neighborhood, rightfully re-established, after the Arab Legion wrongfully destroyed it.²²⁸

I: But you could use that argument for a number of Jewish villages which you lost during that war that existed prior to the 1949 Green Line. In fact your biblical extremists make that kind of argument for retaining *all* the land you seized in 1967.

Y: Which, of course, I reject. Both sides will have to give way on their absolutist claims, if we ever are to have peace. Jews are not entitled to their old villages on your side of the 1949 Green Line. Arabs are not entitled to their old villages on our side of the line. But the Jewish Quarter is *sui generis*.²²⁹

I: Why?

Y: Because it was for centuries *the* Jewish neighborhood within the city holiest to Jews. Because Arabs destroyed it in 1948 and banished or killed those who could not escape. Because Jerusalem's status under the 1947 UN was different from the West Bank²³⁰—it was never intended to be part of an Arab state. It includes the Western Wall, the most sacred space on earth for religious Jews and even profoundly meaningful to a secular Jew like me. It's just different.

I: So why shouldn't it be a Jewish Quarter within Palestinian East Jerusalem? It lies within the Arab side of the Green Line. Why do the special cases always work to your advantage? Remember, a Palestine within the Green Line gives us only about a quarter of our original country.

Y: Few Jews would trust a Palestinian government to fairly treat a Jewish Quarter within its jurisdiction.

I: Particularly in light of how the Israeli government has treated Palestinians within its jurisdiction.²³¹

Y: Yes. Trust is a problem.

I: But what about the rest of East Jerusalem? Do you grant that its people should enjoy self-determination? The Jewish Quarter aside, do you grant that the annexation of East Jerusalem by Israel was illegal and void?²³² Do you accept that Jerusalem must be the Palestinian capital?

Y: Yes, I grant all that.

I: But the Israeli government does not. Nor do most Israelis.

Y: Sadly, I grant that, too.

I: So, what's to be done?

Y: Arab neighborhoods should be part of Palestine. Jewish neighborhoods should be part of Israel. Each Quarter in the Old City should choose its affiliation by plebiscite.

I: What about the new Jewish neighborhoods like French Hill around Mt. Scopus? What about the settler encroachments on Arab villages like Silwan, near your so-called City of David?

Y: Small areas. Land swaps, compensation, occasional removal of settlers.

I: Not easy. Not necessarily fair.

Y: But fairly necessary.

Abe (side stage): Yitz can't resist the clever remark. Borscht Belt.²³³

I: Clever, but not convincing But, generally, you also agree that the Occupation is illegal? Beyond the settlements issue—the Occupation *per se*?

Y: Well, the Occupation as it exists, as it is implemented now—yes, I agree that Israel is probably violating international law in a number of ways. But, I'm not sure what you mean by “the Occupation *per se*.”

I: I mean the whole thing. I mean the armed conquest of somebody else's land.²³⁴ I mean sitting on that land for half a century. I mean purporting to annex the most sacred part of that land—Jerusalem—to purported Israeli sovereignty.²³⁵ I mean treating Palestinians like prisoners in their own towns and villages.²³⁶ I mean checkpoints.²³⁷ I mean the Wall.²³⁸ I mean arrests and detentions without due process.²³⁹ I mean shoot-to-

kill practice by Israeli police.²⁴⁰ I mean homes destroyed as collective punishment.²⁴¹ I mean gifts of Palestinian land to right-wing Jewish settlers. I mean strategic land seizures that make a viable Palestinian state, and thus a two-state solution, impossible.²⁴² Et cetera. I mean the whole thing.

Y: Well, then I don't agree that the Occupation *per se* is illegal.

I: You're kidding?!

Y: No. I'm not. Of course, I agree that much of the administration of the Occupation violates Geneva norms.²⁴³ And I reject the arguments of a few right-wing academics and politicians that those norms don't apply here. If they are not applicable by treaty, they are still binding as international legal custom.²⁴⁴

I: Go on . . .

Y: So clearly, the land seizures, the house demolitions, detentions without trial, and so on violate international law.²⁴⁵ Other things you mention might be overstatement or oversimplification. Israeli police must react instantaneously to real deadly attacks on civilians.²⁴⁶

I: It's usually Palestinians that end up dead . . .

Y: The Wall might violate some Palestinian rights²⁴⁷, but its existence has saved lives.²⁴⁸ The checkpoints are more oppressive than they need be, but their existence is necessary.²⁴⁹ And while half a century is too long for any Occupation, if not legally, certainly morally and politically, Israel can't really end it without a trustworthy Palestinian partner. Finally, we profoundly disagree on your first point, that the initial "conquest" as you label it was illegal. In 1967, Israel's vital sovereign interests, if not existence, were threatened, so that its action against Egypt, Syria, and Jordan was legitimate self-defense.²⁵⁰

I: How could Israel's attack in June '67 possibly be considered self-defense? Israeli troops poured into Egypt, Syria, and Jordanian Palestine²⁵¹ without any military action by those three Arab states. Your air force destroyed Arab planes

peacefully sitting on the ground, allowing your sneak attack—your *blitzkrieg*²⁵²—to succeed, and your illegal seizure and occupation of Arab land many times the size of Israel.²⁵³ How could that possibly be called “self-defense”?

Y: Anticipatory self-defense.²⁵⁴

I: Nonsense! Orwellian doublespeak.²⁵⁵

Y: Not doublespeak. Accepted modern doctrine within the law on military force.²⁵⁶

I: Accepted by whom?

Y: The United States,²⁵⁷ Great Britain,²⁵⁸ the former Soviet Union,²⁵⁹ numerous scholars and others.²⁶⁰

I: I don't think you're right about the Soviet Union, and if you are correct about the US and Britain, that's only a rump consensus of two—the two most aggressively imperialist contemporary powers,²⁶¹ at that. Certainly, no international custom there.

Y: I'm not necessarily claiming that anticipatory self-defense is a separate *new* custom. Rather, it's inherent in the concept of self-defense—both an interstate custom²⁶² and a general principle of all municipal systems²⁶³ for hundreds of years, as well as a guarantee under the UN Charter Article 51.²⁶⁴ If a mugger waves a knife at you, you needn't wait for his attack to repel him.

I: Even if you're right in the abstract about anticipatory self-defense, which I doubt, there was no knife at Israel's throat when it attacked Egypt, Syria and Palestine in '67.

Y: The knife had been pulled. Nasser had ordered UN peacekeepers to leave the buffer zone at the Egyptian-Israeli border.²⁶⁵ That violated the cease-fire agreement from the Sinai War.²⁶⁶ He then moved troops to the border. Thus, the knife was waved. Additionally, he closed the Red Sea Straits to Israeli shipping. Blockades are acts of war.²⁶⁷ Israel had the right—the inherent sovereign right of self-defense—to respond to these

acts.

I: Your history regarding Egypt and Israel is one-sided and selective. Your legal logic is tortured. But beyond that, you make no claim that Syria or Jordanian Palestine immediately threatened Israel in June '67. What was the justification for attacking them?

Y: Jordan and Syria were allies of Egypt.²⁶⁸ Like Egypt, they were in a state of war with Israel, dating back to their invasion of the new state in 1948.²⁶⁹ They never made peace with us. They continued, with Egypt, to deny our right to exist.²⁷⁰ Syria, for years, had continued to shell peaceful Israeli farms and towns in the Galilee.²⁷¹ The defense against Egypt would have been meaningless, had Syria and Jordan not been kept at bay.

I: Kept at bay? You *invaded* them. And whatever exaggerated claim you make about alleged Syrian shelling of allegedly peaceful Israelis on allegedly Israeli territory, no such case can be made against Jordanian Palestine. You invaded it to recreate a Biblical Judea, and particularly to seize Arab Jerusalem. All this violated the UN Charter as well as customary international law.

Y: Not how it happened . . .

I: And after a half-century, now it's apartheid.²⁷²

Y: That's a slander.

I: No. Not slander. Unpleasant truth. From the Jordan to the Mediterranean you have replicated pre-Mandela South Africa. Bantustans.²⁷³ Land theft.²⁷⁴ Military policing.²⁷⁵ Detentions without trial.²⁷⁶ Grossly unequal public services. Walls and humiliating checkpoints.²⁷⁷ Natives without residency.²⁷⁸ Residents without citizenship.²⁷⁹ Citizens without rights . . .²⁸⁰ It is apartheid.²⁸¹

Y: You know that I, too, condemn those government practices. Their wrongfulness doesn't make the situation apartheid. Not all evils are identical. Apples and oranges are both round, but an apple is not an orange.

I: What . . . ?

Y: More than a million Arabs have full Israeli citizenship.²⁸² They vote in elections.²⁸³ They elect Arab parliament members.²⁸⁴ They have civil rights.²⁸⁵ They receive better social services than their brethren in surrounding Arab states and in Palestinian administered territory.²⁸⁶ Arab doctors treat Jews and Jewish doctors treat Arabs in Israeli hospitals. And our Supreme Court calls out the government for many of its administrative and due process abuses.²⁸⁷ Black Africans enjoyed no such protections or participation in apartheid South Africa.²⁸⁸

I: You over-simplify. What you say only applies to the minority of Palestinians who hold Israeli citizenship. Not to the millions who don't. And even those Israeli Arabs face discrimination every day. Hostility on the street. Underfunded public services, whether education, housing, health, or garbage collection.²⁸⁹ And exclusion from the military.

Y: You think that Israeli Arabs want to serve in the army?²⁹⁰

I: Not as long as it's an army of occupation. But many do want the right to serve, with all the attendant privileges it brings—career opportunities, social standing, a sense of shared national experience.²⁹¹

Y: A nation that they don't wish to be part of.

I: In any case, it's not mainly the treatment of Arab Israeli citizens that makes the situation apartheid. It's the treatment of the majority of Palestinians outside the Green Line. Again, I'll say it—walls, military abuse, checkpoints, institutionalized violence, bantustans—apartheid!

Y: I agree with a lot of those charges. But you overgeneralize and overstate. Words like “bantustan” inflame young Palestinians and alienate potential Israeli peace partners.

I: But “bantustan” describes precisely what the Israeli government is doing. Bit by bit it is seizing more and more

chunks of West Bank land, for settlements, development, purported security, leaving isolated patches of Palestinian territory. These patches cannot function as a real state. Such encroachment proves that Israel doesn't want a two-state solution. It wants an apartheid state with a dominant race and a subservient race.

Y: I know. The Netanyahu regime²⁹² does make a two-state peace more difficult with every square meter of West Bank land that it appropriates for government or settler use.²⁹³ It both makes the logistics of a Palestinian state more difficult and destroys trust by moderate Palestinians in negotiation. But your "bantustan" and "apartheid" rhetoric destroys trust by moderate Israelis. We see such words as hateful and slanderous. We are not South Africa.²⁹⁴

I: Then stop acting like it.

Y: Our oppressive acts are occasional. Our barbaric acts are rare, not part of the national ethic. And they are not greeted with street festivals the way the barbaric acts of Hamas and Islamic Jihad are.²⁹⁵ How can the suicide attacks on innocents be hailed as occasions for celebration? Palestinians danced and sang with glee when the 9/11 terrorists brought down the World Trade Center and slaughtered 3,000 civilians.²⁹⁶ Such behavior of the "Arab Street" is obscene and it destroys any chance for trust.

I: Our triumphalism is spontaneous and infrequent. People imprisoned by the Occupation with little hope and much frustration understandably burst with joy at what they feel are victories against the oppressors. Of course it disturbs you. It disturbs me. None of us should celebrate death, even of our enemies. I've been to your Passover Seders when you spill wine to commemorate God's anger at the Hebrews rejoicing at the death of Egyptian soldiers.²⁹⁷

Y: So?

I: So, your triumphalism is much worse. It is institutionalized in your Spring holidays and reaches a peak of insensitivity on your Independence Day. Have you been on Jaffa Road or Ben Yehuda Street on the eve of that day? Wall-to-wall people dancing, singing, drinking, yelling. Little children wielding their three-

foot Israeli flag balloons shaped like hammers and hatchets!²⁹⁸

Y: It's our national holiday. People are celebrating a happy event like July Fourth in America or Quatorze Juillet in France.

I: For us that happy event signifies exile and death. Nakba. Our triumphalism reflects the occasional outburst of the frustrated and the powerless. Your triumphalism implements national policy and indoctrinates your children. Granted, your triumphalism is more sanitary, but which is more obscene?

Y: The obscenity is Palestinians in Aman dancing to celebrate mass murder.

I: Your spring national holidays celebrate our lost homes. They are like the Orange Marching Season in Northern Ireland.²⁹⁹ Your barbarism is institutional and chronic. Bombs from the sky and checkpoints.³⁰⁰ The chronic banality of oppression.³⁰¹ Have you ever gone through a checkpoint?

Y: Those checkpoints protect³⁰² against the terror that spawned them.

I: Have you been to one? On a hot, crowded day?³⁰³ To Qalandia?³⁰⁴

Y: You know that Israeli citizens are prohibited from entering that part of the West Bank.³⁰⁵

I: But you've been through airport security, right?

Y: Of course.

I: Not pleasant. Waiting in line. Worrying about missing your flight. Stupid questions that you must answer without irony, right?

Y: Okay.

I: Now imagine that happening *not* in a modern, clean, air-conditioned airport, but on a dusty, hot road in a convergence of impatient pedestrians and exhaust emitting vehicles,

constricted into one or two stalled lines. And questioned not by trained and experienced and good-humored air security personnel, but by twenty-year-old Israeli army draftees, some of whom are nice and some of whom are not. And imagine that happening every day, rather than merely a couple of times a year when you take an international flight. That's part of Palestinian life.

Abe appears at front of the stage.

A: Time is a funny thing for these boys. History might seem like yesterday. Tomorrow might seem just about here or forever out of reach.

Abe leaves.

Y: You think that time is on your side.

I: It is.

Y: But time can take a long time—with lots of blood and heartbreak while you wait.

I: We know how to suffer. And the wait won't be that long. Times are a-changing.³⁰⁶ America is Israel's last important ally, and even she has had enough. Look at the Security Council vote condemning Israeli settlements.³⁰⁷ No US veto. Historic! And the American public is changing. More brown and Muslim, less Jewish. The Jews remaining are assimilating and care less about Israel—or even reject its policies.³⁰⁸

Y: But America is a large ship. It will take decades to turn it around on Israel policy.

I: No, it has begun the turn and it moves quickly. As I said, look at the Security Council resolution. The new political majority in the US is minorities and progressive whites—not friends of Israel.³⁰⁹ Certainly not friends of the Netanyahu regime. That regime digs its own grave. At this very last moment to save a two-state solution, which would give the Israelis a *de facto* Jewish state for decades, he builds new settlements and demands a *de jure* Jewish state forever. He has killed the two-

state solution.³¹⁰ Twenty-five years from now there will be one state, an Arab one from the Jordan to the sea. The world will put up with no less.

Y: The Security Council voted in the last lame-duck days of the Obama administration.³¹¹ Trump will veto any similar resolutions.³¹² He's recognized Jerusalem as our capital.³¹³ And your "new American Majority" failed to keep him out of office.³¹⁴ You're right that a two-state solution is on the ropes. You're right that Netanyahu and company bear much of the blame. But you're wrong that an Arab-dominated one-state solution is anywhere near. And you're expecting it only worsens things.

I: I don't see why.

Y: Because it makes the two-state solution truly impossible if Arab moderates abandon it. That leaves us with competing one-state solutions, with the right-wing Israelis in control of all the territory, excepting impoverished and powerless and shrinking Palestinian enclaves. And with the Trump administration in power, the world can't do a damn thing.

I: As I've said, apartheid!

Y: That's an ugly, defamatory word. It's a slander at the moment, but by giving up on two states, you increase the likelihood of its eventual accuracy. Tragic. Blood and hate and more blood.

I: The truth is sometimes ugly. Liberal Jews don't want to hear that they are racists.

Y: "Racist" and "apartheid" are words that stop conversation. Using them gives up on compromise and understanding. These words declare war. And, worst of all they incite the street and poison the minds of children.

I: If you put up with racist policies, you are a racist.

Y: It over-simplifies and alienates. Especially when directed *en masse* against Jews with our record as victims of the world's worst racism. How the Netanyahu government denies Palestinian rights is inexcusable,³¹⁵ but it bears no comparison

to the genocides of the Inquisition, the Ukraine in 1648,³¹⁶ and the Holocaust.

I: You speak of genocide. What about Israel's nuclear arsenal?³¹⁷ What do those nukes represent other than threatened genocide of millions of Arabs and Muslims?

Y: There's a big difference between Nazis actually gassing millions on the one hand, and on the other hand a deterrent against annihilation which no one wants to use.

I: If no one wants to use it, get rid of it. Agree to a nuclear-free Mideast.

Y: I do agree to that, but only after Iran and Pakistan and all the Arab states accept Israel's existence. Then we all get rid of our nukes.

I: But why does Israel need such weapons, given its military superiority³¹⁸ and the support of the American military umbrella? Their only purpose can be to intimidate us and threaten our existence.

Y: Our military superiority is qualitative, not quantitative. The qualitative advantage can be lost as Muslim states modernize. The quantitative disadvantage will never be overcome by a Jewish state of six million³¹⁹ in a sea of 200 million Arabs³²⁰ and a globe of a billion Muslims.³²¹ As to American support, it exists today but may not be there tomorrow.

I: Your country has a Masada Complex, a myth created by elevating a bunch of fanatic bandits to hero status.³²² A myth intended to terrify both Jews and Arabs. Jews, by the nobility of group suicide. Arabs by the prospect of Jews, now nuclear-armed, willing to commit genocide to preserve a Jewish state.

Y: But you foster that suicidal Masada complex by rejecting a two-state solution and promoting an Arab Palestine from the Jordan to the Mediterranean.

I: I don't "reject" a two-state solution. I recognize it cannot work given your government's settlement policy. You gobble up more

and more Palestinian land. You make a Palestinian partner state with Israel impossible.

Y: *I* haven't "gobbled up" anything. Netanyahu is not *my* government.

I: Of course he is. A majority of Israelis voted for him.

Y: No. Only a plurality. He cobbled together a coalition under our *meshugah*³²³ electoral system.³²⁴

I: He represents you.

Y: No he doesn't. Israel is my state, but its government doesn't represent me. I am in opposition. That's how democracy works.

I: Democracy?! How can you claim democracy where Arab rights are trampled?

Y: Sometimes denied, sometimes upheld. Look at the military and police enforcing the Amona decision from our Supreme Court. Jewish settlers evicted from an illegal settlement because the court stands up to the government to protect Arab rights. I'd like you to show me such judicial protection of minority rights against government abuse in any of Israel's neighbor states.

I: But you know that Amona is the exception. The Knesset is moving quickly to legalize other illegal settlements, so there won't be future Amona orders. I might prefer an openly hostile supreme court—at least there would be no pretense of justice where little exists³²⁵. Furthermore, Netanyahu is trying to pack your Supreme Court with new conservative judges who don't care about human rights.³²⁶

They shift positions on stage.

I: Arab blood is cheap.

Y: You steal our mantra.³²⁷

I: You ignore your mantra. Eighteen months for cold-blooded murder.³²⁸ Obscene!

Y: He was just a boy-soldier, who had just witnessed the attempted murder of his colleague.³²⁹

I: He was just a boy. Wounded and no threat, lying on the ground. Your “boy-soldier” put a bullet in his head for no damn reason, except vengeance.³³⁰ Vengeance and impunity!

Y: No.

I: And it’s Israel’s “bad” if it sends children to become Occupation Police.

Y: Your “impunity” charge is unfair. The Israeli Defense Force charged, tried, convicted, and sentenced the Jewish soldier.³³¹

I: To eighteen months! For an Arab boy’s life.

Y: But the Jewish Prosecutor wanted three years. And much of the Jewish public wanted no conviction at all, given the wave of unprovoked knife attacks, often on innocent civilians, of which this Arab teenager was a part. So the court’s sentence seems a reasonable judicial balancing for a manslaughter conviction. That’s how an independent judiciary works. Not perfect, but better justice than anything you’d find in Egypt, Iran, Syria, or Saudi Arabia.

I: “Justice?!” You must be kidding? How can eighteen months for cold-blooded murder be justice? Israel likes to maintain a veneer of due process, human rights and democracy, but without the substance of any of them. And you can’t forever use comparisons to Egypt and Saudi Arabia as justification for your own low standards of justice. Do you really call that morality? Do you really call that logic?

Y: By regional standards . . .

I: And now your army has done it again. Killing peacefully protesting children in Gaza in May and June. Actually using snipers to murder children!³³²

Y: A sixteen-year-old with a fire balloon³³³ or a burning tire or

even a brick is no child.³³⁴

I: You don't need to shoot to kill. Violates any measure of proportionality. And only a few of them even had stones or burning tires. Gross overreaction.

Y: Those with weapons hide among the unarmed. A typical variation on Hamas' human shield tactics. Both in purpose and method objectionable.

I: Meaning?

Y: The purpose was to undo 1948. The method was to use thousands as shields for the hundreds committing violence at the instigation of the few in the Hamas leadership.

Abe appears.

Abe: Enough! Enough is enough! Are you two prepared to compromise for peace? For an end to the bleeding of the innocent? To each let go of his tales of injustice?

Y: I don't want to argue with him forever. He is my friend. I would compromise if he will . . .

I: And I don't want to argue with him forever. He is my friend.

A: *If* a settlement comes, everyone knows what it will look like.

Y: Yes. Two sovereign states.

I: Yes. 1967 borders.

Y: Yes. With some adjustments.

I: Yes. Return of original 1948 refugees to their homes where possible. Compensation where not.

Y: Perhaps. But not their kids and grandkids. And closure on further claims.

I: I don't know. Perhaps. With recognition of disappeared Arab villages.

Y: Yes. Memorial recognition of disappeared villages and neighborhoods, Arab and Jewish.

I: Yes. Full equality within Israel to social services.

Y: Yes. Full equality within Israel to all civil rights, except immigration.³³⁵

I: Maybe. But with withdrawal of Israeli military from Palestine.

Y: Okay. But with demilitarization of Palestine.

I: Okay. With international legal guarantees by UN, EU, US, Russia and China.

Y: Yes. And substantial funding by UN, US and EU with disproportionate German contribution.

I: Yes. Recognition of Israel by all major Arab and Muslim states.

Y: Yes. Outlawing all political or sectarian violence and prosecution of violators.

I: Yes. Renunciation of anti-Semitism against Jews or Arabs with concrete implementation.

Y: Yes. West Jerusalem as the capital of Israel.

I: Yes. East Jerusalem as the capital of Palestine.

Y: Yes. The Old City jointly governed or divided by neighborhood choice by each Quarter.

I: Yes. As the people decide.

Y: Yes. Renouncing of further claims related to the Conflict.

I: Yes. Dismantling of nuclear weapons by Israel.

Y: Yes. After ten years of peace and normal relations. And reciprocal disarmament by any Muslim nuclear state.

Abe: *If* peace comes dropping slow . . . ³³⁶

1. In this drama, Yitz (Yitzkhak) and Ishmael are graduate law students at a U.S. university seeking their LL.M.s in international Law. Both have practiced law back in Israel/Palestine for a few years after having received law degrees from Hebrew University. They like each other. They are friends. They are both liberal democrats and human rights advocates.

2. RAYMOND P. SCHEINLIND, *A SHORT HISTORY OF THE JEWISH PEOPLE* 5–8 (Oxford Univ. Press ed. 2000) (1998). As described in the Bible, the Israelites were enslaved in Egypt and forced to build the cities of Pithom, Ramses, and the new capital Pi-Ramses under the reign of Sethos I and Ramses II, although that author questions whether the people who fled Egypt were the same as the Israelites.

3. NISSIM REJWAN, *THE LAST JEWS IN BAGHDAD: REMEMBERING A LOST HOMELAND* 209 (2004). Babylonians exiled the Jews in massive deportations during the eighth century BCE.

4. CECIL ROTH, *HISTORY OF THE JEWS* 70–80 (5th ed. 1961); *see also* SCHEINLIND, *supra* note 2, at 5–8. Under Antiochus IV, the Hellenized Seleucids overtook Judea, reconstructed Jerusalem’s social life, architecture, and religion in the Hellenic style, and destroyed Jewish religious scrolls, sacrificed swine on Jewish alters, and converted temples to pagan use.

5. Margaret H. Williams, *The Expulsion of the Jews from Rome in A.D. 19*, 48 *LATOMUS* 765, 765 (1989).

6. Robert Bonfil, *Continuity and Discontinuity (641–1204)*, in ROBERT BONFLI ET AL., *JEWS IN BYZANTIUM: DIALECTICS OF MINORITY AND MAJORITY CULTURES* 65, 77–78, 81 (2012) (“[T]he four instances of allegedly-forced conversion of the Jews . . .” In 628 Heraclius is reported to have revoked his brother’s decision to exterminate the Jews of Edessa, charged with treacherous support to the Persians during the war; in 630, en route to Jerusalem, he is reported to have issued a document granting safety to the Jews of the Galilee who would have feared similar charges.”); *see also* JOSHUA STARR, *THE JEWS IN THE BYZANTINE EMPIRE* 1 (1970) (Starr describes the Jewish adaption to societal aspects of hidden, religious life in the Byzantine Empire from culture, to law, to taxation. In his chapter entitled Persecution and Intolerance, Starr says that “[Jews] were still under the shadow of the forcible Christianization decreed by Heraclius (640-41), in a vain effort to establish a solid front against his Moslem enemy. Thereafter, each of the following three centuries produced an emperor who outlawed Judaism.”).

7. THOMAS W. LIPPMAN, *UNDERSTANDING ISLAM: AN INTRODUCTION TO THE MOSLEM WORLD* 52 (1982) (“Two of the three Jewish tribes of Medina were expelled from the city. The third, the Qurayza, supported the Quraish during the Battle of the Trench . . . [and after,] the Moslems extracted a terrible vengeance. All the men, six hundred to eight hundred in number, were beheaded; the women and children were sold into slavery.”); *THE KORAN* 4:160 (“For wrongdoing on the part of the Jews, We made unlawful for them [certain] good foods which had been lawful to them, and for their averting from the way of Allah many [people]”); *THE KORAN* 62:5 (“The example of those who were

entrusted with the Torah and then did not take it on is like that of a donkey who carries volumes [of books]. Wretched is the example of the people who deny the signs of Allah. And Allah does not guide the wrongdoing people.”); *see also* IRA M. LAPIDUS, *A HISTORY OF ISLAMIC SOCIETIES* 23–24 (2002). *See generally* PETER HOLT ET AL., *CAMBRIDGE HISTORY OF ISLAM* (1970). Muslims staunchly deny that Mohammad murdered the Quraish Jews based on Arabic language sources and claim that the only source is Jewish tradition.

8. ROTH, *supra* note 4, at 162–63; B. NETANYAHU, *THE ORIGINS OF THE INQUISITION IN FIFTEENTH CENTURY SPAIN* 163 (1995). The Andalusian al-Mohades overtook Northern Africa and Southern Spain forcing Islam and its traditions upon the conquered peoples under the threat of extermination or expulsion. This conquering led to the forced conversion of many Spanish Jews and the martyrdom of thousands during the onslaughts of 1367 and 1391.

9. ESTHER BENBASSA & ARON RODRIDGE, *SEPHARDI JEWRY: A HISTORY OF THE JUDEO-SPANISH COMMUNITY, 14TH-20TH CENTURIES*, xxxix (U. Cal. Press 2000) (1993) (“Portugal did not have a middle class, and the new skills brought by the Jews were proving to be of great benefit. As a result, the Jews of Portugal were all forcibly converted en masse in 1497, with no alternative offered them.”); JONATHAN RAY, *AFTER EXPULSION: 1492 AND THE MAKING OF SEPHARDIC JEWRY* 57 (2013) (“One of the defining characteristics of Jewish history in the sixteenth century was that the great expulsions of the 1490s did not lead to a neat transfer of Jewish settlement from West to East. Rather, the Jewish exodus from Spain gave way to a long and decidedly unsettled period of nearly continuous migration around the Mediterranean.”); NORMAN ROTH, *CONVERSOS, INQUISITION, AND THE EXPULSION OF THE JEWS FROM SPAIN* 307–16 (2002). The Monarchs Ferdinand and Isabella of Spain signed the Mar. 31, 1492 Edict of Expulsion, or Alhambra Decree, after the fall of Granada. Between 100,000 and 200,000 Sephardic Jews fled the Iberian Peninsula and other Spanish-owned lands.

10. S.M. DUBNOV, *1 HISTORY OF THE JEWS IN RUSSIA AND POLAND* 144–47 (1916). Dubnov cites a Russian historian who said, “Killing was accompanied by barbarous tortures; the victims were flayed alive, split asunder, clubbed to death, roasted on coals, or scalded with boiling water The most terrible cruelty, however, was shown towards the Jews Jews were laid down upon [Jewish legal scrolls taken from synagogues], and butchered without mercy. Thousands of Jewish infants were thrown into wells, or buried alive.” In Niemirow alone, around six thousand Jews died at Cossack hands. As the hired military of the Russian aristocracy, Cossacks partook in the Eastern European Pogroms against Jews. Pogrom, the Russian word referring to a mob attack, has come to mean the late nineteenth century and early twentieth century attacks on Jews in the Russian Empire. For example, the Odessa Pogrom of 1905 killed somewhere between 400 and 2,500 Jews, injured an additional 300 to 600 Jews, and damaged at least 1,600 Jewish homes. *See generally* JOHN DOYLE KLIER & SHLOMO LAMBROZA, *POGROMS: ANTI-JEWISH VIOLENCE IN MODERN RUSSIAN HISTORY* (1992).

11. YUSUF RIZK-ALAH GHANIMAH, *A NOSTALGIC TRIP INTO THE HISTORY OF THE JEWS OF IRAQ* 168–70 (A. Dallal trans., 1998); Hayyim J. Cohen, *The Anti-Jewish “Farhūd” in Baghdad, 1941*, 3 *MIDDLE EASTERN STUD.* 2 (1966). *See generally* CYNTHIA KAPLAN SHAMASH, *THE STRANGERS WE BECAME: LESSONS IN EXILE FROM ONE OF IRAQ’S LAST JEWS* (2015). Throughout the 1930s and ‘40s, Iraqi Jews experienced a wave of attacks garnered by the pro-Nazi Iraq government. Many died. Many fled if they could—some to British Palestine, after 1948, to Israel; anti-Jewish persecutions continued in wakes of 1948 and 1967 wars. As a result, today there are virtually no Jews in Iraq after thousands of years of presence and a Jewish near-plurality in Bagdad in 1900.

12. RAUL HILBERG, *THE DESTRUCTION OF THE EUROPEAN JEWS* 3 (1961) (explaining that the German bureaucratic policies of the 1930s and '40s caused the death of over five million European Jews: "The expulsion and exclusion policy was adopted by the Nazis [members of the German, Hitler-led National-Socialist Party,] and remained the goal of all anti-Jewish activity until 1941. . . . In 1941, the Nazis found themselves in the midst of a total war. Several million Jews were incarcerated in ghettos . . . 'the final solution of the Jewish question in Europe,' . . . envisaged the death of the European Jewry.").

13. *See generally* EYAL CHOWERS, *THE POLITICAL PHILOSOPHY OF ZIONISM* 11 (2012); DAVID FROMKIN, *A PEACE TO END ALL PEACE* 493–96 (1989); AMY DOCKSER MARCUS, *JERUSALEM 1913: THE ORIGINS OF THE ARAB-ISRAELI CONFLICT* 43 (2008).

14. 1 THOMAS YOSELOFF, *THE COMPLETE DIARIES OF THEODOR HERZL* 23, 238 (1960) [hereinafter YOSELOFF, VOLUME I]; 4 THOMAS YOSELOFF, *THE COMPLETE DIARIES OF THEODOR HERZL* 1302–03 (1960) [hereinafter YOSELOFF, VOLUME IV]. In 1895, Herzl discusses creating the "Jewish National Loan Fund of ten million marks" to pay for his Zionist dream. Later that year, Herzl investigates the liquidation of the Rothschild businesses for Zionist funding. In July 1902, Herzl seeks further funding for the Jewish National Fund in a letter to Lord Nathaniel Rothschild. *See also* IRIT AMIT-COHEN, *ZIONISM AND FREE ENTERPRISE: THE STORY OF PRIVATE ENTREPRENEURS IN CITRUS PLANTATIONS IN PALESTINE IN THE 1920S AND 1930S* 25 (2012) ("Due to British Imperial interests, the Palestine Mandatory government encouraged . . . [e]conomic development in Palestine and the British support of it [included] . . . a development loan guaranteed by the British Exchequer, customs policy of the Government of Palestine that protected local industry, exempted raw materials and fuel from customs duties and encouraged growth of the local industry, and introduction of a new currency . . .").

15. MICHAEL R. FISCHBACH, *RECORDS OF DISPOSSESSION PALESTINIAN REFUGEE PROPERTY AND THE ARAB-ISRAELI CONFLICT* 15–19, 361 (2003) (describing how, at the onset of the 1948 War, Zionists created several organizations to deal with "abandoned area." One early Israeli law defined abandoned area as "any area or place conquered by or surrendered to armed forces or deserted by all or part of its inhabitants, and which has been declared by order to be an abandoned area." Today, Israelis and Palestinians differ immensely as to what constitutes abandoned property with the Palestinians taking a more expansive view); *see also* ANITA SHAPIRA, *ISRAEL: A HISTORY*, 196–97 (2012) ("Israel seized abandoned Arab property and expropriated land for Jewish settlement. According to some estimates, between forty and sixty percent of the Arab-owned land in Israeli areas in 1948 was now transferred to Jewish settlement.").

16. U.N. Charter art. 2, ¶ 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.").

17. BERNARD WASSERSTEIN, *DIVIDED JERUSALEM: THE STRUGGLE FOR THE HOLY CITY* 144 (3d ed. 2008) ("On 9 April a unit of the Irgun Zvai Leumi entered the village of Deir Yassin, a little to the west of Jerusalem, and massacred at least 100 Arabs (reports at the time said as many as 250), including many civilians, among them women and children Four days later Arabs took vengeance: they ambushed a convoy of doctors and nurses driving to the Hadassah Hospital on Mount Scopus. Seventy-seven people were killed"); *see also* AHRON BREGMAN, *ISRAEL'S WARS A HISTORY SINCE 1947* 15–16 (2002). *See generally* EFRAT BEN-ZE'EV, *REMEMBERING PALESTINE IN 1948 BEYOND NATIONAL NARRATIVES* (2011) (stating that during the Deir Yassin massacre,

Irgun and Lehi forces killed large numbers of villages).

18. BREGMAN, *supra* note 17, at 24 (“[T]he total strength of the invading Arab armies was about 23,500 troops, made up of 10,000 in the Egyptian army, 4,500 in the Arab Legion of Transjordan, 3,000 Syrians, 3,000 Iraqis and 3,000 Lebanese and Arab Liberation Army (ALA) troops; there was also a token contingent from Saudi Arabia.”); BERNARD REICH, AN HISTORICAL ENCYCLOPEDIA OF THE ARAB-ISRAELI CONFLICT 609 (1996) (presenting a timeline that shows that the Arab Liberation Army entered Palestine in January 1948); SHAPIRA, *supra* note 15.

19. U.N., Member States, <http://www.un.org/en/member-states/#gotoI> (last visited Sep. 30, 2018). Israel was admitted to the U.N. on May 11, 1949.

20. GORDON ALEXANDER CRAIG, THE END OF PRUSSIA (1984); MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW CASES AND COMMENTARY 756 (2014) (The inherent right of self-defense “includes a right both to repel the armed attack and to take the war to the aggressor state in order effectively to terminate the attack and prevent a recurrence.”); H.W. KOCH, A HISTORY OF PRUSSIA (1978). At the conclusion of World War II Stalin moved a number of central European borders westward, giving the Soviet Union territory that had been part of other states—Germany, Poland, Hungary, etc. He totally seized the ancient German state of East Prussia, giving the southern part to Poland and turning the northern third in to a militarized soviet enclave on the Baltic Sea. Hundreds of thousands of German civilians were killed or driven out, and the historic city of Königsberg disappeared, replaced by Soviet Kaliningrad.

21. See Lippman, *supra* note 7, for details regarding the Deir Yassin massacre; see also SAMI ADWAN ET AL., SIDE BY SIDE PARALLEL HISTORIES OF ISRAEL-PALESTINE 366 (2012); REICH, *supra* note 18, at 204–05, 246–48; SHAPIRA, *supra* note 15, at 128–29 (2012). The Haganah was a relatively mainstream Jewish militia in Palestine. The Irgun was an extremist underground right-wing Jewish military group that sprang out of the Haganah in reaction to anti-Jewish violence in 1936.

22. 8 U.S.C. § 1101(a)(42) (2012); Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Oct. 4, 1967); Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 176 (Apr. 22, 1954). The 1954 U.N. Convention Relating to the Status of Refugees defines a refugee as someone who “[O]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” Because the U.S. has adopted the U.N. definition of a refugee, the U.S. refugee definition (found at 8 U.S.C. § 1101(a)(42)) is almost the same.

23. MICHAEL BRENNER, A SHORT HISTORY OF THE JEWS 322 (Jeremiah Riemer trans., 2010) (“Although antisemitism was forging ahead all over Europe, nowhere did it assume such systematic forms as in Germany. The objective during the first years of Nazi rule was clear: exclusion and migration for Jews. Accompanying the policy of *Gleichschaltung*—of forcing the political and social apparatus of Germany into line with National Socialism—was the removal of Jews from professional life. As soon as they were deprived of their economic foundation, it was assumed that they would take the next logical step and leave the country.”); ROTH, *supra* note 4, at 386–92, 421–53.

24. AHRON BREGMAN, CURSED VICTORY: A HISTORY OF ISRAEL AND THE OCCUPIED TERRITORIES 41–42 (2015) (“Throughout the centuries a small Jewish community had lived among the Arabs of Hebron; their number

increased towards the end of the nineteenth century with the arrival of Eastern European Jews. But the Jews of Hebron have always been hated by their neighbours, who regarded them as arrogant colonialists; in the wave of ethnic violence that swept Palestine in August 1929, sixty-seven Jews were killed by Arabs in Hebron, and their community and its synagogues destroyed. The survivors fled to Jerusalem; there they stayed until, in 1931, thirty-one Jewish families returned to Hebron to re-establish their community.”); BREGMAN, *supra* note 17, at 3, 8 (“[Zionists] took it for granted that the native Arabs would welcome the new arrivals, whose zeal and skill and, of course, money would help develop the barren land for the benefit of all of its inhabitants.” After years of increasing wealth and Jewish population in Mandatory Palestine, “Arab dissatisfaction reached its peak between 1936 and 1939, a period known as ‘The Arab Rebellion,’ when they began a general strike which soon turned into clashes, mainly with the British who had allowed Jews to enter Palestine, purchase land and establish the infrastructure for a future state.”).

25. REICH, *supra* note 18, at 606–28 (according to Reich’s timeline, between 1860 to 1995 both Arabs and Jews attacked each other); ARI SHAVIT, MY PROMISED LAND 59 (2013) (illustrating how on Oct. 18, 1935, in Jaffa “[o]ne of the [shipment] barrels fell and broke, and out rolled thousands of rifle bullets. There was a panic in the harbor: it was clear that the illegal ammunition was headed for the illicit Jewish defense organization, the Haganah. Within hours there was a panic throughout the country. Now Palestinians felt that not only was Jewish immigration a threat but so was Jewish military buildup. After a general strike was called, al-Kassam decided the day had come for action ‘I taught you religion and I taught you nationhood,’ he said to his followers. ‘Now it’s your duty to carry out jihad. Ho, Islamists, go out on jihad.’”).

26. Sacha Stern, *Dissonance and Misunderstanding in Jewish-Roman Relations*, in JEWS IN A GRAECO-ROMAN WORLD 241–50 (1998) (comparing the Jewish recording of the founding of the Roman city, Aelia Capitolina, on top of Jerusalem in the Mishnah as one of the five great Jewish tragedies of the time and marking the successful exile of the Jews to a Roman coin depicting the event as a happy conquest). Aelia Capitolina was officially founded in 135 A.D. after the Second Jewish Revolt from 132–135 A.D.

27. BRUCE K. FRIESEN, MORAL SYSTEMS AND THE EVOLUTION OF HUMAN RIGHTS 35–36 (2015) (demonstrating that uniting regions under a single religion helped create the unity needed to explore human rights. For the Middle East and Europe, that political unity was found through the Jewish monotheistic tradition remodeled in Christianity and later Islam. Monotheism offered a particularly good path to unity because the single God muted diversity and increased social integration).

28. HOLT ET AL., *supra* note 7; LAPIDUS, *supra* note 7. Of the significant number of Jews who migrated to the Arabian Peninsula the largest concentrations were initially found in the city of Medina and in Yemen. The Medina community was destroyed by Muhammad when it failed to accept his new religion. The Yemenite community existed until the twentieth century when in a number of migrations, it moved to Israel.

29. SHAVIT, *supra* note 25, at 14–15 (chronicling the story of Theodor Herzl, who “erect[ed] the great artificial state that would connect East and West.”); YOSELOFF, VOLUME I, *supra* note 14, at 23, 238; YOSELOFF, VOLUME IV, *supra* note 14, at 1303. While Eesh’s claim is factually true, the tone is more conspiratorial than the history. Lord Nathaniel Rothschild and others were part of the organization that helped pay for Jews going to Israel to settle and live.

30. *Joshua* 10:40 (New International Version Bible) (“So Joshua subdued the whole region, including the hill country, the Negev, the western foothills and the mountain slopes, together with all their kings. He left no survivors. He

totally destroyed all who breathed, just as the Lord, the God of Israel, had commanded Joshua subdued them from Kadesh Barnea to Gaza and from the whole region of Goshen to Gibeon. All these kings and their lands Joshua conquered in one campaign, because the Lord, the God of Israel, fought for Israel.”); RASHID KHALIDI, *PALESTINIAN IDENTITY* 253 (1997) (explaining that some Palestinian advocates claim that present day Arabs of Palestine are descendants of Canaanites); *see also* EMMANUEL ANATI, *PALESTINE BEFORE THE HEBREWS: A HISTORY FROM THE EARLIEST ARRIVAL OF MAN TO THE CONQUEST OF CANAAN* (1962) (surveying the groups that inhabited the land in modern-day Israel from the earliest known information of his time until Israel appears in early Egyptian texts around 3,200 years ago); Antonio Arnaiz-Villena et al., *HLA Genes in Palestinians: The Origin of Palestinians and Their Genetic Relatedness with Other Mediterranean Populations*, 62 *HUM. IMMUNOLOGY*, 889–900 (2001) (“Both Jews and Palestinians share a very similar HLA genetic pool that support a common ancient Canaanite origin.”); Kristin Romney, *Living Descendants of Biblical Canaanites Identified Via DNA*, *NAT'L GEOGRAPHIC* (July 27, 2017), <http://news.nationalgeographic.com/2017/07/canaanite-bible-ancient-dna-lebanon-genetics-archaeology/> (citing Marc Haber, et al., *Continuity and Admixture in the Last Five Millennia of Levantine History from Ancient Canaanite and Present-Day Lebanese Genome Sequences*, 101(2) *AM. J. HUM. GENETICS* 274–82 (2017) (finding that modern Lebanese people share more than ninety percent of their DNA with the Canaanites).

31. *2 Kings* 18:8 (New International Version Bible) (“From watchtower to fortified city, he defeated the Philistines, as far as Gaza and its territory.”); *Do the Palestinians Descend from the Philistines? DNA Tests from First Philistine Cemetery Will Tell*, *MESSIANIC BIBLE PROJECT* (July 18, 2016), <http://test.messianicbible.com/news/dna-tests-first-philistine-cemetery-will-refute-palestinian-link/> (“Palestinian Authority (PA) President Mahmoud Abbas stated on official PA TV in March, ‘Our narrative says that we were in this land since before Abraham. I am not saying it. The Bible says it. The Bible says, in these words, that the Palestinians existed before Abraham. So why don’t you recognize my right? Referring to Genesis 21:34, the Bible says that Abraham ‘dwelt many days in the land of the Philistines.’”); Yale Zussman, *A ‘Palestinian Inconvenient Truth*, *ALGEMEINER* (July 3, 2013, 10:55 AM), <https://www.algemeiner.com/2013/07/03/a-palestinian-inconvenient-truth/> (“The archaeological record establishes that the Philistines arrived in Canaan around 100-150 years after the Israelites, and thus even if the ‘Palestinians could prove a connection, that would provide no prior claim to controlling territory. The Philistines conquered only the southwest coast of Canaan, an area corresponding roughly to today’s Gaza Strip, and did not settle the central highland . . . [T]hat would give them no claim much beyond Gaza.”).

32. BRENNER, *supra* note 23, at 348 (referencing a 1968 Haggadah printed in Jerusalem, Brenner says “The sentence ‘Next year in Jerusalem,’ which is spoken at the end of the evening Seder service, appears to have been fulfilled here.”); HARRY EMERSON FOSDICK, *A PILGRIMAGE TO PALESTINE* 275 (1927) (explaining how a Christian made the pilgrimage to Jerusalem, had Passover with a Jewish family, and remarked that the eldest man commented on the Jewish ritual of ending Passover in any other country with “Next Year in Jerusalem.”); THEODOR HERZL, *A JEWISH STATE: AN ATTEMPT AT A MODERN SOLUTION OF THE JEWISH QUESTION* 46 (5th ed., H. Pordes 1967) (1896) (“All through the long night of their history the Jews have never ceased to dream the kingly dream. ‘Next year in Jerusalem’ is our watchword. It is now a matter of showing that the dream can be converted into an effective thought for broad daylight.”); *JEWISH FED’NS NORTH AM., THE PASSOVER HAGGADAH: A GUIDE TO THE SEDER*, http://jewishfederation.org/images/uploads/holiday_images/

39497.pdf (detailing the Passover Seder and ending with the Closing Prayer and exclamation “Next Year in Jerusalem!” (הַבְּנוּיָהּ בִּירוּשָׁלַיִם הַבְּבֹאָה לְשָׁנָה)); Arthur Waskow, *The Rainbow Seder*, SHALOM CTR., <https://theshalomcenter.org/node/259> (last visited Sept. 30, 2018). Even modern, progressive Haggadahs include the closing wish “Next Year in Jerusalem!” in Hebrew, although the English translation is sometimes modified to, e.g., “Next year in the City of Peace!” or “Next Year may Jerusalem be at peace.”

33. Ashraf Ray Ibrahim, *The Doctrine of Laches in International Law*, 83 VA. L. REV. 3, 647–92 (1997) (describing laches as an equitable principal in Anglo-American law barring the bringing of a claim due to the unreasonable passing of time. Ibrahim argues that the doctrine of laches is firmly established in public international law and is available to courts despite its sparse use. Interestingly, Ibrahim does not expressly apply this argument to Palestine); Yaël Ronen, *ICC Jurisdiction over Acts Committed in the Gaza Strip*, 8 J. INT’L CRIM. JUST. 3 (2010) (“[T]he inapplicability of a statute of limitations to international crimes is designed to overcome political impediments to accountability in the short term.”). Therefore, not every international law issue is limited by a traditional statute of limitations.

34. *Balfour Declaration 1917*, AVALON PROJECT: DOCUMENTS L. HIST., & DIPL. [hereinafter AVALON PROJECT], http://avalon.law.yale.edu/20th_century/balfour.asp (last visited Oct. 18, 2018); FOSDICK, *supra* note 32, at 271–72 (quoting the Balfour Declaration in part and describing its reception as a contemporary, believing the Balfour Declaration to be “generous and laudable, but its results are visibly exciting, offering alike spectacles of heroic adventure and possibilities of tragic failure.”).

November 2nd, 1917

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty’s Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet.

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

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours sincerely,

Arthur James Balfour

35. *Art. 6, The Palestine Mandate*, AVALON PROJECT, http://avalon.law.yale.edu/20th_century/palmanda.asp (last visited Sept. 2016) (“Article 6. The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.”).

36. See M. E. CHAMBERLAIN, *SCRAMBLE FOR AFRICA* (2014); see also MARIAN KENT, *THE GREAT POWERS AND THE END OF THE OTTOMAN EMPIRE* (2005) (examining the relationship between imperialism and the end of the Ottoman Empire).

37. *San Remo Convention*, WORLD WAR I DOCUMENT ARCHIVE, https://wwi.lib.byu.edu/index.php/San_Remoo_Convention (last visited Sept. 30,

2018).

38. *Art. 22, The Covenant of the League of Nations*, AVALON PROJECT, http://avalon.law.yale.edu/20th_century/leagcov.asp#art22 (last visited Oct. 18, 2018) (entrusting not yet advanced peoples newly independent after the first world war to the more advanced nations; this article was included in the draft of the Covenant of the League of Nations that existed contemporaneously with the Balfour Declaration); *see also San Remo Convention, supra* note 37; *British White Paper of June 1922*, AVALON PROJECT, http://avalon.law.yale.edu/20th_century/brwh1922.asp (last visited Oct. 18, 2018).

39. *Apartheid Legislation 1850s-1970s*, S. AFR. HIST. ONLINE (Apr. 11, 2016), <http://www.sahistory.org.za/article/apartheid-legislation-1850s-1970s>.

40. 1 WILLIAM LITTELL, *THE STATUTE LAW OF KENTUCKY; WITH NOTES, PRAELECTIONS, AND OBSERVATIONS ON THE PUBLIC ACTS 52 (1809)* (detailing the encoding of the general principles of slavery in Kentucky); VIRGINIA GENERAL ASSEMBLY OF 1812, *ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA OF A PUBLIC & PERMANENT NATURE, AS ARE NOW IN FORCE: COMPRISING THE FIRST VOLUME OF THE REVISED CODE 142-49 (1814)* (allowing trial by jury for prosecutable crimes for only free persons).

41. NICKOLAUS WACHSMANN, *HITLER'S PRISONS: LEGAL TERROR IN NAZI GERMANY* 158, 160 (2004); *see also* JOHN A. MAXWELL & JAMES J. FRIEDBERG, *HUMAN RIGHTS IN WESTERN CIVILIZATION: 1600 TO THE PRESENT*, 158 (2d ed. 1994) (revealing the Nazi Party enacted many racist laws including the Nuremberg Laws (Nürenberg Gesetze) in 1935 which prohibited German and Jewish intermarriages and reduced Jewish civil and political rights).

42. ROBERT JOHN & SAMI HADAWI, 1 *THE PALESTINE DIARY 1914-1945*, 219-26 (1971) (explaining that Eesh's claim finds historical evidence of tragic absentee landlord sales, but that this was not the official or general policy of Zionist land purchases. In 1930, the British colonial office sent Sir John Hope Simpson to survey the state of land acquisition and Jewish immigration. He described Palestine as very small and not generally arable, contrasting with Zionist plans to "make the desert blossom" by buying significant swathes of land from Arab landowners. Simpson relayed the story of the Sursocks, a Lebanese family who sold the Zionists a significant tract of land, which displaced 688 Arab agricultural families, leaving many of them searching for work. Britain responded with a series of ordinances intended to protect Palestinian Arabs).

43. Jeremy Forman & Alexandre Keda, *Colonialism, Colonization, and Land Law in Mandate Palestine: The Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective*, 4 *THEORETICAL INQ. L.* 491, 518 (July 2003) (The 1923 Luke Commission report (1) "affirmed local rights to all cultivated land and recommended its removal from the concession" and (2) "acknowledged that claims to some uncultivated land might be justified as well. This bolstered the position of the local residents, who rejected settlements based on moral rights alone and, in result, greatly weakened the government's ability to maneuver."). The Luke Commission did not specify whether the local rights it spoke of only pertained to owners or tenant-peasant farmers).

44. FOSDICK, *supra* note 32, at 273, 278 (stating that £22,500 of Zionist central funds were used to purchase the land and supplies for the Zionist colony Dilb and lamenting that the success of Zionism in his opinion depended on the generosity of the American Jewry over at least twenty-five years); JOHN & HADAWI, *supra* note 42, at 217-35; SHAPIRA, *supra* note 15, at 52 ("In this way the individual interests of the radical workers who lacked means and the interest of Zionism were maybe to converge."); Adam S. Hofri-Winogradow, *Zionist Settlers and the English Private Trust in Mandate Palestine*, 30 *L. & HIST. REV.* 813, 846 (2012) (describing the property trust company, Palestine Trust Company, Ltd., which "assist[ed] in the purchase and development of

land, plantations, farms, and urban property.”).

45. See REEVA SPECTOR SIMON ET AL., *THE JEWS OF THE MIDDLE EAST AND NORTH AFRICA IN MODERN TIMES* (2003).

46. See FOSDICK, *supra* note 32, at 271–74; YOSELOFF, VOLUME IV, *supra* note 14, at 1629 (revealing how Herzl discusses the issue of asking Turkey for a region of Palestine “large enough for five to six million Jews,” but noticeably ignores throughout the diaries the existence of the Palestinian people).

47. DAVID BEN GURION, *ISRAEL: YEARS OF CHALLENGE 13–15* (1963) (discussing how Zionist ideology initially held “that the return of the Jews to their land was bound up with a lofty mission to make the Middle East bloom again and to establish friendly co-operation between two Semitic peoples” From 1933 to 1935, Ben Gurion “entered into conversations with prominent Palestinian Arabs and with representatives of Syria, Lebanon, Egypt, and Saudi Arabia [Arab Leaders] could only become ‘Jewish-orientated’ if [the Zionists] could prove that there were economic and political benefits for them. We had to make them understand that the presence of the Jews in Palestine was not a feeble and fleeting factor but a decisive one, an historical reality which could not be annulled or upset or disregarded.”); see also HERZL, *supra* note 32, at 64 (“In [Palestine and Argentina] noteworthy experiments in colonization have been made, though on the mistaken principle of a gradual infiltration of Jews. Any infiltration is bound to end badly. For the inevitable moment must come when the native population feels itself threatened and forces the Government to stop all further influx of Jews. Immigration is consequently futile unless we have the sovereign right to continue such immigration.”).

48. *Yishuv*, CTR. ISR. EDUC., <https://israeled.org/themes/yishuv/> (last visited Oct. 18, 2018) (explaining *Yishuv* (יִשׁוּב) is the Hebrew word identifying the Jewish community in pre-1948 Palestine).

49. REICH, *supra* note 18, at 204 (describing how the Haganah was founded in June of 1920 out of the disbanded Hashomer under the control of Ahdut Haavoda. “The Yishuv recognized the dangers it faced by the growing Arab violence and the difficulty that the Jewish community faced by the British refusal to allow the Jews to bear arms. For this reason, the Haganah was a clandestine defense organization.”); GORDON THOMAS, *GIDEON’S SPIES: THE SECRET HISTORY OF THE MOSSAD* 32–34 (2015); JACQUELINE ROSE, *THE QUESTION OF ZION* 115 (2005); see also SHAVIT, *supra* note 25, at 59 (“One of the barrels fell and broke, and out rolled thousands of rifle bullets. There was a panic in the harbor: it was clear that the illegal ammunition was headed for the illicit Jewish defense organization, the Haganah.”); Matt Plenn, *Zionism, the Palestinians, and Peace: Do the Various Ideologies of Zionism Allow for the Practical Coexistence of Jews and Palestinians?*, MY JEWISH LEARNING, <http://www.myjewishlearning.com/article/zionism-the-palestinians-peace/> (last visited Oct. 18, 2018) (“Until the 1930s, for example, David Ben Gurion believed that as the economic growth caused by Jewish immigration enhanced the Palestinian Arabs’ standard of living, they would gradually come to appreciate the benefits of Zionism; the conflict would thereby be neutralized. This prognosis was shattered by the outbreak of the Arab revolt in 1936, at the peak of a cycle of economic growth. The Labor Zionists had failed to take into account the nationalist, ideological basis of the Arabs’ opposition to Zionism. That reality now became painfully clear Hashomer Hatzair, together with Brit Shalom—a liberal, academic peace movement—abandoned the aim of exclusive Jewish independence in favor of a binational vision of Jewish-Arab coexistence within a unitary state. This plan was invalidated both by the absence of an Arab partner and by the establishment of the State of Israel as a fait accompli in 1948.”).

50. ADWAN ET AL., *supra* note 21, at 366.

51. See FOSDICK, *supra* note 32, at 279–80 (pointing out that early Zionism relied on the notion that Jews without a homeland were moving “to a land without a people” and citing that over seventy-three percent of Palestine’s population were Muslim Arabs); AMNON RUBINSTEIN, THE ZIONIST DREAM REVISITED: FROM HERZL TO GUSH EMUNIM AND BACK 54 (1984) (recalling an early Zionist teacher, Isaac Epstein, who in 1907 “charged that the Zionists were oblivious to the Arab question and were turning a blind eye to the existence of strong nationalistic feelings among the Arab inhabitants of Palestine.”).

52. U.N. Charter art. 1, ¶ 2, art. 55, ¶ 1 (encouraging the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”); G.A. Res. 220A (XXI) (Dec. 16, 1966) (protecting all people’s right to self-determination and gives State parties the responsibility to protect that right); *President Woodrow Wilson’s 14 Points 1918*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=62> (last visited Sept. 30, 2018) (revealing that in his famous Fourteen Points speech, Woodrow Wilson “proposed the removal of economic barriers between nations, the promise of “self-determination” for those oppressed minorities, and a world organization that would provide a system of collective security for all nations.”).

53. Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.).

54. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22).

55. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]; Amy Chiang, Student Note and Comment, *An International and Islamic Perspective of Hamas*, 83 CHI.-KENT L. REV. 1021, 1038–39 (2008) (analyzing Hamas’s violations of international humanitarian law). Article 147 of the Fourth Geneva Convention states: “[I]f committed against persons or property protected by the present Convention: willful [sic] killing, torture or inhuman treatment, including biological experiments, wilfully [sic] causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully [sic] depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

56. Lizzy Dearden, *Israel-Gaza Conflict: 50-Day War by Numbers*, INDEPENDENT (Aug. 27, 2014, 11:15 AM), <http://www.independent.co.uk/news/world/middle-east/israel-gaza-conflict-50-day-war-by-numbers-9693310.html> (reporting 3,000 Palestinian children as casualties in 2014); Chris McGreal & Hazem Balousha, *Gaza’s Day of Carnage—40 Dead as Israelis Bomb Two U.N. Schools*, GUARDIAN (Jan. 6, 2009, 7:01 PM), <https://www.theguardian.com/world/2009/jan/07/gaza-israel-obama>.

57. Haidar Eid, *The Rape of Gaza*, AL JAZEERA (July 31, 2014), <http://www.aljazeera.com/indepth/opinion/2014/07/rape-gaza-201473114415929540.html> (“Gaza has become a permanent war zone; the biggest concentration camp on earth has become a burial site—a noisy graveyard.”); Danielle Ziri, *Former UN Envoy Draws Parallel Between Gaza Strip and a Concentration Camp*, JERUSALEM POST (June 20, 2017, 10:39 PM), <http://www.jpost.com/Arab-Israeli-Conflict/Former-UN-envoy-parallels-between-Gaza-strip-and-a-concentration-camp-497458>.

58. ANDREA NÜSSE, MUSLIM PALESTINE: THE IDEOLOGY OF HAMAS xi (1998); Mark Joseph Stern, *How Did Hamas Take the Gaza Strip?*, SLATE (Nov.

19, 2012, 4:53 PM), http://www.slate.com/articles/news_and_politics/explainer/2012/11/hamas_in_gaza_how_the_organization_beat_fatah_and_took_control_of_the_gaza.html; Conal Urquart et al., *Hamas Takes Control of Gaza*, GUARDIAN (June 15, 2007, 10:29 AM), <https://www.theguardian.com/world/2007/jun/15/israel4> (stating that Hamas is an acronym that stands for *Haraket al myqawama al-Islamiyya* formed from the Muslim Brotherhood and intended to resist the Israeli Occupation and compete with the threat of other Islamic fringe groups. In 1993, through the Oslo Accords, Israel ceded governmental control over the West Bank and Gaza to the Palestinians and withdrew its soldiers from both regions in 2005. The following year, the Palestinian Authority advocated for an election, in which Hamas won the parliamentary majority and caused factional fighting in the Palestinian Territory. By 2007, Hamas fully controlled the Gaza, after defeating Fatah/PLO forces in local fighting).

59. *Hamas Charter: The Covenant of the Islamic Resistance Movement* (1988), ¶ 2, AVALON PROJECT, http://avalon.law.yale.edu/20th_century/hamas.asp (last visited Oct. 18, 2018); *EU Court Takes Hamas off Terror List*, BBC (Dec. 17, 2014), <http://www.bbc.com/news/world-middle-east-30511569> (stating that Hamas is one of the first organizations to have been classified as terroristic by the United States. The Hamas Charter begins with several quotes that embody Hamas's mission including: "Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it." The EU removed Hamas from the terrorist organization two years ago by a general court decision, but the council appealed); Bureau of Counterterrorism, *Foreign Terrorist Organizations*, U.S. ST. DEP'T, <https://www.state.gov/j/ct/rls/other/des/123085.htm> (last visited Oct. 18, 2018); Counter Terrorism Guide, *Hamas*, U.S. OFF. DIRECTOR NAT'L INTELLIGENCE, <https://www.dni.gov/nctc/groups/hamas.html> (last visited Oct. 18, 2018); Reuters, *EU to Challenge Court Ruling to Remove Hamas from Terror List*, GUARDIAN (Jan. 19, 2015), <https://www.theguardian.com/world/2015/jan/19/eu-challenge-court-ruling-remove-hamas-terror-list>; *Proscribed Terrorist Organisations*, U.K. HOME OFF. (Dec. 22, 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538297/20160715-Proscription-website-update.pdf.

60. George E. Bisharat et al., *General Article: Israel's Invasion of Gaza in International Law*, 38 DENV. J. INT'L L. & POL'Y 41, 41 (2009); see also Barry A. Feinstein, *Proportionality and War Crimes in Gaza under the Laws of Armed Conflict*, 36 RUTGERS L. REC. 224, 232 (2009); *Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians*, HUM. RTS. WATCH (Dec. 24, 2012, 12:45 AM), <https://www.hrw.org/news/2012/12/24/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians>; William Saletan, *Civilian Deaths in Gaza*, SLATE (July 11, 2014, 9:18 PM), http://www.slate.com/articles/news_and_politics/frame_game/2014/07/gaza_civilian_casualties_a_closer_look_at_the_death_toll_israel_s_warnings.html (stating that Saletan examines legality of Israeli attacks on Gaza in 2014).

61. Ronen, *supra* note 33, at 1–2 ("On 27 December 2008, Israel opened a three-week long military offensive in the Gaza Strip ('Operation Cast Lead'). During that period, Israel carried out over 2,360 air strikes over Gaza, as well as ground assaults. These attacks left 1,300 Palestinians dead and more than 5,000 wounded, a third of them children. At the same time, Hamas and its associates bombed Israeli territory with 617 rockets and 178 mortar shells, causing a total of three civilian fatalities, 182 wounded, and 584 persons suffering from shock and anxiety syndrome. Nine Israeli soldiers were killed inside the Gaza Strip."); *Gaza Crisis: Toll of Operations in Gaza*, BBC (Sept. 1, 2014), <http://www.bbc.com/news/world-middle-east-28439404> (reporting that 2,104 Palestinians died between July 8 and August 31, 2014, while only 72

Israelis died).

62. Gallagher Fenwick, *Exclusive: Hamas Rocket Launch Pad Lies Near Gaza Homes*, FR. 24 (Aug. 7, 2014), <http://www.france24.com/en/20140805-exclusive-video-hamas-rocket-launching-pad-near-gaza-homes-un-building/>; WATCH: IAF Strikes Rocket Launchers Hidden in Gaza School, JERUSALEM POST (Aug. 26, 2014), <http://www.jpost.com/Arab-Israeli-Conflict/WATCH-IAF-strikes-rocket-launchers-hidden-in-Gaza-school-372347>; Robert Mackey, *Indian TV Crew Shows Rare Video of Rocket Launch From Gaza*, N.Y. TIMES (Aug. 5, 2014), http://www.nytimes.com/2014/08/06/world/middleeast/indian-tv-crew-shows-rare-video-of-rocket-launch-from-gaza.html?_r=0.

63. Human shields refer to the military or terrorist use of civilians to “precede them in attack.” PERSIAN GULF WAR ENCYCLOPEDIA: A POLITICAL, SOCIAL, AND MILITARY HISTORY 191 (Spencer C. Tucker ed., 2014). The use of human shields is implicitly, through the prohibition on taking hostages, and expressly prohibited in the Fourth Geneva Convention stating: “The presence of a protected person may not be used to render certain points or areas immune from military operations.” Fourth Geneva Convention, *supra* note 55, arts. 3, 28; *see also* Feinstein, *supra* note 60, at 232 (arguing that by using human shields, Hamas violated the laws of war and cites Rome Statute Article 8(2)(b)(xxiii), in which explicitly states that “war crimes” includes “[u]tilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations”).

64. Richard Falk (Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967), *Human Rights Situation in Palestine and Other Occupied Arab Territories*, 6, U.N. Doc. A/HRC/10/20 (Feb. 11, 2009) (stating that a U.N. fact-finding mission found that 1,434 Palestinians were killed during the 2009 Gaza Conflict); Jodi Rudoren, *Civilian or Not? New Fight in Tallying the Dead from the Gaza Conflict*, N.Y. TIMES (Aug. 5, 2014), http://www.nytimes.com/2014/08/06/world/middleeast/civilian-or-not-new-fight-in-tallying-the-dead-from-the-gaza-conflict.html?_r=0 (reporting that casualties from the 2014 Gaza conflict were between 900, as reported by the Israelis, and 1,865, as reported by Hamas).

65. *Mid-East Crisis: The Blockade of Gaza—in 60 Seconds*, BBC (Aug. 13, 2014), <http://www.bbc.com/news/world-middle-east-28757657>; *Rethinking the Gaza Blockade*, N.Y. TIMES (June 1, 2010), http://roomfordebate.blogs.nytimes.com/2010/06/01/rethinking-the-gaza-blockade/?_r=0.

66. Rep. of the U.N. Fact-Finding Mission on the Gaza Conflict, *Human Rights in Palestine and Other Occupied Arab Territories*, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009); JANIS & NOYES, *supra* note 20, at 756, 782, 793 (“[T]he right of self-defence, individual or collective is subject to limitations of ‘necessity’ and ‘proportionality,’ but that self-defence includes a right both to repel the armed attack and to take the war to the aggressor state in order effectively to terminate the attack and prevent a recurrence.”); Bisharat et al., *supra* note 60, at 102.

67. Yiftah S. Shapir, *Lessons from the Iron Dome*, 5 MIL. & STRATEGIC AFF. 81, 81 (May 2013) (describing the Israeli Iron Dome as a missile defense system “for intercepting rockets and artillery shells with ranges of up to 70 kilometers”); William Booth & Ruth Eglash, *Israeli Drones Hunt Hamas as Militants Fire Rockets Deeper into Israel*, WASH. POST (July 9, 2014), https://www.washingtonpost.com/world/israel-steps-up-offensive-against-hamas/2014/07/09/bb366894-074c-11e4-a0dd-f2b22a257353_story.html?utm_term=.6a14fd91760c (including video of the Iron Dome at work in Tel Aviv).

68. Protocol Relating to the Protection of Victims of International Armed Conflicts, arts. 51(5)(b), 57(2)(a)(iii)–(b), June 8, 1977, 16 I.L.M. 1391; George H. Aldrich, *New Life for the Laws of War*, 75 AM. J. INT’L L. 764, 778 (Oct. 1981)

(describing articles 51(5)(b) and 57(2)(a)(iii)–(b) as the “first codification of the customary international law on the law of war principle of proportionality.” Article 51(5)(b) describes an indiscriminate attack as one “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” Article 57(2) states that attack planners shall:

(a)(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

see also Nobuo Hayashi, *Requirements of Military Necessity in International Humanitarian Law and International Criminal Law*, 28 B.U. INT’L L. J. 39 (Spring 2010); Michael Rosenfeld, *Judicial Balancing in Times of Stress: Comparing the American, British, and Israeli Approaches to the War on Terror*, 27 CARDOZO L. REV. 2079, 2083 (Mar. 2006).

69. *Israeli Air Strikes Pound Gaza after Rocket Attack*, AL JAZEERA (Aug. 21, 2016), <http://www.aljazeera.com/news/2016/08/israeli-air-strikes-pound-gaza-rocket-attack-160821212419200.html>; Tovah Lazaroff, *Arab-Israeli Conflict, Netanyahu Warns Hamas after Weekend of Rocket Fire from Gaza*, JERUSALEM POST (Mar. 13, 2016), <http://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-warns-Hamas-after-weekend-of-rocket-fire-from-Gaza-447742>.

70. Feinstein, *supra* note 60, at 227 (citing Article 51 as stating “[D]espite the focus herein on an examination of the proportionality of Israel’s actions in Gaza in light of the laws of war, it nevertheless bears mention that to the extent that jus ad bellum would be relevant, Israel, just as any other State, is permitted to exercise its inherent right of self-defense, and indeed has the duty to thwart attacks against its citizens and to rid itself of any threat caused by the terrorists . . . Specifically, when terrorists attack a State, the State is permitted to exercise force to protect itself pursuant to its inherent right of self-defense pursuant to Article 51 of the United Nations Charter that stipulates: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.’”).

71. David Luban, *Military Necessity and the Cultures of Military Law*, 26 LEIDEN J. INT’L L. 315 (2013) (discussing the development of the meaning of necessity in the law of war and contrasts how military lawyers and humanitarian lawyers conceptualize that meaning); Wajiha Rais, *Defending Israelis or Suppressing Palestinian Self-Determination? An Analysis of Operation Protective Edge Using the Two-Factor Test*, 11 FIU L. Rev. 255, 278 (2015); *British-American Diplomacy: The Caroline Case*, AVALON PROJECT, http://avalon.law.yale.edu/19th_century/br-1842d.asp (last visited Oct. 18, 2018) (defining necessity in the law of war as the only means of averting an attack).

72. GABRIEL SHEFFER & OREN BARAK, ISRAEL’S SECURITY NETWORKS: A THEORETICAL AND COMPARATIVE PERSPECTIVE 90–93 (2013) (“Barak and high-

ranking officers in the IDF made it quite clear that the Iron Dome's capability to intercept rockets coming from the Gaza strip was quite limited and very costly. According to Barak, Iron Dome 'is a system that can already shoot if fired in its direction, but we need to understand that apart from the fact that this is an extraordinary achievement of our defense industries, which is unprecedented anywhere else, it eventually does not give 100 percent coverage.'"); Daphné Richemond-Barak & Ayal Feinberg, *The Irony of the Iron Dome: Intelligent Defense Systems, Law, and Security*, 7 HARV. NAT'L SEC. J. 469, 496 (2016).

73. *Palestinian Armed Groups Killed Civilians on Both Sides in Attacks Amounting to War Crimes in Gaza Conflict*, AMNESTY INT'L (Mar. 26, 2015, 12:01 AM), <https://www.amnesty.org/en/press-releases/2015/03/palestinian-armed-groups-killed-civilians-on-both-sides-in-attacks-amounting-to-war-crimes-during-2014-gaza-conflict/>; Nicole Crowder, *Hidden in Plain Sight: The Anatomy of Israeli Bomb Shelters*, WASH. POST (Mar. 17, 2015), https://www.washingtonpost.com/news/in-sight/wp/2015/03/17/hidden-in-plain-sight-the-anatomy-of-israeli-bomb-shelters/?utm_term=.16464cc6c6f3 ("Along with the more conventional below-ground bomb shelters, there are underground parking garages that can be converted into nuclear-proof bomb shelters and hospitals able to accommodate thousands. Entire schools are encased in reinforced concrete with blast-proof windows, and small, one-room 'mamads' or 'safe rooms' in private residences are meant to withstand rockets and unconventional weapons attack. Many of the bomb shelters have been re-purposed for broader uses like dance studios, community centers, pubs, mosques, and synagogues."); Christian Storm, *Here's What It's Like Inside the Bomb Shelters Where Israelis Take Shelter Whenever the Sirens Go Off*, BUS. INSIDER (Aug. 5, 2014, 2:48 PM), <http://www.businessinsider.com/a-look-inside-israels-bomb-shelters-photos-2014-8> ("Because attacks are so frequent, bomb shelters are everywhere. Most public, industrial, and residential building have them, as mandated by a law passed in 1951.").

74. See, e.g., HCJ 3003/18, 3250/18 *Yesh Din v. IDF Chief of Staff* (Isr.) (Hebrew); Avinoam Sharon, *Recent Developments in Israeli Law*, VERSA OPINIONS OF THE COURT OF ISRAEL (May 30, 2018), <http://versa.cardozo.yu.edu/viewpoints/recent-developments-israeli-law-0> (English summary of HCJ 3003/18, 3250/18). See generally Yonah Jeremy Bob, *High Court Declares IDF Conduct on Gaza Border Legal*, JERUSALEM POST (May 24, 2018), <https://www.jpost.com/Arab-Israeli-Conflict/High-Court-declares-IDF-conduct-on-Gaza-border-legal-558341> (describing how, while criticizing the IDF for not allowing the Court to read the classified IDF rules of engagement, the Israeli High Court nevertheless declared the IDF's conduct during the 2018 Gaza border crisis legal because "it found them to be too general prior to all cases being probed; in light of the IDF's representations that it modified its rules; and because of its inability to view the classified rules.").

75. *Israel Bombs Gaza Homes*, AL JAZEERA (Jan. 3, 2008), <http://www.aljazeera.com/news/middleeast/2008/01/200852514341315549.html>; Robert Tait, *Israel Increases Bombardment of Gaza as Huge Bombs Destroy Buildings*, TELEGRAPH (Aug. 24, 2014, 7:06 PM), <http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11054092/Israel-increases-bombardment-of-Gaza-as-huge-bombs-destroy-buildings.html>.

76. ADWAN ET AL., *supra* note 21 at 108–09 (detailing the history of the 1948 War from each perspective with the left page representing the Israeli perspective and the right page the Palestinian perspective. From the Jewish perspective, the 1948 War "is known as the War of Independence because the Jewish Yishuv succeeded in gaining its independence after the Arabs in the Land of Israel and neighboring nations tried to prevent it. Jews also call this

the War of Liberation.” From the Palestinian perspective, “*Al-Nakbah* (Arabic for the catastrophe) represents the defeat of the Arab armies in the 1948 Palestine War, the Arabs’ acceptance of the truce, the displacement of most of the Palestinian people from their home cities and villages, and the emergence of the refugee problem and the Palestinian Diaspora.”).

77. FISCHBACH, *supra* note 15, at 1; *see also* MARK TESSLER, A HISTORY OF THE ISRAELI PALESTINIAN CONFLICT 279 (1994) (“According to UN Figures, the number of refugees had risen to 750,000 by the beginning of 1949 and to 940,000 by June of that year. Arab sources generally concur with these estimates and occasionally place them even higher. Israeli sources, by contrast, often contend that the UN statistics are grossly inflated.”); *Palestine Refugees*, UNRWA (2016), <http://www.unrwa.org/palestine-refugees> (last visited Oct. 9 2018) (stating that “UNRWA was responding to the needs of about 750,000 Palestinians refugees in 1950” and that today that number has grown to around five million Palestinians).

78. *Israel-Egypt Peace Treaty 26 March 1979*, ISR. MINISTRY FOREIGN AFF. (2013), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israel-egypt%20peace%20treaty.aspx>; *Israel-Jordan Peace Treaty 26 Oct 1994*, ISR. MINISTRY FOREIGN AFF. (2013), <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Israel-Jordan%20Peace%20Treaty.aspx>; *see also* Sam Roberts, *Harold H. Saunders, Middle East Peace Broker, Dies at 85*, N.Y. TIMES (Mar. 11, 2016), <https://www.nytimes.com/2016/03/09/world/middleeast/harold-h-saunders-mideast-peace-broker-dies-at-85.html> (lamenting over the death of Harold Saunders who helped to negotiate and draft the Camp David Accords in 1978 which led to a peace treaty between Israel in Egypt). Thus, it was about thirty years before the first Arab state was willing to make peace with Israel, and almost fifty years for the second.

79. *See* Nottebohm Case (Liechtenstein v. Guatemala) (second phase), Judgment, 1955 I.C.J. Rep. 4. (Apr. 6).

80. U.N. Convention Relating to the Status of Refugees, *supra* note 22, art. 1(C) (stating that a person ceases to be a refugee for purposes of the Refugee Convention when among other circumstances the person “(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution”); Protocol Relating to the Status of Refugees, *supra* note 22, art. 1 (adopting the Convention’s definition of “refugee”).

81. *UNRWA Statistics 2010*, UNRWA (Nov. 2011) <https://www.unrwa.org/userfiles/2011120434013.pdf> (showing that, based on the latest UNRWA data from 2010, around 40.6 percent of the Palestinian refugee population lives in the West Bank and Gaza. This leaves around 3 million other Palestinian refugees in neighboring Syria, Lebanon, and Jordan); *Table 2.1 World Development Indicators: Population Dynamics*, WORLD BANK, <http://wdi.worldbank.org/table/2.1> (last visited Oct. 20, 2018) (showing that Israel’s population as of 2015 was 8.4 million and was projected to reach 9.7 million in 2025. The West Bank and Gaza population for 2015 was 4.4 million and projected to reach 5.7 million by 2025. In 2014 Israel’s crude birth rate was 22 per 1,000, whereas the West Bank and Gaza’s crude birth rate was 33 per 1,000). In considering the above figures, both Israel and the West Bank and Gaza will reach 9.7 million persons in 2025 if the 3 million Palestinian refugees living outside of Israel-Palestine are added to the projected West Bank and Gaza figure of 5.7 million. This estimate does not account for the relatively higher Palestinian birthrate; therefore, Yitz is likely correct that there will be more Palestinians than Israelis.

82. G.A. Res. 393 (V) (Dec. 2, 1950) (continuing direct aid to Palestine

refugees and establishing a Reintegration Fund); G.A. Res. 194 (III) (Dec. 11, 1948) (establishing a U.N. Conciliation Commission, resolving that Jerusalem should be placed under a permanent international regime, and resolving that the refugees should be permitted to return to their homes); *see also* Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 (5) EUR. J. INT'L L. 879, 883–84 (2005) (“The binding effect of GA decisions is limited, *ratione materiae*, to organizational matters, but may cover, *ratione personae*, the entire UN sphere. Although GA resolutions are recommendatory as a rule, especially regarding external relations with Member States, the [ICJ] has recognized the binding legal effect of GA decisions pertaining to the admission of new Member States, voting procedure, or apportionment of the budget, and in general has confirmed that the Court possesses certain powers of decision.”); *Palestine Refugees*, *supra* note 77 (“Palestine refugees are defined as ‘persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.’ . . . The descendants of Palestine refugee males, including adopted children, are also eligible for registration. When the Agency began operations in 1950, it was responding to the needs of about 750,000 Palestine refugees. Today, some 5 million Palestine refugees are eligible for UNRWA services.”). Therefore, as far as our research has revealed, neither the Security Council nor the General Assembly has passed a rule or declaration that descendants of Palestine refugees are in fact refugees themselves. Rather, it seems this has been an interpretive determination by UNRWA.

83. *History*, ORG. ISLAMIC COOPERATION, https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en (last visited Sept. 16, 2018) (“The Organisation of Islamic Cooperation (OIC) is the second largest inter-governmental organization after the United Nations with a membership of 57 states spread over four continents.”); *see also Member States*, ORG. ISLAMIC COOPERATION, <https://www.oic-oci.org/states/?lan=en> (last visited Sept. 16, 2018).

84. *See* U.N. Convention Relating to the Status of Refugees, *supra* note 22; ADWAN ET AL., *supra* note 21 (indicating the international definition of a refugee). *See generally* Protocol Relating to the Status of Refugees, *supra* note 22.

85. Statute and Rules of Court 1926 P.C.I.J (ser. D) No. 1, at 20 (declaring that the I.C.J. may consider “international custom, as evidence of a general practice accepted as law” in its decisions); Michael Wood (Special Rapporteur), *Second Rep. on Identification of Customary International Law*, Int’l Law Comm’n, U.N. Doc. A/69/10 (2014) (relaying how a court may ascertain customary international law through its two elements: (1) general practice of States, and (2) acceptance as law (*opinio juris*)).

86. COLEMAN PHILLIPSON, INTERNATIONAL LAW AND THE GREAT WAR 93 (1915); Michael Kagan, *Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East*, 38 COLUM. HUM. RTS L. REV. 263, 270 (2007) (explaining the history of the doctrine of enemy nationals and its application in the Middle East, especially the Israeli-Palestinian Conflict).

87. Sarah Lynne Campbell, *Give Me Your Tired, Your Poor, and Your Country Shoppers: Reevaluating the Firm Resettlement Requirement in U.S. Asylum Law after Maharaj v. Gonzales*, 21 BYU J. PUB. L. 377, 379 (2007); Stephen H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, 15 INT’L J. REFUGEE L. 567, 567 (2003). Domestic law varies on whether a refugee or an asylee may seek protection in a third country. There are generally two categories: (1) first country of asylum, in which a State is allowed not to grant asylum because the refugee has received asylum for the same circumstances

elsewhere and (2) safe third country, in which the third-party State may deny the refugee asylum because they should have sought asylum upon reaching the first safe country. The U.S. adheres to a combination of the two referred to as firm resettlement.

88. *Compare At a Glance: State of Palestine*, UNICEF, http://www.unicef.org/infobycountry/oPt_statistics.html#118 (last updated Dec. 31, 2013), with *At a Glance: State of Israel*, UNICEF, http://www.unicef.org/infobycountry/israel_statistics.html (last updated Dec. 27, 2013) (showing that the Palestinian birthrate has declined from 503,000 in 1970 to 306,000 in 2012, the Israel birthrate remains much lower at 265,000 in 1970 and 206,000 in 2012).

89. International Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, Dec. 9, 1948, 78 U.N.T.S. 277, S. TREATY DOC. NO. 95-18 (“[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such : (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”).

90. *Syria*, FREEDOM HOUSE, <https://freedomhouse.org/country/Syria> (last visited Oct. 7, 2018); *Egypt*, FREEDOM HOUSE, <https://freedomhouse.org/country/Egypt> (last visited Oct. 7, 2018); *Iran*, FREEDOM HOUSE, <https://freedomhouse.org/country/Iran> (last visited Oct. 7, 2018); *Israel*, FREEDOM HOUSE, <https://freedomhouse.org/country/Israel> (last visited Oct. 7, 2018). Israel is rated free while Syria, Egypt, and Iran are rated not free.

91. MARILYN J. HARRAN ET AL., *THE HOLOCAUST CHRONICLE* 13–15, 57 (2003); *Introduction to the Holocaust*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/learn/introduction-to-the-holocaust> (last visited Oct. 7, 2018) (“The Holocaust was the systematic, bureaucratic, state-sponsored persecution and murder of six million Jews by the Nazi regime and its collaborators. The Nazis, who came to power in Germany in January 1933, believed that Germans were ‘racially superior’ and that the Jews, deemed ‘inferior,’ were an alien threat to the so-called German racial community.”). The term comes from the Greek translation of the Hebrew Bible’s use of *olah* (עֹלָה), meaning sacrifice by fire. However, in Israel, Jews use the term *Sho’ah* (שואה) for the Holocaust.

92. 1 UNITED NATIONS RESOLUTIONS ON PALESTINE AND THE ARAB-ISRAELI CONFLICT (George J. Tomeh ed., 1975); 2 UNITED NATIONS RESOLUTIONS ON PALESTINE AND THE ARAB-ISRAELI CONFLICT (Regina S. Sharif ed., 1988); 3 UNITED NATIONS RESOLUTIONS ON PALESTINE AND THE ARAB-ISRAELI CONFLICT (Michael Simpson ed., 1988); S.C. Res. 242 (Nov. 22, 1967) (stating the principles that could lead to a just and lasting peace in the Middle East); Rep. of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, U.N. Doc. A/72/539 (Oct. 18, 2017).

93. Jeremy R. Hammond, *The Myth of the U.N. Creation of Israel*, FOREIGN POLY J. (2010) <https://www.foreignpolicyjournal.com/2010/10/26/the-myth-of-the-u-n-creation-of-israel/> (“The U.S., Syria, and other member nations were correct in their observations that, while the Security Council did have authority to declare a threat to the peace and authorize the use of force to deal with that and maintain or restore peace and security, it did not have any authority to implement by force a plan to partition Palestine contrary to the will of most of its inhabitants. Any attempt to usurp such authority by either the General Assembly or the Security Council would have been a prima facie violation of the

Charter's founding principle of respect for the right to self-determination of all peoples, and thus null and void under international law. In sum, the popular claim that the U.N. 'created' Israel is a myth, and Israel's own claim in its founding document that U.N. Resolution 181 constituted legal authority for Israel's creation, or otherwise constituted 'recognition' by the U.N. of the 'right' of the Zionist Jews to expropriate for themselves Arab land and deny to the majority Arab population of that land their own right to self-determination, is a patent fraud." The author does not agree with this argument, since both the Security Council and General Assembly have acted as interpreters of their own powers, in ways that demonstrate international approval or at least acquiescence to growth of institutional powers, not an unknown phenomenon in governmental evolution. "[P]rima facie violation" and "null and void" are terms that overstate a plausible, but minority interpretation.

94. *Armistice Lines (1949-1967)*, ISR. MINISTRY FOREIGN AFF., <http://www.mfa.gov.il/mfa/aboutisrael/maps/pages/1949-1967%20armistice%20lines.aspx> (last visited Oct. 7, 2018).

95. ERNEST RENAN, QU'EST-CE QU'UNE NATION? (Ethan Rundell trans., Presses-Pocket 1992) (1882) (theorizing that a State has the right to exist, when its individuals are willing to sacrifice for the benefit of the community, in his essay published before a French academic conference in 1882); Stephen Manashi, *Ethnonationalism and Liberal Democracy*, 32 U. PA. J. INT'L L. 57, 114 (2010) ("Political persecution combined with religious and ethnocultural ties gave rise to the sentiment of nationality identified by Mill, Renan, and others. As Herzl explained: We are a nation—the enemy makes us a nation whether we like it or not.").

96. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 6 (Dec. 10, 1948) ("Everyone has the right to recognition everywhere as a person before the law."); *id.* art. 15 ("(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."); Comm. on Economic, Social, & Cultural Rights, Rep. on the Thirtieth and Thirty-First Sessions, ¶ 261, U.N. Doc. E/2004/22 (2004) ("The Committee is particularly concerned about the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees."); SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS, 138-39 (2004); Peter J. Spiro, *A New International Law of Citizenship*, 105 AM. J. INT'L L. 694, 727-28 (2011).

97. Compare Frank James, *Israel's Netanyahu Likens His Nation to New Jersey*, NPR (Mar. 23, 2010, 1:51 PM), https://www.npr.org/sections/thetwo-way/2010/03/israels_netanyahu_likens_his_n.html (reporting on Israel's Prime Minister, Netanyahu, comparing the size of Israel to New Jersey), *with Israel*, U.N. DATA, <http://data.un.org/CountryProfile.aspx?cname=Israel> (last visited Oct. 7, 2018) (reporting that Israel is 8,522 sq. mi. (22,072 sq. km.)), and *State Area Measurements and Internal Point Coordinates*, U.S. CENSUS BUREAU, <https://www.census.gov/geo/reference/state-area.html> (last visited Oct. 7, 2018) (showing that New Jersey is 7,354.22 sq. mi. (19,047 sq. km.)), and *The Land: Geography and Climate*, ISR. MINISTRY FOREIGN AFF., <http://www.mfa.gov.il/mfa/aboutisrael/land/pages/the%20land-%20geography%20and%20climate.aspx> (last visited Oct. 7, 2018) (showing that Israel is 8,367 sq. miles (21,671 sq. km.)).

98. PAKISTAN CONST. art. 2, (declaring Islam as the official religion of Pakistan); *id.* art. 227-31 (detailing how the Koran is to be used by the governmental body). *But see id.* art. 20 (suggesting that each Pakistani citizen

has the right to practice his own religion and that every religious denomination and sect has “the right to establish, maintain and manage its religious institutions”).

99. See Kathy Gannon, *AP Explains: There are Barely 2.5 Million Christians in Mostly Muslim Pakistan, a Country of 180 Million, and They Say They Worry About Sending Their Children Out and Rarely Feel Safe, Even in Church*, U.S. NEWS (Mar. 28, 2016, 4:24 PM), <http://www.usnews.com/news/world/articles/2016-03-28/ap-explains-violence-against-christians-in-pakistan/>; Katie Hunt & Nasir Habib, *Girl Held in Pakistan, Accused of Burning Quran Pages*, CNN (Aug. 20, 2012, 5:39 PM ET), <http://www.cnn.com/2012/08/20/world/asia/pakistan-girl-blasphemy/index.html>; Umair Jamal, *The Plight of Pakistan’s Hindu Community*, DIPLOMAT (June 23, 2016), <https://thediplomat.com/2016/06/the-plight-of-pakistans-hindu-community/>; Saima Mohsin, *Pakistan Attack: How the Christian Minority Lives*, CNN (Apr. 4, 2016, 4:12 AM ET), <https://www.cnn.com/2016/04/04/asia/pakistan-attack-religious-intolerance/index.html>; Qasir Zulfikar, *11-Year-Old Mentally Challenged Christian Girl Jailed for Blasphemy*, EXPRESS TRIB. (Aug. 19, 2012), <https://tribune.com.pk/story/424084/11-year-old-mentally-challenged-christian-girl-jailed-for-blasphemy/>.

100. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 12 (naming Islam and the Twelver Ja’fari school of religion as the official religion of the State); *id.* art. 13 (recognizing a list of religious minorities, namely Zoroastrian, Christian, and Jewish); *id.* art. 72 (preventing the government from changing Iran’s official religion).

101. THE BASIC LAW OF GOVERNANCE [CONSTITUTION] Mar. 1, 1992 art. 1 (Saudi Arabia) (“The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God’s blessings and peace be upon him (PBUH). Its language shall be Arabic and its capital shall be the city of Riyadh.”).

102. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 2 (naming Islam as Saudi Arabi’s official State religion); *id.* art. 53 (intending to prevent discrimination based on religion, among other characteristics); *id.* art. 64 (“Freedom of belief is absolute.”); Reza Sayah & Mohammed Tawfeeq, *Egypt Passes a New Constitution*, CNN (Jan. 18, 2014, 5:04 PM), <http://www.cnn.com/2014/01/18/world/africa/egypt-constitution/> (indicating that Egyptian voters passed a new Constitution in 2014).

103. CONSTITUTION OF KUWAIT Nov. 11, 1962, reinstated 1992, art. 2, *translated in* CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Kuwait_1992?lang=en (last visited Oct. 21, 2018) (“The religion of the State is Islam and Islamic Law shall be a main source of legislation.”); CONSTITUTION OF LIBYA amended Feb. 17, 2011, art. 1, *translated in* CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Libya_2012?lang=en (last visited Oct. 21, 2018) (“Islam shall be its religion and Islamic Shari’a shall be the main source of legislation. The State shall guarantee for non-Muslims the freedom to practice their religious rituals.”); CONSTITUTION OF THE REPUBLIC OF YEMEN amended Feb. 20, 2001, art. 160, *translated by* Ahmed noman Al-Madhagi & Abdelrahman A. Abdrabou (swearing in Yemen’s President and other State officers by saying, “I swear by Almighty Allah: To adhere to the Quran (the Book of God) and the traditions established by Prophet Mohammed . . .”).

104. Martin Asser, *Obstacles to Arab-Israeli Peace: Palestinian Refugees*, BBC (Sept. 2, 2010), <http://www.bbc.com/news/world-middle-east-11104284> (finding that in 2010, there were approximately 4,375,050 Palestinians living

outside of Israel-Palestine).

105. FISCHBACH, *supra* note 15, at 1; ANN M. LESCH, ORIGINS AND DEVELOPMENT OF THE ARAB-ISRAELI CONFLICT 13 (rev. ed. 2006). NUR MASALHA, THE POLITICS OF DENIAL: ISRAEL AND THE REFUGEE PROBLEM 178 (2003); AKIVA ORR, ISRAEL: POLITICS, MYTHS AND IDENTITY CRISIS 68 (1994). While the figures vary, the highest estimates of refugees who fled Israel during the 1967 and 1948 wars are 730,000 and 325,000 respectively.

106. BRUCE CLARK, TWICE STRANGER 21–41 (2006). In the early 1920s, the Turkish army expelled the majority of the Greek population from Smyrna, or Izmir in Turkish: “Within four days of the new occupiers’ arrival, three-quarters of the city had been burned to the ground and tens of thousands of people had been incinerated or drowned as they tried in most cases vainly, to find succor on the British, French, or American ships which were anchored nearby and did relatively little to alleviate the catastrophe.”

107. MARK MAZOWER, SALONICA, CITY OF GHOSTS 331 (2004) (“In recent years, books, monuments, museums and conferences have contributed to a new interest in the deportation and extermination of the city’s Jews during the Second World War As yet, however, no such debate has opened concerning the departure of Salonica’s Muslims To get them to leave in their totality required a diplomatic agreement drawn up between states in the aftermath of war, which forcibly uprooted these people for the sake of geopolitical stability and nation-building. This time [in 1923-1924,] they had to depart whether they wished to or not.”); Gail Holst-Warhaft, *The Tragedy of the Greek Jews: Three Survivors’ Accounts*, 13 HOLOCAUST & GENOCIDE STUD. 98, 98–99 (1999) (detailing how Salonika’s Jewish population dropped from 90,000 to 56,000 by 1939 and that by August 1943, as a result of Nazi killings and deportations, only 500 Jews remained: “By then all vestiges of Jewish life in Salonika—archives, priceless manuscripts, cemetery monuments, and synagogue ornaments—had been destroyed or shipped to Germany.”).

108. ANAND GIRIDHARADAS, INDIA CALLING: AN INTIMATE PORTRAIT OF A NATION’S REMAKING (2011); STANLEY WOLPERT, INDIA 99–100 (4th ed., U.C. Press 2009).

109. ANTONY BEEVOR, BERLIN: THE DOWNFALL: 1945 (2002) (giving background on Kaliningrad, Russia, Königsberg and describing the horrors in East Prussia); ALFRED MAURICE DE ZAYAS, THE GERMAN EXPELLEES: VICTIMS IN WAR AND PEACE 38–42, 63 (John A. Koehler trans., St. Martin’s Press 1993) (1986) (detailing personal accounts of ethnic cleansing in East Prussia by Soviet soldiers).

110. DAVID TAL, WAR IN PALESTINE, 1948: STRATEGY AND DIPLOMACY 157–58 (2004) (“As soon as the British Mandate expired and David Ben-Gurion declared the establishment of Israel in a ceremony held in Tel Aviv, Arab Armies crossed the international boundary into Palestine.”).

111. See Alex Weingrod, *Styles of Ethnic Adaption: Interpreting Iraqi and Moroccan Settlement in Israel*, in ISRAEL: THE FIRST DECADE OF INDEPENDENCE 526–27 (S. Ilan Troen & Noah Lucas eds., 1992); Samuel G. Freedman, *Are Jews Who Fled Arab Lands to Israel Refugees, Too?*, N.Y. TIMES (Oct. 11, 2003) <http://www.nytimes.com/2003/10/11/arts/are-jews-who-fled-arab-lands-to-israel-refugees-too.html>; Lela Gilbert, *The Nakba of Morocco’s Jews*, JERUSALEM POST (Apr. 28, 2010), <http://www.jpost.com/Features/In-TheSpotlight/The-Nakba-of-Morocco’s-Jews>; Ya’akov Meron, *Why Jews Fled the Arab Countries*, MIDDLE EAST Q. (Summer 1995), <https://www.meforum.org/articles/other/why-jews-fled-the-arab-countries>.

112. Yitz mostly speaks the truth here. No major states or international organizations clamor for the return of Hindus to Pakistan, Germans to Königsberg, Poles to the Ukraine and Lithuania, Greeks to Izmir, etc. But times

and law have changed—by the 1990s the ethnic cleansing in former Yugoslavia generally was condemned by the world community, as is today’s Burmese actions to rid Myanmar of its Rohingya minority. See S.C. Res. 827, ¶ 3 (May 25, 1993) (expressing concern over ethnic cleansing in Bosnia); G.A. Res. 72/248, ¶ 6–13 (Jan. 23, 2018) (expressing concern over violence toward Rohingya minority in Myanmar). A question, therefore, is whether Israel should be judged by the legal standards of the late 1940s or of the year 2000. Given the evolution of such practice, perhaps the answers are different for 1948 and for 1967 and beyond.

113. G.A. Res. 302 (IV), Assistance to Palestinian Refugees (Dec. 8, 1949) (establishing the U.N. Relief and Works Agency to collaborate with local governments for the benefit of Palestinian refugees).

114. U.N. Convention Relating to the Status of Refugees, *supra* note 22, Protocol Relating to the Status of Refugees, *supra* note 22; *About Us*, UNHCR, <http://www.unhcr.org/about-us.html> (last visited Oct. 7, 2018) (“[U.N. High Commissioner for Refugees (“UNHCR”)], the U.N. Refugee Agency, is a global organization dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people.”).

115. See *Exploding the Myths: UNRWA, UNHCR, and the Palestinian Refugees*, UNRWA (June 27, 2011), <http://www.unrwa.org/newsroom/features/exploding-myths-unrwa-unhcr-and-palestine-refugees> (discussing the UNRWA position on whether it should be disbanded in favor of consolidating refugee protection within the UNHCR); Terry M. Rempel, *UNHCR, Palestinian Refugees, and Durable Solutions*, BADIL (Aug. 2002), http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/Brief-No.7.pdf (examining the special regime created to protect Palestinian refugees in contrast to the general refugee agency, the UNHCR).

116. *Introductory Note by the Office of the U.N. High Commissioner for Refugees*, in CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3 (2010), <http://www.unhcr.org/3b66c2aa10.pdf> (“The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR, such as refugees from Palestine who fall under the auspices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Nor does the Convention apply to those refugees who have a status equivalent to nationals in their country of asylum.”).

117. *E.g.*, SHAVIT, *supra* note 25, at 107–23 (telling a similar tale and describing the purposeful, forced evacuation of Lydda in 1948: Shortly after the U.N. decided on a partition plan in Israel, “on July 4, 1948, Operation Larlar, designed to conquer Lydda, is presented to Israel’s first prime minister, David Ben Gurion. On July 10–11, the 8th Brigade of the IDF takes the northern parts of the Lydda Valley . . . Within twenty-four hours of the Israeli Army’s first division–scale offensive, all the villages Dr. Lehmann so loved and taught his students to love are conquered. And as Zionism closes in on the valley of Lydda from the south, east, and north, it now prepares to conquer Lydda itself.” Shavit describes the defense by Jordanian forces and the ultimate defeat of the city before one of his Jewish IDF characters “describes the marching column [of Palestinian refugees]. Standing by his command car, he watches the people of Lydda walking, carrying on their backs heavy sacks made of blankets and sheets. Gradually, they cast aside the sacks they cannot carry any farther. In the heavy heat, suffering from terrible thirst, old men and women collapse. Like the ancient Jews, the people of Lydda go into exile.”)

118. See Fourth Geneva Convention, *supra* note 55, art. 49 (“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other

country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated. The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place. These provisions would not have been applicable to just-born Israel in 1948 as a matter of treaty law since it was not a party to the Convention. Whether such provisions constituted customary law by that time is a matter of debate.”).

119. YOSSI ALPHER, PERIPHERY: ISRAEL’S SEARCH FOR MIDDLE EAST ALLIES 95–103 (2015) (indicating that the first successful peace process after the 1948 War began in 1977 after years of hostilities from Israel’s neighboring countries).

120. Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, Egypt-Isr., Mar. 26, 1979, 1136 U.N.T.S. 17813.

121. Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Isr.-Jordan, July 25, 1994, 2042 U.N.T.S. 35325.

122. Asser, *supra* note 104 (estimating that 4,375,050 Palestinian descendants were living outside of Israel in 2010).

123. Steve Holland & Maayan Lubell, *Trump Recognizes Jerusalem as Israel’s Capital, Reversing Longtime U.S. Policy*, REUTERS (Dec. 6, 2017), <https://www.reuters.com/article/us-usa-trump-israel/trump-recognizes-jerusalem-as-israels-capital-reversing-longtime-u-s-policy-idUSKBN1E01PS>; Mark Landler, *Trump Recognizes Jerusalem as Israel’s Capital and Orders U.S. Embassy to Move*, N.Y. TIMES (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/world/middleeast/trump-jerusalem-israel-capital.html>.

124. Jennifer Rubin, *Will Trump’s Jerusalem Move Work?*, WASH. POST (Dec. 6, 2017, 3:45 PM), <https://www.washingtonpost.com/blogs/right-turn/wp/2017/12/06/on-jerusalem-context-is-everything> (“The Knesset, the prime minister’s office and the Israeli Supreme Court are all located in West Jerusalem. Moreover, Russia this year recognized West Jerusalem as the capital of Israel, so it is not as if the United States would be the lone country to recognize Jerusalem’s effective status as the seat of government.”).

125. See, e.g., Hajji Mustafa, *The Story of a Non-Muslim Eyewitness in Mecca*, WND (Mar. 22, 2015) <http://www.wnd.com/2015/03/the-story-of-a-non-muslim-eyewitness-in-mecca/>.

126. F.E. PETERS, THE HAJJ: THE MUSLIM PILGRIMAGE TO MECCA AND THE HOLY PLACES 206 (1994); AUGUSTUS RALLI, CHRISTIANS AT MEDINA 2 (1909); Mustafa, *supra* note 125 (recounting the lengths it took to infiltrate Mecca and Medina as a non-Muslim European); Jennifer Williams, *Haji, the Islamic Pilgrimage to Mecca, Explained for Non-Muslims*, VOX, <http://www.vox.com/2016/9/12/12814258/haji-islamic-pilgrimage-mecca-explained> (last updated Aug. 20, 2018, 12:50 PM EDT).

127. THE KORAN 17:1 (“Exalted is He who took His Servant by night from al-Masjid al-Haram to al-Masjid al-Aqsa, whose surroundings We have blessed, to show him of Our signs. Indeed, He is the Hearing, the Seeing.”).

128. See *id.*; Asser, *supra* note 104. Narrated: Anas bin Malik that the

Messenger of Allah (may peace be upon him) said: I was brought al-Buraq Who is an animal white and long, larger than a donkey but smaller than a mule, who would place his hoof a distance equal to the range of vision. I mounted it and came to the Temple (Bait Maqdis in Jerusalem), then tethered it to the ring used by the prophets.” Israelis, as Yitz says, believe that this is Islamic propaganda created after the death of Mohammed, since the Koran does not mention the city Jerusalem and since the “farthest mosque” in Muhammed’s night visit could not have referred to a place in Jerusalem while Muhammed lived since Arabs only conquered Jerusalem from the Christian Byzantines a number of years later after which the Calif Umar began the construction of the first mosque to be built in that city.

129. HOLT ET AL., *supra* note 7, at 54, 62 (showing history records that the initial Muslim conquest of Jerusalem by Caliph Umar and his start of construction of the first mosque on the Temple Mount to have *begun in 638 CE, six years after Muhammed’s death*); LAPIDUS, *supra* note 7, at 28, 32 (indicating that since the Arabs of the seventh century were in regional geopolitical completion with the Byzantines and the not-yet-conquered Persians, tying Muhammed’s night-visit to the “farthest mosque” from the Koran, to Jerusalem might have seemed to strengthen a Muslim claim to control the Holy City). See generally Angelika Neuwirth, *Jerusalem and the Genesis of Islamic Scripture, in JERUSALEM: ITS SANCTITY AND CENTRALITY TO JUDAISM, CHRISTIANITY, AND ISLAM* 319 (Lee. I. Levine ed., 1999) (“This somewhat cryptic verse mentions a nocturnal journey, more precisely a flight, conceived as an experience of liberation and viewed even in analogy to the exodus of Moses, leading the prophet out of Mecca toward ‘the other sanctuary’ par excellence, which in the context of the religio-geographical horizons of the early community can hardly be located elsewhere than on the Temple Mount of Jerusalem, the ‘*masjid* of the Banu Isra’il.’ The simplest explanation of the event alluded to in this verse would be to assume the experience of a dream. In Islam, this explanation has been upheld by only a minority of the exegetes, yet it has been incorporated into the most renowned tenth-century commentary on the Qur’an . . .”).

130. A waqf is a religious, educational, or charitable donation that conforms to a number of Islamic Laws. See BARTON ET AL., *LAW IN RADICALLY DIFFERENT CULTURES* 218 (1983); *Waqf*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/waqf> (last visited Oct. 18, 2018); Ayatullah Sayyid Ali Hussaini Sistani, *Islamic Laws according to the Fatawa of Ayatullah al Uzma Sayyid Ali al-Husaini Seestani*, WORLD FED’N KSI MUSLIM COMMUNITIES (2014), <https://www.al-islam.org/islamic-laws-ayatullah-ali-al-husayni-al-sistani/rules-regarding-waqf>.

131. See *Hamas: Netanyahu is Playing with Fire by Allowing Jews on Temple Mount*, JERUSALEM POST (Dec. 5, 2014, 10:49), <http://www.jpost.com/Arab-Israeli-Conflict/Hamass-Khaled-Mashaal-Netanyahu-is-playing-with-fire-by-allowing-Jews-on-Temple-Mount-383755>; *Jerusalem Court Allows Jewish Prayer on Temple Mount in Historic Ruling*, RT (Mar. 3, 2015, 16:02), <https://www.rt.com/news/237269-jewish-prayer-temple-mount/>; מפגש עם ההיסטוריה, <http://www.harhakodesh.co.il/tour/> (last visited Oct. 7, 2018) (presenting a 3D model of the proposed Third Temple superimposed on the Dome of the Rock); Ben Piven, “*Third Temple*” in *Jerusalem: Mission Impossible for Messianic Zealots*, AL JAZEERA (Oct. 15, 2015, 2:00 PM ET), <http://america.aljazeera.com/articles/2015/10/15/third-temple-jerusalem-messianic-dream.html> (“The restriction on Jewish rituals performed at the site is underscored by religious-based prohibitions. Both the Ashkenazi and Sephardi chief rabbis have reiterated their opposition to Jews visiting the esplanade, known in Hebrew as Har HaBayit.”); Sean Savage, *Will Temple Mount Tensions Yet Again Strain Israeli-Jordanian Relations?*, ALGEMEINER

(Aug. 23, 2016, 6:38 AM), <https://www.algemeiner.com/2016/08/23/will-temple-mount-tensions-yet-again-strain-israeli-jordanian-relations/> (indicating that Israel actually restricts Muslim access to the Temple Mount in order to “reduce violen[t]” protests that have sparked over tensions over the Holy Site in recent years, but Jewish access to the Temple Mount is a recent development which has sparked warnings from Hamas).

132. See JAMES TURNER BARCLAY, *City of the Great King JERUSALEM: AS IT WAS, AS IT IS, AND AS IT IS TO BE* 493 (1858); REICH, *supra* note 18, at 580–81 (explaining the significance of the wall to Jews and Muslims, the author notes that for Jews, it is “all that remains of the western exterior of the Temple of Harod,” whereas for Muslims, the wall is where Mohammad tied up his horse before ascending into heaven). The Western Wall refers to the western wall of the Second Temple complex destroyed by the Romans in 70 CE. Before the reconquest of the old city by Israel in 1967 Jews referred to this structure as the Wailing Wall marking it a place of mourning for the destruction of the Temple since 1967 Jews have used the wall as an important place of prayer. In recent years religious Jewish women have demanded and gotten access to prayer space at the wall. However, that prayer space is smaller than that prayer space allocated to men, and men and women are still prohibited from praying together at the wall a religious foundation supported by the Israeli government makes the rules that decree such use.

133. MAX I. DIMONT & ETHEL DIMONT, *JEWS, GOD AND HISTORY* 14–15, 41, 61 (2003); Piven, *supra* note 131 (“While there is certainly no formal Israeli government plan to partition the Temple Mount or destroy the Dome of the Rock—as was reportedly suggested by the army’s chief rabbi immediately after conquering the 37-acre site 48 years ago [in 1967], and even attempted on several occasions by the Jewish Underground and Yehuda Etzion there has been a marked increase in visits by nationalist activists in the last five years. What began as a fringe activity has become much more acceptable in Israel’s mainstream, especially during Jewish holidays specifically tied to Mount Moriah.”); Ben Sales, *Want World Peace? ‘Build 3rd Temple’*, *TIMES IS.* (July 29, 2014, 5:55 AM) <http://www.timesofisrael.com/want-mideast-peace-build-the-3rd-temple/>; *Watch: Architectural Plans for Third Temple Have Begun*, *ARUTZ SHIVA* (July 26, 2015, 11:40), <http://www.israelnationalnews.com/News/News.aspx/198621>; *Welcome to the Temple Institute*, *TEMPLE INST.*, <http://www.templeinstitute.org/> (“The Temple Institute’s ultimate goal is to see Israel rebuild the Holy Temple on Mount Moriah in Jerusalem, in accord with the Biblical commandments.”).

134. See Shany Littman, *Following the Dream of a Third Temple in Jerusalem*, *HAARETZ* (Oct. 4, 2012, 3:59 PM), <https://www.haaretz.com/israel-news/following-the-dream-of-a-third-temple-in-jerusalem-1.468221> (“According to a survey conducted by the joint directorate of the Temple movements, only 17 percent of Israeli Jews, religious and secular alike, want to see a Third Temple built. However, the numbers shoot up in regard to the possibility of praying on the Temple Mount, with 43 percent of the secular public and 92 percent of the religious public in favor, which averages out to 52 percent of the entire Jewish public.”); Piven, *supra* note 131 (“While there is certainly no formal Israeli government plan to partition the Temple Mount or destroy the Dome of the Rock—as was reportedly suggested by the army’s chief rabbi immediately after conquering the 37-acre site 48 years ago, and even attempted on several occasions by the Jewish Underground and Yehuda Etzion—there has been a marked increase in visits by nationalist activists in the last five years. What began as a fringe activity has become much more acceptable in Israel’s mainstream, especially during Jewish holidays specifically tied to Mount Moriah.”).

135. See generally Terry Regier & Muhammad Ali Khalidi, *The Arab Street: Tracking a Political Metaphor*, 63 MIDDLE EAST J. 11 (2009), <http://lclab.berkeley.edu/papers/arab-street-published.pdf>; *Netanyahu: Arab "Street" May One Day Soften on Israel*, JEWISH TELEGRAPHIC AGENCY (June 6, 2017, 2:39 PM), <https://archive.jta.org/2017/06/06/news-opinion/united-states/netanyahu-arab-street-may-one-day-soften-on-israel> ("Israeli Prime Minister Benjamin Netanyahu said alliances of convenience between Israel and Sunni Arab states could lead to improved perceptions of Israel on the 'Arab street.' Shared interests of crushing the rise of Islamist terrorist groups 'may eventually open the door not only for changing the relations of governments but also to change the perception of Israel in the Arab street.'").

136. See, e.g., Peter Beaumont, *Israel-Palestine: Outlook Bleak as Wave of Violence Passes Six-Month Mark*, GUARDIAN (Mar. 31, 2016, 11:19 EDT), <https://www.theguardian.com/world/2016/mar/31/israel-palestine-violence-knife-attacks-west-bank-gaza> ("[From October 2015 to March 2016,] 211 stabbings of Israelis by Palestinians have been reported, in addition to 83 shootings and 42 car-ramming attacks, responsible in total for the deaths of 30 Israelis and two American citizens. More than 200 Palestinians have been killed, of whom more than 130 died while allegedly carrying out attacks on Israelis."); William Booth, *Knife and Car Attacks Hit Jerusalem and West Bank; 3 Suspected Assailants Killed*, WASH. POST (Sept. 16, 2016), https://www.washingtonpost.com/world/middle_east/knife-and-car-attacks-hit-jerusalem-and-west-bank-3-suspected-attackers-killed/2016/09/16/b723c010-7c1d-11e6-8064-c1ddc8a724bb_story.html.

137. *Al-Aqsa Mosque: Five Things You Need to Know*, AL JAZEERA (Dec. 16, 2017), <https://www.aljazeera.com/indepth/features/2017/07/al-aqsa-170719122538219.html> (discussing the historic and religious significance of al-Aqsa, known as the Noble Sanctuary by Muslims and the Temple Mount by Jews).

138. Fourth Geneva Convention, *supra* note 55; ANTONIO CASSESE ET AL., INTERNATIONAL CRIMINAL LAW 73 (2013) ("Common Article 3 reads: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."); WILLIAM A. SCHABBAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 192 (2017).

139. JEREMY M. SHARP, CONG. RESEARCH SERV., RL33222, U.S. FOREIGN AID TO ISRAEL (2016) ("Israel is the largest cumulative recipient of U.S. foreign

assistance since World War II. To date, the United States has provided Israel \$134.7 billion (current, or noninflation-adjusted, dollars) in bilateral assistance . . . under the terms of the new [Memorandum of Understanding], the Administration pledges to request \$500 million in annual combined funding for missile defense programs with joint U.S.-Israeli elements—such as Iron Dome, Arrow II and Arrow III, and David's Sling.”); Nick Francona, *Hamas's Military Capabilities After the Gaza Takeover*, WASH. INST. NEAR EAST POLY (Aug. 27, 2007), <https://www.washingtoninstitute.org/policy-analysis/view/hamass-military-capabilities-after-the-gaza-takeover> (explaining that during the Gaza takeover, Hamas captured small arms and antitank weapons, antiaircraft missiles and rockets, and Israeli intelligence); *Hamas Parade Their Military Strength* (CNN television broadcast Dec. 15, 2014), <http://www.cnn.com/videos/world/2014/12/15/pkg-robertson-hamas-military-parade.cnn> (showing underwater scuba fighters, rockets, drones, anti-tank weaponry and air missiles); Yaakov Katz, *IAF to Upgrade Old F-16 Fighter Jets*, JERUSALEM POST (Dec. 12, 2011, 03:10), <http://www.jpost.com/Defense/IAF-to-upgrade-old-F-16-fighter-jets> (stating that Israel retired many F-16s after budgeting for the newer F-35s in 2010. “In 2010, the Defense Ministry signed a \$2.75 billion contract for its first squadron of 20 F-35s, which are supposed to begin arriving in 2017 with pilots traveling to the US for training in mid-2016.”).

140. Rep. of the Special Comm. to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories on its Seventy-Second Session, ¶ 3, U.N. Doc. A/72/539 (Oct. 18, 2017) (“[P]ending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, especially Israeli violations of the [Fourth Geneva Convention] and . . . with the International Committee of the Red Cross . . . to ensure that the welfare and human rights of the peoples of the occupied territories, including prisoners and detainees, are safeguarded and to report to the Secretary-General as soon as possible and whenever the need arises thereafter.”); RAJA SHEHADEH, OCCUPIER'S LAW ISRAEL AND THE WEST BANK 42–43 (1985) (quoting Article 35 of Military Proclamation no. 3 of 7 June 1967) (“As a general rule, according to the laws of belligerent occupation, the occupying state must preserve the laws which were previously in force in the area occupied. [Therefore, Israel's] take-over of land and the settlement of Jews in the occupied territories is illegal. But Israel takes a different view. ‘Except for the first five months of the occupation, Israel [has not] consider[ed] itself an occupying state. [Israel] has not felt bound to apply the Geneva Conventions but agrees to apply the ‘humanitarian standards laid down in these conventions.’”); LEX TAKKENBERG, THE STATUS OF PALESTINIAN REFUGEES IN INTERNATIONAL LAW 214 (1998) (disagreeing with Israel that the Fourth Geneva Convention is inapplicable. “The Israeli position has been criticized by the [International Committee of the Red Cross] as well as by many legal writers, including some in Israel itself, and has been decisively rejected by virtually all the members of the international community.” Takkenberg cites the language ‘in all circumstances’ from article 1 of the Fourth Geneva Convention: “The phrase ‘in all circumstances’ is intended to include declared or undeclared war, recognized or unrecognized states of war, partial or total occupation with or without armed resistance, or even under certain circumstances when the opponent is not a contracting party The Convention applies automatically upon the outbreak of hostilities, and its application is not subject to the requirement that the ousted power is the legitimate sovereign of the territories lost.”).

141. G.A. Res. 194 (III), *supra* note 82, ¶ 11 (“Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should

be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”).

142. In Catholicism, Original Sin is the doctrine that because Eve disobeyed God in the Garden of Eden and ate the forbidden fruit, God then punished all people by giving them a natural tendency to sin that is washed away by baptism. However, in some denominations, including Orthodox Christianity and Latter-Day Saints, Original Sin created the possibility of human sin, but no guilt is inherited by subsequent generations. CATHOLIC CHURCH, BALTIMORE CATECHISM ¶ 59 (rev. ed. 1941) (responding to the question “Why is this sin called original?” in part with a quotation from *Romans* 5:12: “Therefore as through one man sin entered into the world and through sin death, and thus death has passed unto all men because all have sinned.”); Byron R. Merrill, *Original Sin*, in THE ENCYCLOPEDIA OF MORMONISM 1052–53 (1992); Tenny Thomas, *Original Sin*, MALANKARA ORTHODOX SYRIAN CHURCH, <http://www.neamericandiocese.org/orthodoxy/original-sin.aspx> (last visited Oct. 7, 2018).

143. M. Abdulsalam, *The Original Sin*, RELIGION ISLAM, <https://www.islamreligion.com/articles/13/original-sin-part-1/> (last modified May 8, 2006) (citing THE KORAN 6:164 (“ . . . No person earns any (sin) except against himself (only), and no bearer of burdens shall bear the burden of another . . .”)); *Original Sin*, JEWISH ENCYCLOPEDIA, <http://jewishencyclopedia.com/articles/11766-original-sin> (last visited Oct. 7, 2018) (“Jewish theologians are divided in regard to the cause of this so-called ‘original sin’; some teach that it was due to Adam’s yielding to temptation in eating of the forbidden fruit and has been inherited by his descendants; the majority, however, do not hold Adam responsible for the sins of mankind.”).

144. The “First Aliyah” is usually dated 1882–1903 and was mostly Eastern European Jews fleeing the Pogroms. The “Second Aliyah” is usually dated 1904–1914 and included many Yemeni and other non-western Jews, as well as Europeans and North Americans. See SHAPIRA, *supra* note 15, at 29–32 (citing the First Aliya “(lit., ascent [to the holy land])” (describing the first group of educated, often secular western Jews who came to Israel at the turn of the century from around 1881 to 1904); *Immigration to Israel: The First Aliyah (1882–1903)*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/the-first-aliyah-1882-1903> (last visited Oct. 7, 2018); *Immigration to Israel: The Second Aliyah (1904–1914)*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/the-second-aliyah-1904-1914> (last visited Oct. 7, 2018).

145. *The Future of World Religions: Population Growth Projections, 2010–2050: Jews*, PEW RES. CTR. (Apr. 2, 2015), <http://www.pewforum.org/2015/04/02/jews/>, (showing that Israel had around 5.6 million in 2010); *The World Factbook: Middle East: Israel*, C.I.A. (2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html> (last updated Nov. 26, 2018) (claiming, in 2017, an estimated total Israeli population of 8,299,706 with 74.7% being Jewish, meaning that the estimated Jewish population of Israel is around 6,199,880 persons).

146. See text and sources accompanying note 91, *supra*.

147. DIMONT & DIMONT, *supra* note 133, at 115–22; RAYMOND P. SCHEINDLIN, A SHORT HISTORY OF THE JEWISH PEOPLE FROM LEGENDARY TIMES TO MODERN STATEHOOD 25–49 (1998).

148. CHAIM GANS, A JUST ZIONISM ON THE MORALITY OF THE JEWISH STATE 37–51 (2008).

149. See generally HOWARD WETTSTEIN, DIASPORAS AND EXILES: VARIETIES OF JEWISH IDENTITY (2002); Mary V. Braginton, *Exile Under the Roman*

Emperors, 39 CLASSICAL J. 391 (1944) (describing the various banishments of Jews and other groups in the Roman empire).

150. In the 1920s and 1930s Palestinian Arabs protested the increasing presence of Jewish settlers in their country. Some of these protests included physical attacks on Jewish communities including serious injury death and occasionally rape. A particularly brutal and deadly instance of this was the Hebron Massacre. See S.C. Res. 904 (Mar. 18, 1994) (“*Shocked* by the appalling massacre committed against Palestinian worshippers in the Mosque of Ibrahim in Hebron, on 25 February 1994, during the holy month of Ramadan, *Gravely concerned* by the consequent Palestinian casualties in the occupied Palestinian territory as a result of the massacre . . .”); REICH, *supra* note 18, at 217 (describing the Hebron Massacre of February 1994 in which a Jewish settler murdered 29 worshipping Arab Muslims in the Hebron Tomb of the Patriarchs with an assault rifle, and “it was the bloodiest single day in the occupied territories since the Six Day War”); text and sources accompanying note 24, *supra*; text and sources accompanying note 155, *infra*.

151. S. M. DUBNOW, JEWISH HISTORY: AN ESSAY IN THE PHILOSOPHY OF HISTORY 176 (1903) (expressing sorrow that while Jews had gained significant freedoms during the enlightenment, “[t]he Jewish Spirit is on alert. It is ever purging and tempering itself in the furnace of suffering”).

152. LIPPMAN, *supra* note 7, at 103. The mufti are Islamic legal scholars who have authority over the “technical [p]oints of the law.” The Grand Mufti are the chief Islamic legal authority over a particular country and promulgate advisory, non-binding opinions on specific cases.

153. ANTISEMITISM: THE GENERIC HATRED ESSAYS IN MEMORY OF SIMON WIESENTHAL 49–50 (Michael Fineberg et al. eds., 2007). The former Grand Mufti of Jerusalem, Haj Amin Al-Husseini, who pushed Palestinians to incite pogroms in Mandate Palestine, lived in honor in Nazi Germany, and encouraged a pro-Nazi Iraq is also quoted saying “Allah has conferred on us the rare privilege of finalizing what Hitler began alone. Let the jihad begin. Kill the Jews. Kill them all.” BARUCH KIMMERLING & JOEL S. MIGDAL, PALESTINIANS THE MAKING OF A PEOPLE 133–34 (1993) (“[T]he Mufti failed to rally the Arabs of Palestine to support the Germans—no organized pro-Nazi movement development inside the country, as occurred in several other Arab lands”).

154. KLAUS-MICHAEL MALLMANN & MARTIN CÜPPERS, NAZI PALESTINE THE PLANS FOR THE EXTERMINATION OF THE JEWS IN PALESTINE (2010) (arguing that the Nazi leadership planned numerous attacks with the goal of exterminating the Jews in Mandatory Palestine with the approval of the Grand Mufti but failed);

155. ZVI ELPELEG, THE GRAND MUFTI HAJ AMIN AL-HUSSAINI, FOUNDER OF THE PALESTINIAN NATIONAL MOVEMENT 17–18, 22, 38 (1993) (stating that one of Haj Amin’s first acts as Grand Mufti was outlawing Jews from bringing objects to the Western Wall. Tensions slowly escalated and Haj Amin, with British support continually restricted Jewish access. “The [resulting] riots spread to the Jewish quarters of Jerusalem, and then to other parts of the country. Settlements between Jerusalem and Tel Aviv were attacked, but the worst incident of all took place [in the Summer of 1929] in Hebron, where sixty Jews were murdered and about a hundred wounded, all of them members of the Old Yishuv [the long-present pre-Zionist Jewish population of Ottoman Palestine], destruction continued for another week and on 30 August the massacre of Jews in Safed took place. Twenty were murdered, many wounded, and approximately 100 houses were robbed and destroyed. In total, 133 Jews were killed and more than 300 wounded in the violence across the country.” This sort of violence continued throughout Palestine until the outbreak of the 1948 War and in some places formed gangs, like the *al-Jihad al-Muqaddas*

(Holy War) in Samaria. Haj Amin al-Hussaini gave the *al-Jihad al-Muqaddas* “his blessing and, at a later stage, became their leader.”); REICH, *supra* note 18, at 237–38 (“During World War II, he supported the Axis powers. He helped organize Axis forces in Iraq. In 1941, Hajj Amin went to Berlin, where he became a propagandist for the Nazis. He broadcast over Radio Berlin encouragement to Muslims throughout the Middle East to conduct a jihad against the British.”); *see* text and sources accompanying note 24, *supra* (discussing the 1929 Hebron Massacre).

156. KIMMERLING & MIGDAL, *supra* note 152, at 133 (stating that the Grand Mufti spoke all around the world “calling the faithful to jihad against the godless British-Zionist-Bolshevik forces”).

157. PHILIP MATTAR, *THE MUFTI OF JERUSALEM: AL-HAJJ AMIN AL-HUSAYNI AND THE PALESTINIAN NATIONAL MOVEMENT* 82 (1992) (stating that in a letter to the Arab Kings, the Mufti urged them “to work for rescuing the country from Imperialism and Jewish colonization and partition.” The British High-Commissioner specifically characterized this quote as anti-British in support of the Mufti’s deportation).

158. JOHN GILMOUR, *SWEDEN, THE SWASTIKA AND STALIN: THE SWEDISH EXPERIENCE IN THE SECOND WORLD WAR* 92–112 (2010) (arguing that the Finns joined forces with Nazi Germany to protect themselves from Russian invasion soon after the end of the Winter War (1939–1940) between young Finland and the USSR).

159. TIINA KINNUNEN & VILLE KIVIMÄKI, *FINLAND IN WORLD WAR II: HISTORY, MEMORY, INTERPRETATIONS* 93–97 (2011). The Finns felt a centuries-long-standing connection to Germany as “one of the most Germanophile countries of the area.” After Nazi Germany’s heightened associations with the Soviets in 1939–1940 and the end of the Winter War, Finland continued to “rely upon Germany as its traditional guardian.”

160. MALLMANN & CÜPPERS, *supra* 154, at 95 (“The relentless dissemination of anti-Semitic propaganda was a key ingredient of el-Husseini’s work in Europe. Countless meeting minutes, speeches, memorandums, letters, and other statements attest that his hatred for the Jews was the fundamental impetus driving him. His call for ‘the abolition of the Jewish national homeland in Palestine’ was always one of the key points in his attempts to obtain a guarantee of independence from the Axis after his meeting with Hitler.”); RESURGENT ANTISEMITISM: GLOBAL PERSPECTIVES 382–98 (Alvin H. Rosenfeld ed., 2013) (describing the role of anti-Semitism in the Arab Spring and its origins in the Nazi rhetoric of the Mufti).

161. CESARE G. DE MICHELIS, *THE NON-EXISTENT MANUSCRIPT: A STUDY OF THE PROTOCOLS OF THE SAGES OF ZION* (2004) (stating that the Protocols of the Elders (or Sages) of Zion is an anti-Semitic text dreamt up around 1900 in Russia that centers around a “Jewish Plot” for global domination); *Morsi’s Hate Speech Against Jews*, N.Y. TIMES (Jan. 16, 2013), <http://www.nytimes.com/2013/01/17/opinion/morsis-hate-speech-against-jews.html> (featuring letters to the editor); *see Horseman Without a Horse*, IMDB, <https://www.imdb.com/title/tt0389677/> (last visited Oct. 7, 2018) (providing information about an Egyptian TV series from 2002 to 2003 “partly based on the so-called ‘Protocols of the elders of Zion’”).

162. Corey Gil-Shuster, *The Ask Project Palestinians: Do You See Israelis as Human Beings?*, YOUTUBE (Dec. 13, 2017), <https://www.youtube.com/watch?v=EK4ghyhBKis>; Corey Gil-Shuster, *The Ask Project Palestinians: Israelis: How Much Do You Hate Palestinians?*, YOUTUBE (Jan. 15, 2015), <https://www.youtube.com/watch?v=r5168ysQ2rU&index=175&list=PLDAzS11-IdfH9puBs-pZV8KC20FtM5DBj>.

163. OMAR BARGHOUTI, *BOYCOTT DIVESTMENT SANCTIONS THE GLOBAL*

STRUGGLE FOR PALESTINIAN RIGHTS 5 (2011); ALON GRATCH, *THE ISRAELI MIND* 238–39 (2015) (“[S]upporters of the BDS (Boycott, Divestment and Sanctions) movement, certainly those who would apply it to Israel as a whole, have colluded with Israeli policy makers and settlers to erase the 1967 border, thereby placing Israel’s existence as a Jewish and a democratic state at risk American Jews should reject both the BDS movement and the Israeli settlement policy Fighting the BDS movement that wishes to delegitimize and dismantle the Jewish state as a whole by comparing it to South Africa must be part of the strategy”); *BDS Movement*, BDS, <https://bdsmovement.net/> (last visited Oct. 7, 2018) (referring to Boycott Divestment Sanctions, a movement for Palestinian rights through the economic punishment of Israel “until it fully complies with its obligations under international law”).

164. Rome Statute of the International Criminal Court art 8, July 17, 1998, 2187 U.N.T.S. 90 (“The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”); Fourth Geneva Convention, *supra* note 55, art. 49; WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 121–23 (2017) (discussing the inclusion of ‘new crimes’ in the Rome Statute: “Israel felt itself particularly targeted by the provision[,]” a provision which makes a punishable war crime of the transfer of civilian population into and within occupied territory); *Rule 130. Transfer of Own Civilian Population into Occupied Territory*, ICRC CUSTOMARY IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule130 (last visited Oct. 7, 2018).

165. BARGHOUTI, *supra* note 163, at 85–97 (commending the British Academic Union for calling for a boycott of two Israeli universities which was then condemned by the American Association of University Professors (AAUP); the chapter focuses the BDS response to AAUP’s arguments and calls on the AAUP to join the boycott).

166. Mike Vuolo, *Let’s Resolve in the New Year to Stop Using That Expression About Breaking Eggs and Making Omelets*, SLATE: LEXICON VALLEY (Dec. 30, 2013), http://www.slate.com/blogs/lexicon_valley/2013/12/30/english_idioms_it_may_be_true_that_you_cant_make_an_omelet_without_breaking.html (“[T]he metaphor . . . originated in French (*on ne saurait faire d’omelette sans casser des œufs*) as early as the 1740s and made its way from there into English.”).

167. *Compare Illegal*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Forbidden by law”), *with Unlawful*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“1. Not authorized by law; illegal. 2. Criminally punishable. 3. Involving moral turpitude.”).

168. The Israeli army maintains a number of checkpoints throughout the Occupied Territories, typically dividing land that Israel claims as within its sovereignty from land it acknowledges as Palestinian. They somewhat resemble militarized turnpike toll gates. Time, location, tension levels and the attitude of Israeli authorities determine the degree of inconvenience such checkpoints impose on Palestinians required to pass through them. Checkpoints are sometimes closed for reasons not always evident to those waiting behind them. *See infra* note 304 for a discussion of the author’s experience at checkpoints.

169. *See* text and sources accompanying note 139, *supra*.

170. Yael Stein, *Unprotected: Detention of Palestinian Teenagers in East Jerusalem*, B’TSELEM (Oct. 2017), https://www.btselem.org/publications/summaries/201710_unprotected.

171. RESURGENT ANTISEMITISM: GLOBAL PERSPECTIVES, *supra* note 160, at 70 (arguing that the British-created BDS Movement breaches anti-

discrimination laws and is anti-Semitic in its purpose having featured “material by the American neo-Nazi David Duke.”); *What is BDS?*, PALESTINIAN BDS NAT’L COMM. (BNC) & PALESTINIAN CAMPAIGN FOR ACAD. & CULTURAL BOYCOTT ISR. (PACBI), <https://bdsmovement.net/what-is-bds> (last visited Nov. 1, 2018) (noting that while some people in the BDS movement may be anti-Semitic, the organization’s official position is that “BDS is an inclusive, anti-racist human rights movement that is opposed on principle to all forms of discrimination, including anti-Semitism and Islamophobia.”).

172. GABRIEL SCHOENFELD, *THE RETURN OF ANTI-SEMITISM* 47 (2004) (“One of the most notorious such deeds was the July 18, 1994, destruction of the AMIA Jewish center in faraway Argentina, leaving eighty-five people dead, wounding more than two hundred, and obliterating the archives and library that had served as the institutional memory of the largest Jewish community in South America.”); *Buenos Aires’ Jewish Center bombing investigation*, EMBASSY ISR. ETH. (Jan. 30, 2013), http://embassies.gov.il/addis_ababa/NewsAndEvents/Pages/The-1994-Jewish-Community-Center-bombing-Buenos-Aires.aspx; *Report: Iran’s Rohani Tied to AMIA 1994 Bombing*, JERUSALEM POST (June 20, 2013), <http://www.jpost.com/Middle-East/Report-Irans-Rohani-tied-to-AMIA-1994-bombing-317162>.

173. SCHOENFELD, *supra* note 172, at 67–68 (“In England and France, the two countries with the most sizable Jewish populations, six synagogues were burned to the ground in the first weeks of the intifada; another twenty-four were the victims of arson attacks. A number of the attacks were timed to coincide with the High Holy Day of Yom Kippur: in Paris, a sniper fired an M-16 rifle into the city’s Great Synagogue while services were going on. Elsewhere, Jews walking to a synagogue were struck with stones, and eleven schoolchildren were harassed by assailants. ‘Three More Synagogues Attacked in France,’ was the Associated Press headline in mid-October [2000].”); *Charlie Hebdo Attack: Three Days of Terror*, BBC (Jan. 14 2015), <https://www.bbc.com/news/world-europe-30708237> (explaining that extreme Islamists launched a several day spree of attacks in Paris in January 2015 that included a hostage situation in a Kosher supermarket); Noah Rayman, *Kosher Grocery Assault Confirms Worst Fears of French Jews*, TIME (Jan. 9, 2015), <http://time.com/3661697/paris-terror-attack-kosher-grocery-jewish/>.

174. RESURGENT ANTISEMITISM: GLOBAL PERSPECTIVES, *supra* note 160, at 89 (describing the rise in intolerance among modern British society, especially in the press and academic intelligentsia: “there are cover stories in the Left-Liberal press that feature anti-Semitic images worthy of fascist propaganda in the 1930s . . . [n]owadays almost any statement of anti-Jewish bigotry is rationalized as a mere criticism of Israel government policy”).

175. Jeff Sparrow, *Why the West Turns a Blind Eye to Saudi Arabia’s Brutality*, ABC (Sept. 29, 2015), <http://www.abc.net.au/news/2015-09-29/sparrow-blind-eye-to-saudi-arabias-brutality/6813422>.

176. Kent Greenawalt, *Punishment*, 74 J. CRIM. L. & CRIMINOLOGY 343, 347–48 (1983) (“In simple retributivist theory, practices of punishment are justified because society should render harm to wrongdoers; only those who are guilty of wrongdoing should be punished; and the severity of punishment should be proportional to the degree of wrongdoing, an approach crudely reflected in the idea of ‘an eye for an eye, a tooth for a tooth.’”); John S. Strahorn, Jr., *Criminology and the Law of Guilt*, U. PENN. L. REV. (Feb. 1936).

177. Yaniv Kubovich et al., *Four Killed, Six Wounded in Shooting Attack at Tel Aviv Shopping Center*, HAARETZ (June 8, 2016), <http://www.haaretz.com/israel-news/1.723941>; *Tel Aviv Shooting: Market Attack Kills Four Israelis*, AL JAZEERA (June 9, 2016), <http://www.aljazeera.com/news/2016/06/israel-tel-aviv-shooting-160608190326052.html>.

178. *Rockets Fired from Gaza at Southern Israel*, AL JAZEERA (June 3, 2015), <http://www.aljazeera.com/news/2015/06/rockets-fired-gaza-southern-israel-150603230355923.html> (“Israeli warplanes launched strikes in response at four targets and then the tensions subsided. Israel blamed Islamic Jihad fighters for that attack, and media reports said that Hamas, which governs Gaza, had arrested the rebels behind that strike.”).

179. WAYNE MCCORMACK, UNDERSTANDING THE LAW OF TERRORISM 9 (2007) (“‘Terrorist activity’ in turn is defined with four elements . . . 1. [V]iolence 2. [C]ivilian targets 3. [S]ubnational or clandestine perpetrator 4. [P]olitical motivation.”).

180. JOHN W. HEVENER, WHICH SIDE ARE YOU ON?: THE HARLAN COUNTY COAL MINERS, 1931–39, 179 (1978) (telling the story of the Harlan County, K.Y., U.S. coal miner’s strikes of the 1930s and making a reference to one of the union labor struggle songs, ‘Which Side Are You On?’, and quoting the chorus singing “If you go to Harlan County There is no neutral there. You’ll either be a union man or a thug for J.H. Blair. Which side are you on? Which side are you on?”).

181. KARL MARX & FREDERICK ENGELS, COMMUNIST MANIFESTO 1 (1848) (theorizing that class conflict between the working class and the bourgeois was at the heart of all societal problems: “The modern bourgeois society that has sprouted from the ruins of feudal society has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old ones.”); see THE GOD THAT FAILED 173 (Richard Crossman ed., 1972) (1949).

182. *Red-baiting*, MERRIAM WEBSTER, (<https://www.merriam-webster.com/dictionary/red-baiting> (last visited Nov. 1, 2018) (defining “red-baiting” as “the act of attacking or persecuting as a Communist or as communistic.”).

183. U.N. Charter, art. 51 (permitting a State the right to defend itself if attacked).

184. Protocol Relating to the Protection of Victims of International Armed Conflicts, *supra* note 68, art. 48 (“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”); *Rule 1. The Principle of Distinction between Civilians and Combatants*, ICRC, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1 (last visited Nov. 1, 2018) (arguing that the Principle of Distinction has been codified as customary international humanitarian law).

185. See, e.g., Fourth Geneva Convention, *supra* note 55, art. 3 (“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person . . .”).

186. RAPHAEL S. COHEN ET AL., FROM CAST LEAD TO PROTECTIVE EDGE: LESSONS FROM ISRAEL’S WARS IN GAZA, RAND CORP. (2017), https://www.rand.org/pubs/research_reports/RR1888.html (referencing the lesson that “[i]n asymmetric conflicts, public support for the conflict often hinges more on the popular perceptions of the campaign’s success than it does

on friendly casualties.”); Richard D. Rosen, *Goldstone Reconsidered*, 21 J. TRANSNAT’L L. & POL’Y 35, 98–99 (2011) (“The Goldstone Report is illustrative of institutional shortcomings prevalent in the observance and enforcement of international humanitarian law generally, and to asymmetric conflicts specifically. The reactions of organizations such as the UN[], NGOs, and the media to civilian casualties in asymmetrical wars involving Israel (and sometimes the United States) is *Pavlovian*—they make allegations ranging from the response was disproportionate (in the *ad bellum* sense), to the failure of Israeli or U.S. forces to prevent “needless” civilian casualties by not discriminating between military objectives and civilians or by not using proportionate force in attacking the military targets . . . International humanitarian law does not (nor should it) create a system that awards a belligerent a “handicap” because it may be militarily weaker than its opponent. The laws of armed conflict do not exist to ensure a “fair fight,” only a fight according to basic rules that protect those who do not or cannot participate in the conflict.”); Toni Pfanner, *Asymmetrical Warfare From the Perspective of Humanitarian Law and Humanitarian Action*, 87(857) ICRC 149, 151 (Mar. 2005) (“In a sense, all warfare is asymmetrical as there are never identical belligerents. Asymmetric warfare can be fought at different levels and can take different forms. There is an operational level (including ruses, covert operations, perfidy, terrorism, etc.), a military strategic level (guerrilla warfare, massive retaliation, Blitzkrieg, etc.) and a political strategic level (moral or religious war, clash of cultures). The different forms include asymmetry of power, means, methods, organization, values and time . . .”).

187. *Orlando Shooting at Pulse Nightclub*, ORLANDO SENTINEL, <http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/> (last visited Nov. 1, 2018) (archiving all Orlando Sentinel news related to the Pulse Shooting); Mike Schneider, *Correction: Nightclub Shooting-Florida Story*, AP (June 15, 2016), <http://bigstory.ap.org/article/435dd4b47ec7403888f74e9c5c3480b5/orlando-police-multiple-injuries-after-nightclub-shooting>.

188. NATANA J. DELONG-BAS, WAHHABI ISLAM: FROM REVIVAL AND REFORM TO GLOBAL JIHAD 13 (2008) (explaining that eighteenth century reformists were scholars, but today, reform is often lead by lay-people); WENDI MOMEN & MOOJAN MOMEN, UNDERSTANDING THE BAHAI FAITH 139 (2005) (explaining that while the Baha’i faith could itself be considered a reform Islam, it has never been accepted as such by the overwhelming bulk of the Muslim community and, in fact, is regarded as a heresy by traditional Muslims. In 1848, the prime minister decided to have the Bab brought to Tabriz, the capital of the north-west province of Iran, and put on trial there before the crown prince, Nasiru’d-Din; he hoped to intimidate and humiliate the Bab by having him interrogated by a number of prominent religious leaders. The trial, however, gave the Bab the opportunity to proclaim openly his claim to be the Mahdi, the Promised Savior of all Islam.).

189. SAFDAR AHMED, REFORM AND MODERNITY IN ISLAM: THE PHILOSOPHICAL, CULTURAL AND POLITICAL DISCOURSES AMONG MUSLIM REFORMERS 225 (2013); *Our Declaration*, MUSLIM REFORM MOVEMENT, <https://muslimreformmovement.org/first-page-posts/declaration/> (last visited Nov. 1, 2018) (“We are opposing a very real interpretation of Islam that espouses violence, social injustice, and political Islam. We have to take back the faith. And we have to take it back with the principles of peace, social justice, and human rights, women’s rights, and secularize governance . . . we’ve had enough and suspect you have also!”); see ASRA Q. NOMANI, STANDING ALONE IN MECCA: AN AMERICAN WOMAN’S STRUGGLE FOR THE SOUL OF ISLAM (2005).

190. Jason Burke, *Was Pulse Nightclub Shooter Omar Mateen Directed by Isis?*, GUARDIAN (June 13, 2016), <https://www.theguardian.com/us-news/2016/>

jun/12/orlando-nightclub-shooter-omar-mateen-isis-affiliation; Jared Malsin, *What to Know About ISIS's Role in Orlando Shooting*, TIME (June 13, 2016), <http://time.com/4365507/orlando-shooting-isis-claims-responsibility-terror/>.

191. Daphne Duret, *Orlando Shooting: Imam Who Knew Mateen Speaks Out Against Extremism*, PALM BEACH POST (June 12, 2016), <https://www.palmbeachpost.com/news/orlando-shooting-imam-who-knew-mateen-speaks-out-against-extremism/ZcoZXdz0D7CeDcTzXfPX1H/> (“Rahman [the Imam at the shooter’s Mosque] said in his messages he never spoke against homosexuality, but did speak out against any form of extremism. ‘There is nothing outside the door that says you can’t come in and worship God and be here and pray if you are gay,’ he said.”).

192. WALTER WINK, *HOMOSEXUALITY AND CHRISTIAN FAITH: QUESTIONS OF CONSCIENCE FOR THE CHURCHES* 35–36 (1999) (“[A]nyone who wishes to base his or her beliefs on the witness of the Old Testament must be completely consistent and demand the death penalty for everyone who performs homosexual acts . . . For Christians, Old Testament texts have to be weighed against the New [Testament].” The author goes on to cite the New Testament’s Romans 1:26–27, in which Paul condemns homosexuality by saying “the men, giving up natural intercourse with women, were consumed with passion for one another. Men committed shameless acts with men and received in their own persons the due penalty for their error.”); *HOMOSEXUALITY AND WORLD RELIGIONS* 103–04, 181 (Arlene Swidler ed., 1993) (stating that liberal Jewish groups treat homosexuality the same as heterosexuality, but “[t]he *halakha*, traditional Jewish law, prohibits sexual relations between members of the same sex. It takes a harsher position against sexual relationships between men than those between women because the former are prohibited by biblical injunctions whereas the latter are prohibited only by later rabbinic legislation.” Whereas in Islam, “its revealed scripture, Al-Qur’an – is very explicit in its condemnation of homosexuality, leaving scarcely any loophole for a theological accommodation of homosexuals in Islam.”).

193. *Conservative Movement Ordains First Openly Gay Rabbi*, JERUSALEM POST (May 30, 2011), <http://www.jpost.com/Breaking-News/Conservative-movement-ordains-first-openly-gay-rabbi>; Alan Cooperman, *Conservative Rabbis Allow Ordained Gays, Same-Sex Unions*, WASH. POST (Dec. 7, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/06/AR2006120601247.html>.

194. David Masci & Michael Lipka, *Where Christian Churches, Other Religions Stand on Gay Marriage*, PEW RES. CTR. (Dec. 21, 2015), <http://www.pewresearch.org/fact-tank/2015/12/21/where-christian-churches-stand-on-gay-marriage/> (listing and comparing various Christian and Jewish denominations’ views on gay marriage).

195. PEW RES. CTR., *THE FUTURE OF WORLD RELIGIONS: POPULATION GROWTH PROJECTIONS, 2010–2050* (Apr. 2, 2015), https://assets.pewresearch.org/wp-content/uploads/sites/11/2015/03/PF_15.04.02_Projections_FullReport.pdf.

196. Zoe Efstathiou, *Evil Islamic State Jihadis Chuck Prisoner off Building as Punishment for Being Gay*, SUNDAY EXPRESS (Jan. 11, 2017), <https://www.express.co.uk/news/world/752663/ISIS-mosul-gay-man-jihadis-punishment-stoning-iraq-homosexual-death-penalty>.

197. Colby Itkowitz, *‘Every Person Deserves to Rest in Peace’: American Muslims Raising Money to Repair Vandalized Jewish Cemetery*, WASH. POST (Feb. 21, 2017), <https://www.washingtonpost.com/news/inspired-life/wp/2017/02/21/every-person-deserves-to-rest-in-peace-american-muslims-raising-money-to-repair-vandalized-jewish-cemetery>; Mary Emily O’Hara, *Muslim Fundraiser to Repair Jewish Cemetery Raises \$100k*, NBC NEWS (Feb. 22, 2017,

9:33 PM), <http://www.nbcnews.com/news/us-news/muslim-fundraiser-repair-jewish-cemetery-raises-100k-n724221>; *Muslims Unite to Repair Jewish Cemetery Muslim Americans Help Repair Anti-Semitic Vandalism of Historic Jewish Cemetery*, LAUNCH GOOD, https://www.launchgood.com/project/muslims_unite_to_repair_jewish_cemetery# (last visited Nov. 1, 2018) (fundraising a total of \$162,468 for repairing the Jewish cemetery in St. Louis, Missouri).

198. THE KORAN 4:16 (“And the two who commit it among you, dishonor them both. But if they repent and correct themselves, leave them alone.”); *id.* at 7:80–84 (“Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people . . . And We rained upon them a rain [of stones]. Then see how was the end of the criminals.”); *id.* at 26:165–66 (“Do you approach males among the worlds[,] And leave what your Lord has created for you as mates? But you are a people transgressing.”).

199. LIPPMAN, *supra* note 7, at 49.

200. REICH, *supra* note 18, at 148 (“Eretz Israel or Eretz Yisrael is a Hebrew term meaning ‘Land of Israel’ used to refer to Palestine. The term is found in the Bible, Talmud, and later literature and refers to the land of ancient Israel; all of Palestine, including Judea and Samaria.”).

201. JOHN B. JUDIS, GENESIS: TRUMAN, AMERICAN JEWS, AND THE ORIGINS OF THE ARAB/ISRAELI CONFLICT 133 (2014) (“The first glimmers of Reform Judaism, inspired by Unitarianism, appeared in Charleston [South Carolina] in the 1820s, but the real inspiration came from Central European emigres Isaac Mayer Wise and David Einhorn, who introduced the German brand of Enlightenment Judaism to the United States in the decades immediately preceding and following the Civil War.”).

202. SEYYED HOSSEIN NASR, ISLAM RELIGION, HISTORY, AND CIVILIZATION 185 (2002) (“Although these modern tendencies were once strong and continue to be present despite their relative eclipse during the past few years, they have not had any appreciable impact on Islamic religious thought as such and have not brought about the ‘protestant’ movement within Islam that so many Western scholars had predicted and wished for.”). *See generally* NOMANI, *supra* note 189, at 243–76 (describing her efforts to change the policy preventing women from entering through the front door and participating in prayers in the sanctuary at her own mosque in Morgantown, W. Va. Her experience was later made into a PBS documentary.).

203. LIPPMAN, *supra* note 7, at 1–31; *Pillars of Islam*, OXFORD DICTIONARY ISLAM, http://www.oxfordislamicstudies.com/article/opr/t125/e1859?_hi=32&_pos=3 (last visited Oct. 2, 2017) (describing how Islam is founded on five pillars: “The first pillar, the *shahadah*, consists of two declarations. The first, ‘There is no god but God,’ affirms belief in a single divine reality (*tawhid*). The second, ‘Muhammad is the messenger of God,’ affirms submission to God via acceptance of His message as revealed to humanity through Muhammad . . . The second pillar, the five daily prayers, signifies the believer’s submission to God and serves as public, physical evidence of the believer’s adherence to Islam . . . The third pillar is the *zakah* (alms tax), typically paid to a religious official or representative of the Islamic state or to a representative of a local mosque . . . The fourth pillar is observation of the monthlong fast (*sawm*) of Ramadan (the ninth month of the lunar Islamic calendar), from sunrise to sunset . . . The fifth pillar is the pilgrimage to Mecca during the first ten days of the month of *Dhu al-Hijjah*.”) (emphasis added).

204. THIA COOPER, THE REEMERGENCE OF LIBERATION THEOLOGIES: MODELS FOR THE TWENTY-FIRST CENTURY 1–2 (2014) (“Liberation theology is both action and reflection that aims to liberate marginalized peoples from

oppression, to act. It argues that faith and religion should free people rather than oppress them, free them to act justly . . . [and] emphasized that God is present now, working in the world through human beings Pope John Paul II silenced Catholic liberation theologians The Catholic hierarchy disapproved of theologies emerging from the people rather than the Pope.”)

205. *Beliefs & Principles*, UNITARIAN UNIVERSALIST ASS'N, <http://www.uua.org/beliefs/what-we-believe> (last visited Nov. 24, 2018) (“Our beliefs are diverse and inclusive. We have no shared creed. Our shared covenant (our seven Principles) supports ‘the free and responsible search for truth and meaning.’”); *The Seven Principles*, UNITARIAN UNIVERSALIST ASS'N, <https://www.uua.org/beliefs/what-we-believe/principles> (last visited Nov. 24, 2018) (“1st Principle: The inherent worth and dignity of every person; 2nd Principle: Justice, equity and compassion in human relations; 3rd Principle: Acceptance of one another and encouragement to spiritual growth in our congregations; 4th Principle: A free and responsible search for truth and meaning; 5th Principle: The right of conscience and the use of the democratic process within our congregations and in society at large; 6th Principle: The goal of world community with peace, liberty, and justice for all; 7th Principle: Respect for the interdependent web of all existence of which we are a part.”).

206. Charles S. Liebman, *Reconstructionism in American Jewish Life*, in 2 UNDERSTANDING AM. JUDAISM TOWARD DESCRIPTION MOD. RELIGION 219–20 (Jacob Neusner ed., 1975) (“The view of Reconstructionism is that religion is a social phenomenon and Judaism is a ‘civilization.’ What links the diversities of ‘Judaism’ is the ‘continuous life of the Jewish people,’ which, Reconstructionism holds, is a single and unitary social group, now and throughout the past. . . . Among themselves, Reconstructionists are not in complete agreement on matters of ideology and belief. All do agree that Mordecai Kaplan is the founder.”).

207. WAEL B. HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* 136–37 (2008) (“The basic principle of abrogation is that the text repeals another contradictory text that was revealed prior to it in time. But abrogation may be propelled by a decidedly clearer consideration, especially when the text itself is made to supersede another.”); JOHN RENARD, *ISLAMIC THEOLOGICAL THEMES: A PRIMARY SOURCE READER* 47 (2014) (“[An] essential theme is the underlying principle of *naskh* (abrogation). Since God tailors revelatory communication to humanity’s limited capacity to receive ultimate truth, He therefore reserves the right to ‘abrogate’ earlier messages in favor of refinements needed to move the community of believers further toward full understanding.”).

208. LIPPMAN, *supra* note 7, at 99 (“The spirit of Islamic law emphasizes justice for transgressors, equity for victims, and mercy for the unfortunate. Only unreconstructed literalists argue that justice today requires adherence to practices that applied in the seventh century. Even when the law is specific and unequivocal it is not uniformly applied, because jurisprudence is made and changed by men and is not characterized by unanimity.”).

209. IRVING J. SLOAN, *THE JEWS IN AMERICA 1621–1970*, 121 (1971) (citing U.S. Bureau of the Census, Current Population Reports, Population Estimates, Series P-25 No. 420, 1969); U.S. CENSUS BUREAU, *CHRISTIAN CHURCH ADHERENTS AND JEWISH POPULATION, STATES, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012*, tbl.77 (131st ed. 2012), <https://www.census.gov/library/publications/2011/compendia/statab/131ed/population.html> (pointing out that Jewish population of the United States is about 6.5 million in 2010. In 1969, there were approximately 5,868,555 Jews in the U.S. The U.S. Census Bureau said of the Jewish population, including religious and cultural or ethnic Jews: “Jewish population of the United States is believed to be between 6.0 and 6.4 million. Over count is mostly due to a significant number of Jews who live in

more than one State.”). The population of Jews in U.S. today is a controversial issue.

210. Rivka Ulmer, *Rabbinic Judaism*, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780195393361/obo-9780195393361-0103.xml> (last modified Sept. 13, 2010) (“[I]n antiquity, rabbinic Judaism held that at Mount Sinai God revealed the Torah to Moses in two media, the Written and the Oral Torah. The rabbis claimed they possessed the memorized or Oral Torah. Classical rabbinic Judaism is separated into different strata: tannaitic (until 200 CE), amoraic (200–500 CE), and saboraic (500 CE–7th century) . . . Today it represents “normative” Judaism, the Jewish religious expression of a substantial portion of the worldwide Jewish community.”).

211. THE KORAN 2:53 (“And [recall] when We gave Moses the Scripture and criterion that perhaps you would be guided”).

212. THE KORAN 4:44 (“Have you not seen those who were given a portion of the Scripture, purchasing error [in exchange for it] and wishing you would lose the way?”). Muslims claimed that later Jews made mistakes in saying what was actually in the Torah. In cases of inconsistency (e.g., Abraham’s disputed sacrifice of Isaac or Ishmael) Muslims believe that the Koran corrected Jewish and Christian mis-transcriptions of the Torah.

213. EDWARD W. SAID, *ORIENTALISM* 113–22 (1978).

214. AMIRA BENNISON, *THE GREAT CALIPHS: THE GOLDEN AGE OF THE ‘ABBASID EMPIRE 4* (2009) (“Our story begins in the 630s C.E. when the Arabs, inspired by the new Abrahamic monotheism which came to be known as Islam, poured out of their harsh and rugged homeland in the Arabian Peninsula and established a vast empire ruled by the Rightly Guided Caliphs (634–61) and the Umayyads (661–750) in turn. By 750 Muslims ruled most of the southern Mediterranean world and the ancient Persian lands to the east and had extended their influence deep into the Sahara Desert, the Central Asian steppe and India.” Their culture thrived, while Europe languished in the Dark Ages.).

215. LIPPMAN, *supra* note 7, at 99; Naina Bajekal, *ISIS Mass Beheading Video Took 6 Hours to Film and Multiple Takes*, TIME (Dec. 9, 2014), <http://time.com/3624976/isis-beheading-technology-video-trac-quilliam/> (referring to a video in which ISIS beheaded 22 Syrians); Sara Hussein & Rita Daou, *Jihadists Beheadings Sow Fear, Prompt Muslim Revulsion*, YAHOO NEWS (Sept. 3, 2014), <https://www.yahoo.com/news/jihadists-beheadings-sow-fear-prompt-muslim-revulsion-205000146.html>; Judea & Ruth Pearl, *Right of Reply: Daniel Pearl’s Last Words*, JERUSALEM POST (May 14, 2008, 7:58 PM), <https://www.jpost.com/opinion/op-ed-contributors/right-of-reply-daniel-pearls-last-words> (discussing Danny Pearl, who was a journalist for the Wall Street Journal covering South Asia who held American and Israeli dual citizenship. During an assignment in Karachi, Pakistan, in 2002, Islamic extremists linked to Al-Qaeda kidnapped Mr. Pearl. The extremists filmed him while captive saying “My name is Daniel Pearl. I’m a Jewish American from Encino, California, USA. I come from, uh, on my father’s side the family is Zionist. My father’s Jewish, my mother’s Jewish, I’m Jewish. My family follows Judaism. We’ve made numerous family visits to Israel.” While still on camera, the terrorists slit Mr. Pearl’s throat before beheading him.). In the last couple decades, several Islamic extremist groups have beheaded hundreds of others.

216. ISRAEL, PALESTINE AND TERROR 18, 34–35 (Stephen Law ed., 2008) (describing the justification of terrorism from a political science perspective. Contributor Ted Honderich thinks that terrorism can be justified when “whenever terrorism is necessary to achieve an end justifiable by his Principle of Humanity, namely, that the right thing—whether we are speaking of an action, practice, institution, government, society or possible world—is the one

that according to the best judgment and information is the rational one in the sense of being effective and not self-defeating with respect to the end of getting and keeping people out of bad lives.”); THE FUNDAMENTALS OF COUNTERTERRORISM LAW 34–35 (Lynne Zusman ed., 2014) (explaining that terrorism in its attacks on the West has had the following attributes in common: “First, they are generally religious-inspired extremists who use extremely narrow interpretation of Islam, which are inconsistent with the views of the vast majority of moderate Muslims, to justify their actions. Second, they tend to reject modernity, including democratic movements, widespread communications, increased participation in government, and enhanced rights for women, workers, and children. Third, they leverage the tactics of asymmetric warfare to pursue their aims, using high-profile and relatively low-cost terrorist weapons and action to influence populations and achieve their ends. Fourth, they believe that they are engaging in a long-term, perhaps eternal, struggle.”). See generally RAPHAEL ISRAELI, PALESTINIANS BETWEEN NATIONALISM AND ISLAM 3–103 (2008).

217. Amel Ahmed, *Beheadings Remain Integral Part of Saudi Justice System*, AL JAZEERA (Sept. 11, 2014, 1:30 PM), <http://america.aljazeera.com/articles/2014/9/5/beheadings-floggingsandamputationsjusticesaudistyle.html>.

218. ISRAELI, *supra* note 216, at 53 (“The debate is not conducted in words only, although the da’wa (call, or propaganda) is an essential tool of the fundamentalists in appealing for public support. They also commit acts of sabotage, kill government officials, foreign tourists and other designated enemies, and terrorize common people into submission; but they also build infrastructure of social welfare, provide leadership and solace to their people, profess social and political revolution, and teach that Islam is the panacea for all ills of their society.”); ISRAELI, PALESTINE AND TERROR, *supra* note 216, at 18, 34–35 (describing, in the first two articles of the book, the methods for justifying terrorism for a political science perspective); Patrick Cockburn, *War with Isis: The Grim Reality of Life under the Islamist Group in Iraq*, INDEPENDENT (May 16, 2015, 9:45 PM), <https://www.independent.co.uk/news/world/middle-east/war-with-isis-the-grim-reality-of-life-under-the-islamist-group-in-iraq-10255422.html> (“It was in the first week of December 2014 when they brought about 13 Yazidi girls to us,” Hamza says. “The commander tried to tempt us by saying that this is halal [lawful] for you, a gift from Allah that we are allowed to satisfy ourselves without even marrying them because they are pagans.” Hamza regarded this as rape and, together with fear that he would be asked to take part in executions, led to his disillusionment with Isis and flight from Fallujah.”); Kelly McEvers, *Abuse of Temporary Marriages Flourishes in Iraq*, NPR (Oct. 19, 2010, 3:42 PM), <http://www.npr.org/templates/story/story.php?storyId=130350678> (“The practice of temporary marriage has long been common in Shiite Muslim communities, especially in Iran. The idea is that rather than having an affair, a man who wants to be sexually involved with a woman should marry her—for a few months, or even, hours—so the relationship will be legitimate One mother of three, who is so ashamed about what happened to her she doesn’t want to give her name, says her husband abandoned her when she found out he preferred men. She had no way to support the family. A religious figure in her neighborhood promised to help. He brought her to his home, locked the door and had sex with her. He offered her \$15. For the man at least, it was a brief moment of *muta’a*, the Arabic word for pleasure—and the Arabic word for temporary marriage.”); Fatemeh Sadeghi, *Temporary Marriage’ and the Economy of Pleasure*, PBS (Mar. 15, 2010, 8:45 PM), <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/03/temporary-marriage-and-the-economy-of-pleasure.html>. While Islamic extremists, on a number of occasions, have been guilty of raping perceived opponents and using

temporary marriage as an excuse for short term sexual relationships, sometimes of questionable consent, it is not clear whether the two concepts are as tightly linked as Yitz implies here.

219. TEMPLE INST., *supra* note 133.

220. Michael J. Koplow, *The Sure-Fire Way to Ensure American Jews Disconnect Further from Israel*, HAARETZ (Oct. 25, 2017, 11:37 PM), <https://www.haaretz.com/opinion/1.816990> (“Israelis are not supportive of many non-Orthodox social and religious policy agendas, and their sneering contempt for ‘reformim’ is not because of the Reform movement’s political preferences.”).

221. *Id.*

222. *Genesis* 17:8 (“And I will give unto thee, and to thy seed after thee, the land wherein thou art a stranger, all the land of Canaan, for an everlasting possession; and I will be their God.”).

223. THE KORAN 5:13 (“So for their breaking of the covenant We cursed them and made their hearts hard. They distort words from their [proper] usages and have forgotten a portion of that of which they were reminded.”); Muhammet Turakci & Suleyman Sayar, *The Qur’anic View of the Corruption of the Torah and the Gospels*, 49(3) ISLAMIC Q. 227 (2005).

224. NISSIM DANA, *THE STRUGGLE FOR JERUSALEM AND THE HOLY LAND: A NEW INQUIRY INTO THE QUR’AN AND CLASSIC ISLAMIC SOURCES ON THE PEOPLE OF ISRAEL, THEIR TORAH, AND THEIR LINKS TO THE HOLY LAND* 50 (2014) (demonstrating that while the Koran itself does not explicitly contradict Yitz’s claim, Muslim scholars have argued God did not exclusively mean the Jews, but instead the righteous, which Islamic texts define to include Muslims).

225. TESSLER, *supra* note 77, at 520, 522 (presenting a map from 1982 showing the settlements established before and after 1977 when the Jewish population in the West Bank tripled).

226. Fourth Geneva Convention, *supra* note 55 (“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”); *see* text and sources accompanying note 164, *supra*.

227. *Vision and Goals*, COMPANY FOR RECONSTRUCTION & DEV. JEWISH QUARTER OLD CITY JERUSALEM LTD., <http://www.rova-yehudi.org.il/vision-and-goals/> (last visited Nov. 1, 2018) (“The Company will emphasize the rehabilitation and development of the Jewish Quarter as a National Heritage Site with global historic and cultural significance while highlighting its unique character.”); Nir Hasson, *Jerusalem Old City’s Jewish Quarter Almost Entirely Haredi, Study Finds*, HAARETZ (June 10, 2011), <http://www.haaretz.com/jerusalem-old-city-s-jewish-quarter-almost-entirely-haredi-study-finds-1.3668> 55 (“In the years following [the 1948 War], while the Jewish Quarter was under Jordanian rule, it lay largely in ruins. After Israel’s capture of the Old City, which reunified Jerusalem, one proposal was that the Jewish Quarter be converted into a large archaeological park. Ultimately, however, the decision was made to turn the Quarter back into a residential area. Efforts were also made to establish institutions and symbols that would underline Israeli sovereignty over the area.”); *Jerusalem Map*, PERRY-CASTAÑEDA LIBR. MAP COLLECTION U. TEXAS LIBR., https://legacy.lib.utexas.edu/maps/world_cities/jerusalem_93.jpg (last visited Nov. 1, 2018).

228. NAPHTALI LAU-LAVIE, *BALAM’S PROPHECY: EYEWITNESS TO HISTORY, 1939–1989*, AT 197, 210 (1998) (“One of the hardest blows was the attack of the Jordanian Arab Legion against the Old City of Jerusalem. The [ancient] Jewish Quarter of the Old City was completely besieged. Hundreds of civilians and dozens of fighters were wounded and many were killed [in 1948.]”); SIMONE RICCA, *REINVENTING JERUSALEM: ISRAEL’S RECONSTRUCTION OF THE*

JEWISH QUARTER AFTER 1967, xii (2007) (“Jerusalem’s Jewish Quarter is often portrayed as the Jewish symbol *par excellence*, the proof of the ‘historic right’ to the land, the core of the Jewish religious faithIsraelis saw its destruction under the Jordanians as proof of the need to create a Jewish state”).

229. *Sui generis*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Of its own kind or class; . . . peculiar.”).

230. G.A. Res. 181 (II) (Nov. 29, 1947); ADWAN ET AL., *supra* note 21, at 106; TESSLER, *supra* note 77, at 260–61, 318 (showing that under the 1947 Partition Plan, Jerusalem was intended to be under a permanent trusteeship of the U.N., whereas the West Bank was considered the “Arab State.” “[The U.N. General Assembly Report of Nov. 29, 1947] proposed that Jerusalem be governed apart from both and treated as a *corpus separatum* under the supervision of the United Nations Trusteeship Council.”).

231. NADIA ABU-ZAHRA & ADAH KAY, UNFREE IN PALESTINE: REGISTRATION, DOCUMENTATION AND MOVEMENT RESTRICTION 122 (2012) (examining the negative effect of registration, blacklists, and movement restrictions on Palestinians. In accessing education, children face violence, checkpoints, and teargas. In regard to healthcare, “the transformation of a functional health system into a context fraught with danger. Examples include ambulances being attacked or denied access, births and deaths at checkpoints, patients with chronic conditions requiring regular treatment being prevented from reaching medical help, and young Israeli soldiers at checkpoints taking on the role of medical diagnosticians.”); Jonathan Lis, *Israeli Ministers Greenlight Nation-State Bill: Arabic Isn’t an Official State Language*, HAARETZ (May 7, 2017) <http://www.haaretz.com/israel-news/1.787689> (reporting that the Knesset will vote on a bill to remove Arabic’s official language status).

232. TESSLER, *supra* note 77, at 319, 466 (describing how in the spring of 1948, “[t]he [Arab Legion] also forced into surrender a small Hagana contingent defending the Jewish Quarter of the Old City and the roughly 2,000 orthodox Jews who lived there.” However, during the 1967 War, Israeli forces reclaimed the Jewish Quarter and retaliated by annexing the entirety of East Jerusalem: “[T]here was a deliberate effort to divide East Jerusalem from the rest of the West Bank, of which it had been an integral part prior to the June War. The part of the city formerly belonging to Jordan was merged with West Jerusalem shortly after the War, creating a unified municipal administration governed by Israeli law, and the border of the new municipality were then expanded to the north, east, and south. The government also began to construct Jewish neighborhoods in former Arab areas, some of which were explicitly designed to give newly acquired sections of the city a more Jewish character, and some of which were intended to create a physical barrier between East Jerusalem and the rest of the West Bank.”).

233. IRWIN RICHMAN, BORSCHT BELT BUNGALOWS: MEMORIES OF CATSKILL SUMMERS (1999) (discussing the Borscht Belt, a region of the Catskill Mountains in New York State where, in the middle decades of the twentieth century, Jewish comedians entertained city folk at summer resorts, as they gorged on Eastern European Yiddish cuisine). Many New York Orthodox and Hassidic Jews continue to vacation in the region today.

234. RAJA SHEDADEH, OCCUPIER’S LAW ISRAEL AND THE WEST BANK, INST. FOR PALESTINIAN STUD. 42-43 viii (1985) (“The some 200 Military Orders issued during [1967 to 1971] laid the foundation for the occupation Many of the orders extended military jurisdiction over diverse facets of life in the Occupied Territories. The military government was given full control of all transactions in immovable property, the use of water and other natural resources, the power to expropriate land, the use of water and to operate banks. In addition, the orders made illegal the import and export of agricultural products to and from

the West Bank without military permission.”).

235. REECE JONES, *BORDER WALLS: SECURITY AND THE WAR ON TERROR IN THE UNITED STATES, INDIA, AND ISRAEL* 165 (2012); WASSERSTEIN, *supra* note 17, at 1–13.

236. JONES, *supra* note 235, at 149 (“travel restrictions, arbitrary denials of work permits, unannounced patrols through villages and midnight raids to arrest young men.”); SHEDADEH, *supra* note 234, at 142 (describing an IDF soldier’s inhumane treatment of an Arab boy 1982 during a ‘Night Call.’ “The above is not an isolated case. There are other known instances of brutality and dehumanizing treatment by soldiers. Night calls are also common.”); Peter Beaumont, *EU Protests Against Israeli Plans to Demolish Palestinian Village*, *GUARDIAN* (July 21, 2015), <https://www.theguardian.com/world/2015/jul/21/israel-demolition-palestinian-village-khirbet-susiya-eu-protest>; Bill Van Esveld, “Forget About Him, He’s Not Here” *Israel’s Control of Palestinian Residency in the West Bank and Gaza*, *HUM. RTS. WATCH* (Feb. 5, 2012), <https://www.hrw.org/report/2012/02/05/forget-about-him-hes-not-here/israels-control-palestinian-residency-west-bank-and> (detailing the story of a West Bank woman’s husband and his banishment to the Gaza Strip; checkpoints, documentation, and residency requirements for Palestinians; and possible legal obligations of Israel towards the Palestinians); Quil Lawrence, *Palestinian Town in Limbo*, *PUB. RADIO INT’L* (Apr. 10, 2008), <http://www.pri.org/stories/2008-04-10/palestinian-town-limbo> (describing the political issues across the border and one area of cooperation between Israelis and Palestinians for clean water).

237. *Israeli Police Set Up East Jerusalem Checkpoints*, *BBC* (Oct. 14, 2015) <http://www.bbc.com/news/world-middle-east-34527369>; Dia Hadid, *In West Bank, Israel Imposes Pop-Up Checkpoints and Road Closings*, *N.Y. TIMES* (Apr. 13, 2016), <http://www.nytimes.com/2016/04/14/world/middleeast/in-west-bank-israel-carries-out-a-crackdown-road-by-road.html>.

238. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, 2004 I.C.J. Rep. 136 (2004); Lior Akerman, *This is Not How You Build a Wall*, *JERUSALEM POST* (July 28, 2016), <http://www.jpost.com/Opinion/This-is-not-how-you-build-a-wall-462681>.

239. SHEDADEH, *supra* note 234, at 141 (estimating that around 200,000 “security prisoners and detainees” have been in Israeli prison. “These powers are frequently and arbitrarily used with the result that a Palestinian in the West Bank is likely to be stopped by soldiers anywhere and at any time, have his house entered and searched, and be arrested without any need for the soldiers to show reasonable cause or present a warrant.”).

240. Alister Dawber, *‘Fire at Every Person’: Israeli Soldiers Reveal They Were Ordered to Shoot to Kill in Gaza Combat Zones—Even if Targets May Have Been Civilians*, *INDEPENDENT* (May 4, 2015), <http://www.independent.co.uk/news/world/middle-east/fire-at-every-person-you-see-israeli-soldiers-reveal-they-were-ordered-to-shoot-to-kill-in-gaza-even-10223427.html>; Nigel Wilson, *Israel’s Gun Policy: A License to Kill Palestinians*, *AL-JAZEERA* (Nov. 19, 2015), <http://www.aljazeera.com/news/2015/11/israel-gun-policy-licence-kill-palestinians-151119080409657.html>.

241. *Israel Destroys 11 Palestinian Homes on Outskirts of Jerusalem*, *YAHOO NEWS* (July 26, 2016), <https://www.yahoo.com/news/israel-destroys-11-palestinian-homes-outskirts-jerusalem-132918489.html>; Jodi Rudoren, *Israeli Forces Demolish Home of Palestinian Who Used a Car to Kill 2*, *N.Y. TIMES* (Nov. 19, 2014), <http://www.nytimes.com/2014/11/20/world/middleeast/israel-demolishes-family-home-of-palestinian-driver-who-killed-2-pedestrians.html>.

242. *Israeli Seizure of Land and Housing Has Made a Two-State Solution Impossible*, *CTR. ON HOUSING RTS. & EVICTIONS & BADIL RESOURCE CTR. FOR*

PALESTINIAN RESIDENCY & REFUGEE RTS. (May 11, 2005), <https://www.globalpolicy.org/component/content/article/189/38314.html> (“An international human rights group warns that a two-state solution to the 57 year Israeli-Palestinian conflict has been made a practical impossibility due to Israel’s continuing expropriation of Palestinian property and denying Palestinian refugees the right to recover their original homes and lands.”); Ben Birnbaum, *The End of the Two-State Solution*, NEW REPUBLIC (Mar. 11, 2013), <https://newrepublic.com/article/112617/88rael-palestine-and-end-two-state-solution>.

243. Fourth Geneva Convention, *supra* note 55 (describing the duties of the Occupying Power to the civilian population under their control. For example, Occupying Power has duties to allow the education of children, to allow access to hospitals, to allow the functioning of the judicial system, and to provide medical and food supply relief); see Orna Ben-Naftali et al., *Illegal Occupation: Framing the Occupied Palestinian Terroritory*, 23 BERKELEY J. INT’L L. 551 (2005).

244. Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶ 172 (Dec. 19); Int’l Comm. Red Cross, *Expert Meeting Report: Occupation and Other Forms of Admin. of Foreign Territory*, 36 (June 11, 2012) (“[T]he law of belligerent occupation has developed as a specific area within the law of armed conflict. It was codified in the Hague Regulations of 1899/1907. These provisions constitute customary law. The Fourth Geneva Convention of 1949 developed this regime considerably. Additional Protocol I of 1977 only added a few details.”).

245. SHEDADEH, *supra* note 234, at 124–25.

246. AFP, *Palestinian Rams Car into Israeli Civilians, Is Shot: Army*, YAHOO NEWS (Nov. 17, 2017), <https://www.yahoo.com/news/palestinian-rams-car-israeli-civilians-shot-army-080451847.html>; *Attacks on Israeli Civilians by Palestinians*, B’TSELEM (Nov. 11, 2017), http://www.btselem.org/topic/israeli_civilians (tracking Palestinian attacks on Israeli civilians); Isabel Kershner, *Attack by Palestinian Kills 2 Israelis in Jerusalem*, N. Y. TIMES (Oct. 9, 2016), <http://www.nytimes.com/2016/10/10/world/middleeast/2-killed-by-palestinian-gunman-in-jerusalem.html>; *November 2016 Monthly Summary*, ISRAELI SECURITY AGENCY (Nov. 2016), <http://www.shabak.gov.il/English/EnTerrorData/decade/Pages/default.aspx> (providing, in addition to a 10 year report, a monthly report on Palestinian terror attacks on Israelis); *Palestinian Stabs to Death 3 Members of Israeli Family and Wounds Fourth in Halamish Settlement*, B’TSELEM (July 22, 2017), http://www.btselem.org/israeli_civilians/20170722_halamish_attack.

247. LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY, Advisory Opinion, 2014 I.C.J. Rep. 136 (JULY 9); Jones, *SUPRA* NOTE 235, AT 148–51; RAJA KHALIDI & SAHAR TAGHDISIRAD, *THE Economic Dimensions OF Prolonged Occupation: CONTINUITY AND Change IN ISRAELI Policy Towards THE PALESTINIAN Economy*, 1, UNCTAD/GDS/2009/2 (Aug. 2009).

248. ISABEL KERSHNER, BARRIER: THE SEAM OF THE ISRAELI-PALESTINIAN CONFLICT 2, 4–5 (2005) (“Stressing the purely security aspect of the barrier, Israeli officials go so far as to call it an ‘anti-terror obstacle’ at times, so as to leave no doubt about its purpose”); NEILL LOCHERY, THE VIEW FROM THE FENCE: THE ARAB-ISRAELI CONFLICT FROM THE PRESENT TO ITS ROOTS 17–18 (2005) (“[Ariel] Sharon cited the wave of Palestinian violence known by Palestinians as the Second Intifada as his rationale for pressing ahead with the fence, which he hoped would make it harder for Palestinians to launch suicide attacks against Israeli targets. The Israeli government pointed to the fact that some forty seven percent of Israelis who have been killed in attacks by

Palestinians since 2000 have been the victims of suicide bombers, with over two-thirds of deaths civilians.” Israelis also traced the argument that the West Bank Security Fence would protect civilians to the success of the Gaza fence at preventing attacks).

249. Abraham H. Foxman & Dustin A. Stein, *Good Reasons for Israeli Checkpoints*, N.Y. TIMES (Apr. 3, 2011), <http://www.nytimes.com/2011/04/04/opinion/04iht-edletmon04.html>.

250. Malvina Halberstam, *The Myth That Israel’s Presence in Judea and Samaria Is Comparable to Iraq’s Presence in Kuwait*, 19 SYRACUSE J. INT’L L. & COM. 1, 4 (1993) (arguing that the Israeli use of force in 1967 was legitimate self-defense while the Iraqi attack on Kuwait was illegal under international law); Ashley S. Deeks, *Taming the Doctrine of Pre-Emption*, in THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 661, 665 (Marc Weller ed., 2015) (“A number of scholars identify Israel’s use of force against Egypt in 1967—where Israel attacked Egypt’s air force after Egypt massed its forces on the Israeli border and closed the Straits of Tiran—as a classic example of anticipatory self-defence.”).

251. ERIC HAMMEL, SIX DAYS IN JUNE: HOW ISRAEL WON THE 1967 ARAB-ISRAELI CIVIL WAR (1992).

252. RAYMOND LIMBACH, *Blitzkrieg*, ENCYCLOPEDIA BRITANNICA <https://www.britannica.com/topic/blitzkrieg> (last visited Nov. 1, 2018) (“Blitzkrieg (German: ‘lightning war’)” is defined as a fast and dramatic military attack “calculated to create psychological shock and resultant disorganization in enemy forces”). See generally ROBERT M. CITINO, THE PATH TO BLITZKRIEG: DOCTRINE AND TRAINING IN THE GERMAN ARMY, 1920–39 (2007) (describing the history and development of Blitzkrieg as a military strategy).

253. ANTHONY CLARK AREND & ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE U.N. CHARTER PARADIGM 44 (2014); LESCH, *supra* note 105, at 24.

254. Leo Van Den Hole, *Anticipatory Self-Defence Under International Law*, 19 AM. U. INT’L L. REV. 69, 72 (2003) (explaining that anticipatory self-defense “is the use of force by a state to repel an attacker before an actual attack has taken place, before the army of the enemy has crossed its border, and before the bombs of the enemy fall upon its territory”); Deeks, *supra* note 250.

255. GEORGE ORWELL, 1984, 34 (Houghton Mifflin Harcourt Publ’g Co. 1977) (1949). Although Ishmael exclaims “Orwellian doublespeak,” he is referring to the term “doublethink,” which Orwell used throughout the novel, defining it at one point as: “[t]o know and not to know, to be conscious of complete truthfulness while telling carefully constructed lies, to hold simultaneously two opinions which cancelled out, knowing them to be contradictory and believing in both of them”

256. David A. Sadoff, *A Question of Determinacy: The Legal Status of Anticipatory Self-Defense*, 40 GEO. J. INT’L L. 523, 565–66 (2009) (“Three draft Security Council resolutions were considered but none was put to a vote. Predictably, support for the United States and Soviet Union/Cuba broke down essentially along ideological lines. During Security Council discussions, no clear acceptance or rejection of the anticipatory self-defense doctrine emerged. The absence of a specific condemnation in this case, given the highly politicized nature of the Security Council especially during the Cold War, should not be read necessarily as legal vindication of the American exercise of force to address a possible strategic imbalance.”)

257. WHITE HOUSE PRESIDENT GEORGE W. BUSH, THE 2002 NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, § 5 (Sept. 2002), <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/nss5.html> (“For

centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack . . . We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries."); Lucy Martinez, *September 11th, Iraq and the Doctrine of Anticipatory Self-Defense*, 72 UMKC L. REV. 123, 152–53, 169 (2003) (describing how the Bush administration claimed that the invasion of Iraq could be justified on the basis that Iraq was allegedly in violation of earlier U.N. Security Council resolutions, and disagreeing somewhat with Nungesser, since the *direct* U.S. rationale for *Iraq II* was its questionable assertion that it and Britain were enforcing a mandate of the U.N. Security Council); Donald Nungesser, *United States' Use of the Doctrine of Anticipatory Self-Defense in the Iraqi Conflicts*, 16 PACE INT'L L. REV. 193, 194 (2004) (discussing anticipatory self-defense despite there being no record of an official state policy. "The United States justified the war based on Iraq's suspected development of nuclear and biological weapons and its suspected involvement with terrorist organizations. Based on this information, the United States believed that it would be attacked by Iraq or that Iraq would support an attack against it in the future. The United States' war against Iraq, therefore, was based on the doctrine of anticipatory self-defense.").

258. Rt. Hon. Jeremy Wright, U.K. Attorney General, Attorney General's Speech at the International Institute for Strategic Studies: The Modern Law of Self-Defence (Jan. 11, 2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583171/170111_Minimence_Speech.pdf ("So let me be clear that the approach I am setting out, based on the settled position of successive British governments, is a very long way from supporting any notion of a doctrine of pre-emptive strikes against threats that are more remote and even further from seeking to diminish the importance of a rules-based international order."); Lord Goldsmith, Extract from Debate in the British House of Lords, cols. 369–71 (Apr. 21, 2004), <https://publications.parliament.uk/pa/ld200304/ldhansrd/vo040421/text/40421-07.htm>.

259. See, e.g., Christopher Greenwood, *International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaida, and Iraq*, 4 SAN DIEGO INT'L L. J. 7, 13 (2003) ("As Sir Derek Bowett has pointed out, even the Soviet Union, which was initially strongly opposed to any concept of anticipatory self-defense, itself relied on such a right at various times."); see also Ronald M. Riggs, *The Grenada Intervention: A Legal Analysis* 109 MIL. L. REV. 1, 78 (1985) (arguing that the Soviet justification for invading in Afghanistan could be seen as an anticipatory self-defense claim); David B. Rivkin et al., *Pre-Emption and Law in the 21st Century*, 5 CHI. J. INT'L L. 467, 468 (2005).

260. CHRISTOPHER GREENWOOD, *International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaida and Iraq*, in ESSAYS ON WAR IN INTERNATIONAL LAW, 667, 667–703 (2006); KINGA TIBORI SZABÓ, ANTICIPATORY ACTION IN SELF-DEFENCE: ESSENCE AND LIMITS UNDER INTERNATIONAL LAW 281 (2011) ("[T]his research concludes that anticipatory action is still part of the contemporary customary understanding of self-defence."); see also KARL P. MUELLER ET AL., STRIKING FIRST: PREEMPTIVE AND PREVENTIVE ATTACK IN U.S. NATIONAL SECURITY POLICY (2006). Yitz might be slightly overstating his case here, but he is not without support in the scholarly community.

261. See, e.g., JERRY HOUGH, THE STRUGGLE FOR THE THIRD WORLD: SOVIET DEBATES AND AMERICAN OPTIONS 8 (1986) (discussing the two superpowers of the twentieth century and their imperialist behavior. At one point, Hough posits "Is American foreign policy in the Middle East part of a conscious desire to encircle the Soviet Union (using Israel as a proxy) or does it reflect various less threatening domestic pressures? Should Soviet news coverage of Alyatollah

Khomeini's Iran have been as favorable as it was, and is the Islamic revolution likely to spread?"); *see also* ANTOINETTE BURTON, *THE TROUBLE WITH THE EMPIRE: CHALLENGES TO MODERN BRITISH IMPERIALISM* (2015); P.J. CAIN & A.G. HOPKINS, *BRITISH IMPERIALISM: 1688–2015* (2016).

262. Martinez, *supra* note 257, at 165–66 (“Traditional strategies of containment and deterrence are no longer sufficient in the modern world, as that world was revealed by September 11, 2001. The U.N. Charter and customary international law must be able to adapt to modern realities, threats and uses of force if it is to remain relevant in the modern era and to provide realistic guidance and parameters, or at least reference points, for States. Accordingly, the international community should continue to recognize the doctrine of anticipatory self-defense as customary international law and, in fact, should ensure the status of this doctrine as a recognized principle of international law by solidifying *opinio juris* and State practice in favor of the doctrine.”)

263. *See* JAN ARNO HESSBRUEGGE, *HUMAN RIGHTS AND PERSONAL SELF-DEFENSE IN INTERNATIONAL LAW* (2017); *cf.* Statute of the International Court of Justice, art. 38(1)(c), June 26, 1945, 59 Stat. 1031, T.S. No. 993 (noting that the I.C.J. uses “the general principles of law recognized by civilized nations . . .” in reaching its judgements). Given the history detailed by Hessbruegge, anticipatory self-defense may be considered an example of the kind of well-established state practice that the I.C.J. will take under advisement in adjudicating cases that come before the court.

264. U.N. Charter, art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”).

265. REICH, *supra* note 18, at 370–71 (discussing how Nasser, the Egyptian President from 1956 until his death in 1970, mobilized Egyptian troops to the Sinai “to replace the United Nations Emergency Force” and blockaded the Strait of Tiran leading Egypt and Israel to war in 1967); *Middle East—UNEF I: Background*, U.N. PEACEKEEPING, <https://peacekeeping.un.org/mission/past/unef1backgr2.html> (last visited Nov. 1, 2018) (“UNEF began operating in Egypt on 12 November 1956, when the Force Commander and a group of military observers detached from UNTSO set up a temporary headquarters in Cairo. It was withdrawn ten-and-a-half years later, on 18 May 1967, at the request of the Egyptian Government.”).

266. MOTTI GOLANI, *ISRAEL IN SEARCH OF A WAR: THE SINAI CAMPAIGN, 1955–1956*, 198 (1998) (discussing Egypt’s motivation for attacking Israel in violation of the cease-fire: “In 1948, Egypt had gone to war very reluctantly. The results of that war, however, sowed in Egypt seeds of animosity towards Israel which hitherto hardly existed. The Sinai War only augmented these. From 1956, Egypt had yet another reason to settle the score . . .”); *The Disaster of 1967*, ROYAL HASHEMITE KINGDOM, http://www.kinghussein.gov.jo/his_periods3.html (last visited Nov. 1, 2018) (describing the Jordanian perspective on the 1967 “Disaster” and taking credit for allying Jordan and Egypt under the Egyptian-Jordanian Mutual Defense Treaty); *Six Day War*, KNESSET ISR., http://knesset.gov.il/lexicon/eng/six_days_eng.htm (last visited Nov. 1, 2018).

267. GA Res. 3314 (XXIX) Definition of Aggression (Dec. 14, 1974) (“(c) The

blockade of the ports or coasts of a State by the armed forces of another State”).

268. Off. Historian, *The 1967 Arab-Israeli War*, U.S. DEP'T ST., <https://history.state.gov/milestones/1961-1968/arab-israeli-war-1967> (last visited Nov. 1, 2018) (noting Jordan and Syria's joint participation with Egypt in the 1967 war against Israel).

269. MICHAEL B. OREN, *SIX DAYS OF WAR: JUNE 1967 AND THE MAKING OF THE MODERN MIDDLE EAST* 317–18 (2017) (describing the three “nos”: “Arab opinion on Israel had only been hardened by the war. There could still be ‘no peace with Israel, no survival of the influence of imperialism and no existence in our land of the Zionist state,’ according to an official Egyptian broadcast.”).

270. TESSLER, *supra* note 77, at 284–91 (“The Arab position was and for the most part remains that the establishment of a Jewish state in Palestine was an illegal and illegitimate act. Even most of the many Arabs today[, as of 1994,] who are prepared to recognize and make peace with Israel continue to believe that this is the case; they may accept Israel as a reality and acknowledge that political compromise is the only way out of the present impasse . . . but they nonetheless remain firmly convinced that a historical injustice was done to the indigenous inhabitants of Palestine by the founding of the Jewish state.”).

271. HENRY M. JACKSON, *AMERICAN SECURITY POLICY THE ARAB ISRAELI CONFLICT VOLUME II: READINGS 1077* (1974) (“The densely populated Upper Jordan Valley lies under the imposing shadow of the Golan Heights from which Syrian guns regularly shelled Israeli settlements prior to the Six-Day War.”).

272. JON SOSKE & SEAN JACOBS, *APARTHEID ISRAEL: THE POLITICS OF AN ANALOGY 3* (2015) (describing the increasing use and recognition of the analogy between South African Apartheid and Palestinian existence in Israel specifically marking out apartheid as “. . . ‘this institutionalized element, involving a state-sanctioned regime of law, policy, and institutions, that distinguishes the practice of apartheid from other prohibited discrimination’”); *Israel and the Media*, AL JAZEERA (Feb. 27, 2016), <http://www.aljazeera.com/programmes/listeningpost/2016/02/spinning-occupation-israel-media-160227093217143.html> (comparing the media landscape in Israel to South Africa); *see also* BENJAMIN POGRUND, *DRAWING FIRE INVESTIGATING THE ACCUSATIONS OF APARTHEID IN ISRAEL* 139–52 (2014) (describing and comparing point-by-point the South African Apartheid with the accusations of Israeli Apartheid. At the end of this chapter's comparison, Pogrund says “Israel is like apartheid South Africa? Ridiculous.” Pogrund is a present-day Israeli citizen and former reporter of South African Apartheid.); Rick Gladstone, *Tempest at U.N. Over Report Saying Israel Practices Apartheid*, N.Y. TIMES: INT'L (Mar. 15, 2017), <https://nyti.ms/2m1VbdA> (describing the U.N. commission report stating that “Israel practices apartheid against Palestinians.” He goes on to note that the report was published by the Economic and Social Commission for Western Asia which is made up of all Arab States and that many Israelis find the term “deeply offensive . . . [and] aimed at isolating and delegitimizing their country.”).

273. Lennox S. Hinds, *The Gross Violations of Human Rights of the Apartheid Regime Under International Law*, 1 RUTGERS RACE & L. REV. 231, 291 (1999) (discussing how Bantustan, meaning black homeland, refers to the South African apartheid policy that created a separate, undesirable tracts within South Africa for the non-white population).

274. Bernadette Atuahene, *Paying for the Past: Redressing the Legacy of Land Dispossession in South Africa*, 45(4) L. & SOC'Y REV. 955, 955 (Dec. 2011) (“One of the most intractable legacies to overcome, however, has been the massive displacement of blacks from their lands by the colonial and apartheid era states. As a consequence of this past land theft, at the end of apartheid 87 percent of the land was owned by whites, who constituted less than 10 percent of the population.”); *see* FISCHBACH, *supra* note 15 (describing the process by

which Zionists acquired land); Isabel Kershner, *Emboldened by Trump, Israel Approves a Wave of West Bank Settlement Expansion*, N.Y. TIMES: INT'L (Jan. 24, 2017), <https://nyti.ms/2knKAse>; Michelle Nichols et al., *U.N. Chief Alarmed by Israel's Approval of New Settlement*, REUTERS (Mar. 31, 2017), <https://www.reuters.com/article/us-israel-palestinians-settlement-un/u-n-chief-alarmed-by-israels-approval-of-new-settlement-idUSKBN1721W2> (reporting that the approval of the new West Bank settlement was the first in two decades).

275. ERELLA GRASSIANI, *SOLDIERING UNDER OCCUPATION: PROCESS OF NUMBING AMONG ISRAELI SOLDIERS IN THE AL-AQSA INTIFADA* 31–32 (2013) (“The work Israeli soldiers perform in the [Occupied Palestinian Territory] is not so much classical military work as it is policing work . . . The situation is one in which Israeli soldiers are being called upon to employ means for the repression of civil violence that defy both the behavioural and moral principles according to which the Israeli army is trained to defend itself against the armed forces of an enemy.”) (quoting Tamar Liebes & Shoshana Blum-Kulka, *Managing a Moral Dilemma: Israeli Soldiers in the Intifada*, 21(1) ARMED FORCES & SOC'Y 45, 45 (1994); David Weisburd, *The Israeli Model for Policing Terrorism Goals, Strategies, and Open Questions*, 36(12) CRIM. JUST. & BEHAV. 1259, 1261 (Nov. 11, 2009).

276. Haaretz Editorial, *Israel Must End Practice of Detention without Trial*, HAARETZ (Aug. 16, 2017), <https://www.haaretz.com/opinion/editorial/1.807147>; *Israel: Release Palestinian Prisoner of Conscience Detained Without Charge or Trial*, AMNESTY INT'L (May 24, 2017), <https://www.amnesty.org/en/latest/news/2017/05/israel-release-palestinian-prisoner-of-conscience-detained-without-charge-or-trial/>.

277. Amahl Bishara, *Driving while Palestinian in Israel and the West Bank: The Politics of Disorientation and the Routes of a Subaltern Knowledge*, 42 AM. ETHNOLOGIST 33, 34 (2015) (“Roads are the sites of hundreds of checkpoints, roadblocks, and other barriers to movement that seem to be designed not only to prevent Palestinian movement but also to inculcate those on the road—especially Israeli Jews—with a fear of Palestinian infiltration.”); see JONES, *supra* note 235.

278. *Received Passports, But Were Compelled to Leave Their Family*, GISHA, <http://gisha.org/updates/3617> (last visited Dec. 1, 2018) (telling the story of two Arab-Israeli sisters born of an Arab-Israeli mother, the article explains that “[t]hrough they were born in Gaza, their mother is an Israeli citizen, and as such, under Israeli law, they too are automatically considered citizens. Because they were registered as Israeli citizens, they were not able to obtain a Palestinian ID card when they turned 16 and were left with no official documentation, neither a Palestinian ID nor an Israeli one.”).

279. See SHOURIDEH C. MOLAVI, *STATELESS CITIZENSHIP: THE PALESTINIAN-ARAB CITIZENS OF ISRAEL* (2013).

280. *Id.* at 173, 184 (explaining that Israel gives citizen-Palestinians “a residual, truncated status, similar to the liberal notion of citizenship as a bundle of rights. Bearers of this citizenship as status do not share in attending to the common good but are secure in their possession of what we consider essential human and civil rights. Precisely this type of citizenship is possessed by Israel’s Arab citizens . . . [A]s it stands, the Palestinian citizens of Israel do have a particular political and legal relationship with the Israeli regime, that other Palestinians do not have. However limited and the internal contradictions aside, there are benefits granted to the Palestinian-Arab citizenry through their inclusion in the discourse of rights as citizens of Israel that are denied to the rest of the Palestinian population, such as mobility rights and the right to vote, among others.”).

281. JIMMY CARTER, PALESTINE: PEACE NOT APARTHEID 189–90, 215 (2006) (“The driving purpose for forced separation of the two peoples is unlike that in South Africa—not racism but the acquisition of land.” Carter also lists a number of options moving forward for Israelis, one of which is “a system of apartheid, with two peoples occupying the same land but completely separated from each other, with the Israelis’ totally dominant and suppressing violence by depriving Palestinians of their basic human rights. This policy is now being followed . . .”); *Spinning the Occupation: Israel and the Media*, AL JAZEERA (Feb. 27, 2016), <http://www.aljazeera.com/programmes/listeningpost/2016/02/spinning-occupation-israel-media-160227093217143.html> (comparing the media landscape in Israel to South Africa).

282. MYERS-JDC-BROOKDALE INST., THE ARAB POPULATION IN ISRAEL: FACTS & FIGURES 2018 3 (2018), http://brookdale.jdc.org.il/wp-content/uploads/2018/03/MJB_Facts_and_Figures_on_the_Arab_Population_in_Israel_2018-English.pdf (“In 2016, Israel had 1.8 million Arab citizens, representing 21% of the country’s total population.”); see Nationality Law, 5740–1980, §3(a), SH No. 984 p.222, as amended (Isr.) (“A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under section 2, shall become an Israel national with effect from the day of the establishment of the State if’ he satisfies three conjunctive requirements which generally depend on registration as a Palestinian resident in 1952). *But see* MOLAVI, *supra* note 279, at 149 (“My nationality, according to the Israeli Ministry of the Interior, is ‘Arab’; and my Israeli passport doesn’t specify my nationality at all. Instead, it states on the front page that I am an Israeli citizenIf I wrote ‘Arab’ under Nationalité in the French form, I would be telling the truth according to the state that had issued my identity card and my passport, but then it might complicate things with the French authorities. On the other hand, writing ‘Israeli’ under Nationalité is worse still, because in that case I would be telling a lie; my passport doesn’t say that at all, and neither does my ID.”).

283. HILLEL FRISCH, ISRAEL’S SECURITY AND ITS ARAB CITIZENS 66 (2011) (mapping voting by demographic, including Arab, Zionist, and Non-Zionist, from 1949 until 2009. During that period, Arab voting competed with Zionist voting for the highest percentage of voters (between 70% and 90% each year) until 2000 when Non-Zionists overtook both groups. As of 2009, Arabs in Israel voted at a rate of around 50%.).

284. *Current Knesset Members*, KNESSET, http://www.knesset.gov.il/mk/eng/mkindex_current_eng.asp?view=1 (last visited Dec. 1, 2018). *But see* Ylenia Gostoli, *The Paradox of Being an Arab Member of Israel’s Knesset*, AL JAZEERA (Feb. 16, 2016), <http://www.aljazeera.com/news/2016/02/paradox-arab-member-israel-knesset-160216055021671.html>.

285. Basic Law: Human Dignity and Liberty, 5752–1992, § 1, SH No. 1454 p.90, as amended (Isr.) (“The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.”); *Declaration of Establishment of State of Israel*, ISR. MINISTRY FOREIGN AFF., <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx> (“The state of Israel . . . will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.”).

286. Haim Bleikh, *Poverty and Inequality in Israel: An International Perspective*, ST. NATION REP. (2015), http://taubcenter.org.il/wp-content/files_mf/povertyandinequalityenglish.pdf.

287. See, e.g., Basic Law: Human Dignity and Liberty, 5754–1994, § 5, SH No. 1454 p.90, as amended (Isr.) (protecting the human right to due process by declaring: “There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.”); Michal Agmon-Gonnen, *Judicial Independence: The Threat from Within*, 38 ISR. L. REV. 120, 128 (2005) (citation omitted) (“The Supreme Court held that significant delays in the ruling of a criminal case must be taken into consideration when sentencing the offender.”).

288. INT’L COMM’N JURISTS (GENEVA), SOUTH AFRICA AND THE RULE OF LAW 15–16 (1960) (discussing a timeline of legal events of instituting apartheid from 1948 until 1960. By way of example, the white parliament struggled with the Supreme Court in enacting laws with limiting Afrikaner education until on June 8, 1959, the parliament succeeded in prohibiting “non-whites attending any white university.”); see Max Price, *Health Care as an Instrument of Apartheid Policy in South Africa*, 1 HEALTH POL’Y & PLAN. 158 (1986).

289. See *East Jerusalem*, B’TSELEM (Nov. 11, 2017), http://www.btselem.org/jerusalem/infrastructure_and_services (observing that even though “Palestinians in East Jerusalem are required to pay taxes like any other inhabitant,” “[t]he Jerusalem Municipality deliberately [underinvests] in Palestinian neighborhoods” and “do[es] not provide basic municipal services such as waste removal, road maintenance[,] and education, resulting in “a severe shortage of classrooms and day care facilities” and failing “water and sewage systems”). This lack of investment has left infrastructure in the Palestinian neighborhoods in East Jerusalem in a deteriorated state: “Entire Palestinian neighborhoods are not connected to a sewage system and do not have paved roads or sidewalks. Almost 90 percent of the sewage pipes, roads, and sidewalks are found in West Jerusalem.”); Mel Frykberg, *In Jerusalem, Separate and Unequal*, ELECTRONIC INTIFADA (Sept. 1, 2009), <https://electronicintifada.net/content/jerusalem-separate-and-unequal/8421>.

290. Aviel Magnezi, *Rise in Arab National Service Volunteers*, YNET NEWS (Oct. 25, 2010, 2:47 PM), <https://www.ynetnews.com/articles/0,7340,L-3974580,00.html> (according to the then head of the Israeli National Service, an Israeli government body created to give Arab Israelis opportunities to receive benefits like IDF veterans, but Arab Israeli leaders discourage youth from serving the Israeli government: “For years the Arab leadership has demanded, justifiably, benefits for Arab youths similar to those received by discharged soldiers. Now, when this opportunity is available, it is precisely these leaders who reject the state’s call to come and do the service, and receive these benefits . . .”); Stuart Winer, *Arab School Principals ‘Obstructing National Service’*, TIMES ISR. (July 28, 2013, 11:43 AM), <https://www.timesofisrael.com/arab-school-principals-obstructing-national-service/>.

291. See SHAVIT, *supra* note 25.

292. AMY WITHERBEE, BENJAMIN NETANYAHU 2 (2011) (“In parliamentary elections held in February 2009, Likud placed second to Kadima, with each party earning over 20 percent of the vote. A coalition government was formed and Netanyahu became prime minister of Israel for the second time in his career. . . . Much of Netanyahu’s second term as prime minister has dealt with establishing renewed peace talks with Palestinian officials.”).

293. Chaim Levinson & Jack Khoury, *Israel Appropriates Massive Tract of West Bank Land*, HAARETZ (Aug. 31, 2014, 11:13 PM), <https://www.haaretz.com/israel-news/premium-1.613319> (“Israel’s Civil Administration in the West Bank yesterday announced the takeover of 988 acres (3,799 dunams) belonging to five Palestinian villages between the Etzion settlement bloc and Jerusalem. The move clears the way for construction of a new settlement named Gvaot.”); Dimi Reider, *Israel Appropriated 1,000 Acres of the West Bank. Why Now?*,

REUTERS (Sept. 8, 2014), <http://blogs.reuters.com/great-debate/2014/09/08/israel-appropriated-1000-acres-of-the-west-bank-why-now/> (“In the West Bank alone, close to 250,000 acres were appropriated since 1979, using a legal mechanism based on an interpretation of Ottoman law.”).

294. See POGRUND, *supra* note 272.

295. Asmaa al-Ghoul, *Low Turnout at Hamas Rally Sign of Declining Support?*, AL-MONITOR (Mar. 27 2014), <http://www.al-monitor.com/pulse/originals/2014/03/hamas-gaza-rally-crisis-siege-anniversary-yassin.html> (interviewing participants of the festival who “all wore green headscarves bearing the slogan of Hamas. ‘We are here today to prove to the world that we are committed to the resistance. Our slogan is: ‘The Hamas movement represents Islam,’ they said. The three friends affirmed that the message is directed at Israel and Egypt in particular. Teenage sisters Iman and Ayat Farwana told *Al-Monitor*, ‘We came here to tell the world that no matter how much you tighten the blockade, we will be victorious and Hamas will stay in our hearts, come what may.’”); *Hamas Festival Pictures and Images*, GETTY IMAGES, <http://www.gettyimages.com/photos/hamas-festival?excludenudity=true&mediatype=photography&phrase=hamas%20festival&sort=mostpopular> (last visited Dec. 1, 2018) (showing a collection of over 150 images of pro-Hamas festivals in Jordan, the Gaza Strip and the West Bank).

296. *Arafat Horrified by Attacks, but Thousands of Palestinians Celebrate; Rest of World Outraged*, FOX NEWS (Sept. 12, 2001), <http://www.foxnews.com/story/2001/09/12/arafat-horrified-by-attacks-but-thousands-palestinians-celebrate-rest-world.html>; Robert Mackey, *The Video of Celebrations That Was Broadcast on 9/11*, N.Y. TIMES (Nov. 24, 2015, 5:51 PM), <https://www.nytimes.com/politics/first-draft/2015/11/24/the-video-of-celebrations-that-was-broadcast-on-911/> (“There was a report that as many as 3,000 Palestinians in the Israeli-occupied West Bank marched in celebration that day, but no footage of that rally was ever broadcast, since the Associated Press cameraman who recorded it was threatened by militants who wanted it suppressed.”); *World Shock over U.S. Attacks*, CNN (Sept. 11, 2001, 9:31 PM), <http://edition.cnn.com/2001/WORLD/europe/09/11/trade.centre.reaction/> (“From Gaza, Islamic Jihad official Nafez Azzam said ‘what happened in the United States today is a consequence of American policies in this region.’ In the West Bank, Qais abu Leila, leader of the Democratic Front for the Liberation of Palestine, denied any connection to the incident and said it has always opposed ‘terror attacks on civilian targets, especially outside the occupied territories.’”).

297. JEWISH FED’NS NORTH AM., *supra* note 32, at 9 (describing the Passover tradition of removing drops of wine from one’s glass).

298. The author observed such celebrations during his Spring 2015 and 2017 visitorships at Hebrew University.

299. PAUL DIXON, *NORTHERN IRELAND THE POLITICS OF WAR AND PEACE* 22 (2001) (“The Orange Order was founded in 1795 and now has approximately 100,000 members. One of its objectives was to defend the Protestant succession to the British throne, and it annually commemorates Protestant victories in Irish history by parading. Catholics are excluded from membership.”) The triumphalism inherent in the marches provoked resentment in the Catholic community, and often led to violent confrontation.

300. See Bishara, *supra* note 277 (referring to checkpoints); *Israel Bombs Gaza Homes*, *supra* note 75 (referring to bombs); *infra* note 304 (referring to checkpoints).

301. HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (Penguin Books 1994) (1963).

302. Ron Jager, *Security Checkposts Save Lives*, ARUTZ SHEVA (June 24,

2014, 10:09 AM), <https://www.israelnationalnews.com/Articles/Article.aspx/15220>.

303. Areej Hazboun, *New Apps Help Palestinians Navigate Israeli Checkpoints*, PHYS.ORG (Nov. 18, 2015), <https://phys.org/news/2015-11-apps-palestinians-israeli-checkpoints.html> (reporting that the crowds and lines at checkpoints are such a problem that there are phone apps that help Palestinians navigate these checkpoints); Associated Press, *New Apps Help Palestinians Navigate Israeli Checkpoints*, AL JAZEERA (Nov. 18, 2015), <http://www.aljazeera.com/news/2015/11/apps-palestinians-navigate-israeli-checkpoints-151118143027515.html>.

304. The author has crossed the Qalandia checkpoint a number of times, always in the company of Palestinian friends who live in a segment of East Jerusalem that has been carved away from the rest of the city by the Barrier Wall, even though that segment lies within the boundaries of annexed East Jerusalem as defined by Israeli statute (though not recognized by international law). This neighborhood has thus become a place without law, or at least, without government services. Although part of Jerusalem under Israeli law, garbage was not collected, streets were not repaired or policed, etc. The PA has not provided service since it is beyond its jurisdiction. Lawsuits in Israeli courts have begun to address the situation, but concrete results are still elusive. Meanwhile residents like my friends must join their neighbors in unpredictably long lines of vehicles and pedestrians to cross the Qalandia checkpoint to go to work, to visit relatives, to receive government services, etc. In May 2017, my Palestinian colleague Moien Odeh was an hour late in picking us up for dinner in Ramallah because of a delay/closure at the Qalandia checkpoint. Returning us to our apartment in the Morasha neighborhood in northeastern West Jerusalem took an hour and a half, rather than the half hour that would have been normal had there been no closures or delays. The checkpoint appears undermanned, causing back-ups often of half-an-hour or more to go a few hundred meters between Arab Jerusalem and Arab Jerusalem. One evening, I observed an ambulance behind us unable to move more than a few meters in traffic for many minutes trying to get a presumably sick or injured rider to emergency care.

305. See generally Jessica Montell, *Op-Ed: The West Bank Is under Military Occupation, and That's a Fact*, JEWISH TELEGRAPHIC AGENCY (Apr. 8, 2014, 2:29PM), <https://www.jta.org/2014/04/08/news-opinion/opinion/op-ed-the-west-bank-is-under-military-occupation-and-thats-a-fact> (“The military passes laws, in the form of military orders that supersede the local laws that otherwise remain in force. Even the fact that Israeli law applies in the settlements, and personally to settlers, is not due to legislation from the Knesset but because the military commander signed an order giving force to that particular piece of Knesset legislation. The military is also the executive, administering all aspects of the governance of this territory. Many of the Israeli civil authorities operate in the settlements, and the Palestinian Authority has responsibility for civil affairs within Palestinian cities. However, all of these authorities operate within the overall control of the Israeli military. And the military is the judiciary. The military legal advisors decide what is lawful and what is not. The Israeli military maintains a military court system in which Palestinians are tried for everything from security offenses to traffic violations.”).

306. *Songs That Shaped Rock and Roll: Bob Dylan, “The Times They Are A-Changin’”*, ROCK & ROLL HALL FAME (May 24, 2016), <https://www.rockhall.com/songs-shaped-rock-and-roll-times-they-are-changin>.

307. S.C. Res. 2334 (Dec. 23, 2016) (announcing cessation of Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem); Meetings Coverage, Security Council, Israel’s Settlements Have No

Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms, U.N. Press Release SC/12657 (Dec. 23, 2016) (“Adopting resolution 2334 (2016) by 14 votes, with the United States abstaining, the Council reiterated its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem.”).

308. Bruce Stokes, *Are American Jews Turning Away from Israel?*, FOREIGN POL’Y (Mar. 10, 2016, 5:49 PM), <http://foreignpolicy.com/2016/03/10/are-american-jews-turning-away-from-israel/> (“A plurality of Jews in Israel (42 percent) say the continued building of these settlements helps the security of Israel. Only 17 percent of U.S. Jews agree. By contrast, in the United States, a plurality of Jews (44 percent) says the settlements hurt Israel’s own security interests; fewer Israeli Jews (30 percent) take this position. Jewish Americans (38 percent) are also considerably less likely than Israeli Jews (56 percent) to say the Israeli government is making a sincere effort to achieve peace with the Palestinians.”).

309. See STEVE PHILLIPS, BROWN IS THE NEW WHITE: HOW THE DEMOGRAPHIC REVOLUTION HAS CREATED A NEW AMERICAN MAJORITY (2016).

310. Carlo Strenger, *Netanyahu Is Killing the Two-State Solution*, HUFFINGTON POST (Sept. 25, 2011, 3:44 PM), https://www.huffingtonpost.com/carlo-strenger/netanyahu-two-state-solution_b_979325.html.

311. S.C. Res. 2334, *supra* note 307; Eric Fehrstorm, *Obama’s Lame-Duck Stunt on Israel*, BOSTON GLOBE (Dec. 28, 2016), <https://www.bostonglobe.com/opinion/2016/12/28/obama-lame-duck-stunt-israel/sapBpDy9CRluRHV0ZgCn7M/story.html>.

312. Pamela Falk, *Nikki Haley’s U.N. Mission: Sticking up for Israel*, CBS NEWS (Feb. 16, 2016, 6:21 AM), <http://www.cbsnews.com/news/nikki-haleys-un-mission-sticking-up-for-israel/> (“In charge of that shift is the president’s U.N. envoy, Ambassador Nikki Haley, who made clear in her testimony at her Senate confirmation hearing that she won’t be going to the U.N. to ‘abstain when the U.N. seeks to create an international environment that encourages boycotts of Israel.”).

313. Jeremy Diamond & Elise Labott, *Trump Recognizes Jerusalem as Israel’s Capital*, CNN (Dec. 6, 2017, 5:45 PM), <https://www.cnn.com/2017/12/06/politics/president-donald-trump-jerusalem/index.html>.

314. PHILLIPS, *supra* note 309.

315. Lis, *supra* note 231 (“A cabinet committee on Sunday gave its support to a new version of the nation-state bill, which revokes Arabic’s ‘official language’ status, holds that the State of Israel is ‘the national home of the Jewish people,’ and that ‘the right to realize self-determination in the State of Israel is unique to the Jewish people.’”).

316. See DUBNOV, *supra* note 10.

317. G.A. Res. 71/54, ¶ 14 (Oct. 16, 2014) (recognizing Israel’s nuclear arsenal in a 2014 resolution to promote its disarmament “calls upon all States parties to spare no effort to achieve the universality of the Treaty on Non-Proliferation of Nuclear Weapons, and in this regard urges India, Israel and Pakistan to accede to the Treaty as non-nuclear-weapon States promptly and without conditions, and to place all of their nuclear facilities under International Atomic Energy Agency safeguards”); In 1974 Estimate, CIA Found that Israel Already Had a Nuclear Stockpile and that “Many Countries” Would Soon Have Nuclear Capabilities, in NATIONAL SECURITY ARCHIVE ELECTRONIC BRIEFING BOOK NO. 240 (William Burr & Jeffrey Richelson eds., Jan. 14, 2008), <http://nsarchive.gwu.edu/NSAEBB/NSAEBB240/index.htm>.

318. JAN GREBE & MAX M. MUTSCHLER, GLOBAL MILITARIZATION INDEX

2015, 5 tbl.1 (Susanne Heinke ed. 2015), https://www.bicc.de/uploads/tx_bicctools/GMI_2015_EN_2015.pdf (ranking Israel as having the highest global level of militarization). Although Palestine is not ranked, *id.* at 14, (presumably due to its disputed Statehood) it is very likely given that Israel is ranked first, that the Palestinians would rank below Israel. *Id.* at 6 (“The country’s high level of militarisation is partly explained by the Israel–Palestine conflict”).

319. See population figures in sources accompanying note 145, *supra*.

320. UNICEF, Table 1 Basic Indicators, in STATE OF THE WORLD’S CHILDREN 2016: STATISTICAL TABLES (June 2016) <http://data.unicef.org/resources/state-worlds-children-2016-statistical-tables/> (according to UNICEF, the population of the Middle East and North Africa was 455 million in 2016).

321. PEW RES. CTR., *supra* note 195 (estimating that there were around 1.6 billion Muslims globally in 2015 and predicted a rise to 2.76 billion by 2050).

322. NACHMAN BEN-YEHUDA, THE MASADA MYTH: COLLECTIVE MEMORY AND MYTHMAKING IN ISRAEL, 3–5 (1995) (asserting that the Masada myth is a “fabricated moralistic claim . . . that there was a group of Jewish freedom fighters who fled Jerusalem, after its destruction by the Roman Imperial Army in 70 A.D., to Masada. There they staged the final fight against that army. When the Romans were about to conquer the fortress, all these heroic Jewish freedom fighters chose to commit collective suicide rather than surrender to Rome and become slaves or die in some strange and painful ways (e.g., in the arena).” Ben Yehuda concludes that David Rapport’s assertion that the Jews at Masada were a group of rogue assassins is possibly true, given sociological and historical analysis and examination of the question of how the Masada narrative came about.).

323. *Yiddish Dictionary*, U. KY., <https://www.cs.uky.edu/~raphael/yiddish/dictionary.cgi> (last visited Dec. 5, 2018) (“meshuge (משוגע) adjective, crazy”). The author understands meshugah to differ from the English “crazy” by adding a touch of nutty, demented, illogical, and silly.

324. *The Knesset in the Governing System: The Electoral System in Israel*, KNESSET, https://www.knesset.gov.il/deSCRIPTION/eng/eng_mimshal_beh.htm (last visited Dec. 5, 2018) (“Israel has an electoral system based on nation-wide proportional representation. In other words, the number of seats that each list receives in the Knesset—the House of Representatives—is proportional to the number of votes it received. Unlike most of the Western parliamentary democracies, the system in Israel is followed in an extreme manner, and the only limitation on a list which participated in the elections being elected is that it should pass the qualifying threshold, which is currently 3.25%. (Until the elections to the 13th Knesset the qualifying threshold was only 1%. During the 16th Knesset, the law changed the threshold from 1.5% to 2%, and the 19th Knesset raised the threshold to 3.25%.”).

325. Palestinian attorney Moien Odeh made a similar comment to the author in the context of the Israeli Supreme court’s decision on the military barrier between Israel proper and the West Bank. Even though the case was victory for a few directly-affected Palestinians, the court-ordered change in the barrier root had little or no effect on the general hardship caused to Palestinians by the barrier and its checkpoint, according to Odeh. See H CJ 7957/04 Mara’abe v. Prime Minister of Israel 60(2) PD 477 (2005), *translated in* 2 JUDGMENTS ISR. SUP. CT.: FIGHTING TERRORISM WITHIN L. 62–150 (2005), http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/SupremeCourtFightingTerror2.pdf (prefacing the decision with a brief introduction).

326. Yonah Jeremy Bob, *Israeli Right Wins Historic Fight Over Supreme Court Justices*, JERUSALEM POST (Feb. 22, 2017), <http://www.jpost.com/Israel-News/Israeli-Right-wins-historic-fight-over-Supreme-Court-judges-482331>; *Netanyahu v the Supreme Court*, ECONOMIST (May 2, 2015), <http://>

www.economist.com/news/middle-east-and-africa/21650159-prime-minister-takes-judiciary-netanyahu-v-supreme-court.

327. See Daniel K. Eisenbud, *Releasing Arab Terrorists Proves Jewish Blood is Cheap, Say Those Protesting Prisoner Release*, JERUSALEM POST (Dec. 30, 2013 6:25 PM), <http://www.jpost.com/Diplomacy-and-Politics/Releasing-Arab-terrorists-proves-Jewish-blood-is-cheap-say-those-protesting-prisoner-release-336524>. Here, Yitz is referencing the common refrain “Jewish blood is cheap.”

328. Oren Liebermann, *Israeli Soldier Convicted in High-Profile Manslaughter Case*, CNN (Jan. 4, 2017, 4:39 PM), <http://www.cnn.com/2017/01/04/middleeast/israel-idf-palestinian-shooting-verdict/index.html> (“An Israeli military court convicted an Israeli soldier of manslaughter Wednesday in the fatal shooting of a wounded Palestinian knife attack suspect.”); Raf Sanchez, *Israeli Soldier Convicted for Killing Wounded Palestinian in Hebron, as Angry Crowd Protests His Innocence*, TELEGRAPH (Jan. 4, 2017, 10:50 AM), <http://www.telegraph.co.uk/news/2017/01/04/Israeli-soldier-convicted-for-killin-g-wounded-Palestinian-Hebron-as-angry-crowd-protests/> (“The Palestinian, 21-year-old Abdul Fatah al-Sharif, had stabbed an Israeli soldier moments before and had been shot but not killed by other Israeli troops. The mobile phone footage shows Sgt Azaria calmly cocking his rifle and firing once into the man’s head.”); *Israeli Soldier Sentenced to 18 months*, USA TODAY (Feb. 21, 2017), <https://www.usatoday.com/videos/news/world/2017/02/21/israeli-soldier-sentenced-18-months/98188818/> (“The Israeli soldier, Sgt. Elor Azaria, who was convicted of manslaughter in the fatal shooting of wounded Palestinian, 21-year-old Abdel Fattah al-Sharif, in a knife attack, has been sentenced to 18 months in military prison”).

329. See sources accompanying note 328, *supra*.

330. Sheren Khalel, *VIDEO: Israeli Soldier ‘Executes’ Injured Palestinian after Stab Attack*, MIDDLE EAST EYE (Mar. 24, 2016, 13:21 PM), <http://www.middleeasteye.net/news/video-shows-assassination-palestinian-man-israeli-human-rights-group-427067084>. The video shows the Palestinian man lying on the ground moving around for nearly two minutes while Israeli soldiers and ambulance workers perform their duties. Between 1:50 and 2:10 the video shows one Israeli soldier, now known to be Sgt. Elor Azaria, cock his rifle and aim at the Palestinian man on the ground. An ambulance drives through the frame and the camera captures the sound of one gunshot. When the ambulance leaves the frame, the Palestinian man has clearly been killed. See also sources accompanying note 328, *supra*.

331. See sources accompanying notes 328, 330, *supra*.

332. Ian Lee & Dominique van Heerden, *‘Her Only Weapon Was Her Medical Vest’: Palestinians Mourn Death of Nurse Killed by Israeli Forces*, CNN (June 3, 2018, 11:07 PM), <https://www.cnn.com/2018/06/03/middleeast/razan-al-najjar-gaza-nurse-killed/index.html> (“Razan al-Najjar is known to the world as the 21-year-old Palestinian medical nurse shot dead by an Israeli sniper during protests on [June 1, 2018].”). We could not find any documentation supporting the claim that Israeli snipers targeted children during the Spring 2018 Gaza border confrontation. Both Ishmael and Yitz are basically honest, but each might bend facts to match his beliefs in the course of argument.

333. Yaniv Kubovich & Jack Khoury, *Fourth Gaza Strike: Israel Goes on the Attack Against Palestinians Launching Burning Balloons*, HAARETZ (June 17, 2018, 6:06 PM), <https://www.haaretz.com/israel-news/third-gaza-strike-israel-on-the-attack-palestinians-burning-kits-balloons-rockets-launched-1.6179846> (captioning a photograph “Young Gazans preparing to launch incendiary kites into Israel . . .”).

334. See Ian Lee & Abeer Salman, *Palestinian Teen Protester Ahd Tamimi Appears in Israeli Military Court*, CNN (Feb. 13, 2018, 12:48 PM),

<https://www.cnn.com/2018/02/13/middleeast/ahed-tamimi-trial-intl/index.html> (reporting on Ahd Tamimi, a seventeen-year-old Palestinian girl who made global headlines in 2018 after “Israel has brought 12 charges against 17-year-old Ahd Tamimi, including aggravated assault against a soldier, incitement, obstructing a soldier in the performance of his duty, threatening a soldier and throwing stones at troops.”).

335. Raoul Wootliff, *Final Text of Jewish Nation-State Law, Approved by the Knesset Early on July 19*, TIMES ISR. (July 18, 2018, 2:55 PM), <https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/>. Knesset’s recent passage of a Jewish state law makes realization of the boys’ agreement to equal rights for Arab Israelis considerably more difficult. Passed by modest majority (sixty-two to fifty-five) over vehement opposition from progressive and Arab members of parliament, the *Basic Law: Israel as the Nation State of the Jewish People* has constitutional status. (Having no comprehensive written constitution, “Basic Laws” passed individually over the seven decades of Israel’s statehood fill the void and are superior to ordinary legislation.) The new law declares Israel to be the homeland of the Jewish people, adopts Jewish symbols and holidays as official state attributes, elevates Hebrew as the primary state language (Arabic had previously shared that status), and recognizes immigration rights for Jews and not others. See generally Basic Laws, KNESSET, https://knesset.gov.il/description/eng/eng_mimshal_yesod.htm (last visited Dec. 5, 2018) (providing background on how the Basic Laws work and explaining how they collectively resemble a constitution). The law would seem to push further away chances for the negotiated compromise Abe envisions.

336. W.B. YEATS, THE LAKE ISLE OF INNISFREE (1888), *reprinted in* POEMS 124 (3d. ed., T. Fischer Unwin Ltd. 1922) (1901). Admittedly, Yeats’ words are borrowed here in a context quite different from his use of them.