

THE LEGAL STATUS OF THE STATE OF ISRAEL

A LIBERTARIAN APPROACH

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At bottom, for the libertarian, the issue of justice in the Middle East regarding the Jews and the Arabs, Israel and Palestinians, comes down to private property rights. Murray Rothbard's War Guilt in the Middle East takes the position that the Arabs were and are the proper owners of the terrain under dispute. We offer the very opposite point of view, but based on the very same libertarian principles employed by Rothbard. Our main criticism is that this author does not go far back enough in history in his analysis nor does he correctly analyze the historical record in the period before and after the creation of the State of Israel. Thus, we provide a case for the existence of Israel as a state from a libertarian legal perspective.

Keywords: Libertarianism, Private Property Rights, Israel, Palestinians, Legal Theory, Political Theory.

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I. INTRODUCTION

Is the government of Israel justified? Not from the Rothbardian anarcho-capitalist point of view. The Israeli government engages in taxation, which is a polite word to describe theft; it has a military draft which amounts to forced labor; it also demands the monopoly right to dispense justice, and will initiate violence against innocent providers of this service who might dare to compete with it.¹ Of course, every other government on the face of the earth (with the exception of compulsory service in the armed forces) violates rights in this manner. They are all therefore equally guilty from the perspective of libertarian anarchism. Thus, given that the Israeli state is not justified, this applies to all other nations on earth as well.²

1. In the view of Murray N. Rothbard (emphasis added by present authors):

For centuries, the State (or more strictly, individuals acting in their roles as ‘members of the government’) has cloaked its criminal activity in high-sounding rhetoric. For centuries the State has committed mass murder and called it “war”; then ennobled the mass slaughter that “war” involves. For centuries the State has enslaved people into its armed battalions and called it “conscription” in the “national service”. For centuries the State has robbed people at bayonet point and called it “taxation”. *In fact, if you wish to know how libertarians regard the State and any of its acts, simply think of the State as a criminal band, and all of the libertarian attitudes will logically fall into place.*

MURRAY N. ROTHBARD, FOR A NEW LIBERTY 56-57 (1973).

2. For the anarcho-capitalist case against all governments, see Terry Anderson & P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979); Bruce L. Benson, *Enforcement of Private Property Rights in Primitive Societies: Law Without Government*, 9 J. LIBERTARIAN STUD. 1 (1989); Bruce L. Benson, *Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order without State Coercion*, 9 J. LIBERTARIAN STUD. 25 (1990); Walter E. Block, *Anarchism and Minarchism; No Rapprochement Possible: Reply to Tibor Machan*, 21 J. LIBERTARIAN STUD. 91 (2007); Walter E. Block, *Governmental Inevitability: Reply to Holcombe*, 22 J. LIBERTARIAN STUD. 667 (2011); Walter E. Block & Michael Fleischer, *How Would An Anarchist Society Handle Child Abuse?*, LEWROCKWELL.COM (Oct. 13, 2010), <http://www.lewrockwell.com/block/block167.html>; Doug Casey, *Doug Casey on Anarchy*, CASEY REPORT (Mar. 31, 2010), <http://www.caseyresearch.com/cwc/doug-casey-anarchy>; Doug Casey, *Why Do We Need Government?*, LEWROCKWELL.COM (Jan. 19, 2016), <https://www.lewrockwell.com/2016/01/doug-casey/as->

cendancy-sociopaths/; GERARD CASEY, *LIBERTARIAN ANARCHY: AGAINST THE STATE* (2012); FRANK CHODOROV, *OUT OF STEP: THE AUTOBIOGRAPHY OF AN INDIVIDUALIST* 216-39 (1962); Thomas J. DiLorenzo, *The Culture of Violence in the American West: Myth versus Reality*, 15 *INDEPENDENT REV.* 227 (2010); Randy England, *The State: What Can We Replace It With?*, LEWROCKWELL.COM (Mar. 31, 2013), <http://www.lewrockwell.com/blog/lewrw/archives/134782.html>; Anthony Gregory, *Abolish the Police*, LEWROCKWELL.COM (May 26, 2011), <http://archive.lewrockwell.com/gregory/gregory213.html>; Gil Guillory & Patrick Tinsley, *The Role of Subscription-Based Patrol and Restitution in the Future of Liberty*, 1 *LIBERTARIAN PAPERS ART.* 12 (2009); John Hasnas, *The Myth of the Rule of Law*, 199 *WISCONSIN L. REV.* 199 (1995); David J. Heinrich, *Justice for All Without the State*, *THE LIBERTARIAN STANDARD* (May 6, 2010), available at <http://www.libertarianstandard.com/articles/david-j-heinrich/justice-for-all-without-the-state/> (last visited May 4, 2016); Robert Higgs, *Why We Couldn't Abolish Slavery Then and Can't Abolish Government Now*, *INDEPENDENT* (Aug. 20, 2009), <http://www.independent.org/newsroom/article.asp?id=2589>; Robert Higgs, *What is the Point of My Libertarian Anarchism?*, LEWROCKWELL.COM (Jan. 16, 2012), <http://archive.lewrockwell.com/higgs/higgs180.html>; Robert Higgs, *The State: Crown Jewel of Human Social Organization*, *INDEPENDENT* (Apr. 3, 2013), <http://blog.independent.org/2013/04/03/the-state-crown-jewel-of-human-social-organization/>; Hans-Hermann Hoppe, *Reflections on the Origin and the Stability of the State*, 193 *LIBERTARIAN ALLIANCE POL. NOTES* 1 (2008); Hans-Hermann Hoppe, *State or Private Law Society*, *MISES INSTITUTE* (May 5, 2011), <https://mises.org/library/state-or-private-law-society>; Hans-Hermann Hoppe, *Of Private, Common, and Public Property and the Rationale for Total Privatization*, 3 *LIBERTARIAN PAPERS* 1 (2011); JACOB HUEBERT, *LIBERTARIANISM TODAY* (2010); Seth King, *Daily Anarchist Interviews Walter E. Block*, *DAILY ANARCHIST* (Sep. 6, 2010), <http://dailyanarchist.com/2010/09/06/daily-anarchist-interviews-walter-block/>; Stephan Kinsella, *The Irrelevance of the Impossibility of Anarcho-Libertarianism*, *STEPHAN KINSELLA* (Aug. 20, 2009), <http://www.stephankinsella.com/2009/08/20/the-irrelevance-of-the-impossibility-of-anarcho-libertarianism/>; Roderick Long, *Libertarian Anarchism: Responses to Ten Objections*, LEWROCKWELL.COM (Aug. 19, 2004), <http://archive.lewrockwell.com/long/long11.html>; Michael McConkey, *Anarchy, Sovereignty, and the State of Exception: Schmitt's Challenge*, 17 *INDEPENDENT REV.* 415 (2013); Stefan Molyneux, *The Stateless Society: An Examination of Alternatives*, available at <http://www.mail.archive.com/libertarianenterprise@yahoo.com/msg02056.html> (last visited May 7, 2016); Stefan Molyneux, *Stefan Molyneux versus Michael Badnarik, How Much Government is Necessary*, *YOUTUBE* (Jul. 5, 2009), https://www.youtube.com/watch?v=6_k93op7_Pc; Robert P. Murphy, *But Wouldn't Warlords Take Over?*, *MISES INSTITUTE* (Jul. 7, 2005), <https://mises.org/library/wouldnt-warlords-take-over>; Robert P. Murphy, *Overrating Government Service*, *MISES INSTITUTE* (Mar. 15 2010), http://mises.org/daily/4131?utm_source=Ludwig+von+Mises+Institute+of+Canada+Dai

However, in the present essay we will engage not in bashing this one state,³ but, rather, in a comparative analysis. How does Israel stack up against other nations, particularly the ones surrounding it? Can there be good and bad governments from this libertarian perspective? Of course there can be. The relatively better ones adhere more closely to the non-aggression principle (hereinafter: NAP) of libertarianism than do the relatively worse ones. Our contention is that, as a state and from a libertarian perspective, Israel is in fact much more closer to the NAP than its Arab neighbors or the pseudo-state that is the Palestinian Authority.

In his well-known “*War Guilt in the Middle East*,” Murray Rothbard argues that the state of war in that part of the world is to be blamed

ly+List&utm_campaign=e4794b19d8RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_6c2fea3584-e4794b19d8-274221537; Robert P. Murphy, *Where are the Rothbardian Defense Agencies?*, MISES INSTITUTE (Dec. 14, 2013), <https://www.mises.ca/where-are-the-rothbardian-defense-agencies/>; Robert P. Murphy, *Drug Gangs and Private Law*, MISES INSTITUTE (Dec. 17, 2013), <http://mises.ca/posts/blog/drug-gangs-and-private-law/>; Robert P. Murphy, *Randians versus Rothbardians*, MISES INSTITUTE (Dec. 22, 2014), <http://mises.ca/posts/blog/randians-versus-rothbardians/>; LLEWELLYN H. ROCKWELL JR., *AGAINST THE STATE: AN ANARCHO-CAPITALIST MANIFESTO* (2014); Llewellyn H. Rockwell Jr., *What Libertarianism Is, and Isn't*, LEWROCKWELL.COM (Mar. 31, 2014), <http://www.lewrockwell.com/2014/03/lew-rockwell/what-libertarianism-is-and-isnt/>; Murray N. Rothbard, *Society Without a State*, 7 LIBERTARIAN FORUM 3 (1975); Murray N. Rothbard, *Punishment and Proportionality*, in *ASSESSING THE CRIMINAL: RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS* 259 (R. E. Barnett & J. Hagel III eds., Ballinger Publishing Co., 1977); MURRAY N. ROTHBARD, *THE ETHICS OF LIBERTY* (New York University Press, 1998) (1982); BUTLER SHAFFER, *THE WIZARDS OF OZYMANDIAS: REFLECTIONS ON THE DECLINE AND FALL* 224-35 (2012); PETER SLOTERDIJK, *THE GRASPING HAND: THE MODERN DEMOCRATIC STATE PILLAGES ITS PRODUCTIVE CITIZENS* (2010), http://www.city-journal.org/2010/20_1_snd-democratic-state.html (last visited May 7, 2016); LYSANDER SPOONER, *NO TREASON: THE CONSTITUTION OF NO AUTHORITY AND A LETTER TO THOMAS F. BAYARD* (Larkspur, 1966) (1870); EDWARD STRINGHAM, *ANARCHY AND THE LAW: THE POLITICAL ECONOMY OF CHOICE* (2007); MORRIS TANNEHILL & LINDA TANNEHILL, *THE MARKET FOR LIBERTY* (Laissez Faire Books, 1984) (1970); Patrick Tinsley, *With Liberty and Justice for All: A Case for Private Police*, 14 J. LIBERTARIAN STUD. 95 (1998-1999); Robert Wenzel, *Robert Ringler's Strawman Anarchist*, LEWROCKWELL.COM (Feb. 2, 2013), <http://archive.lewrockwell.com/wenzel/wenzel211.html>.

3. As all too often occurs.

solely on Israel.⁴ The first thing that may surprise the reader is why this author is talking about the *entire* Middle East (not only in the title, but in his article as well) when he is *only* analyzing the situation with regard to Israel.⁵ The major problem with the article is the reasons he uses in order to arrive at that conclusion.⁶

It is difficult to understand why, among all the conflicts that were taking place in the Middle East at that time,⁷ Rothbard focuses on Israel. Most wars in this part of the world did not involve that country.

4. Murray N. Rothbard, *War Guilt in the Middle East*, 3 LEFT & RIGHT 20 (1967), http://mises.org/journals/lar/pdfs/3_3/3_3_4.pdf. Unless otherwise specified, all mentions of this author will refer to this one essay of his.
5. Which amounts now to: “. . . about 290 miles (470 km.) in length and 85 miles (135 km.) in width at its widest point” with a population of 7.8 million people, only near 0.1% of the Middle East. ISR. MINISTRY OF FOREIGN AFF., <http://mfa.gov.il/MFA/AboutIsrael/Pages/ISRAEL%20IN%20BRIEF.aspx> (last visited May 8, 2016). The total surface of Israel is 21,671 km², Judea and Samaria 5,506 km², Gaza 378 km², Grand Total 27,555 km², see Sergio DellaPergola, *Demography in Israel/Palestine: Trends, Prospects, Policy Implications*, IUSSP XXIV GENERAL POPULATION CONFERENCE SALVADOR DE BAHIA: POPULATION CHANGE AND POLITICAL TRANSITIONS 4 (2001); Judea and Samaria is often called the West Bank, and together with Gaza they are called “Palestinian Territories”. But this is misleading since these are “disputed territories” and there are also Jewish settlements in Judea and Samaria such as Modi’in Illit, Ma’ale Adumim, Beitar Illit and Ariel.
6. For another critique of Israel on supposedly broadly libertarian grounds, see Stefan Molyneux, *The Truth about Israel and Palestine*, YOUTUBE (Jul. 31, 2014), <https://www.youtube.com/watch?v=iKzlh9kN4HI>; for a rebuttal, see Chris LeRoux, *The Real Truth about Molyneux’s Alleged Truth of the Israeli-Arab/Muslim Conflict*, PEACE, FREEDOM, AND PROSPERITY (Aug. 1, 2014), <http://peacefreedomprosperity.com/7871/real-truth-molyneuxs-alleged-truth-israeli-arabmuslim-conflict/>. For the Objectivist position on Israel see Ayn Rand, *Ayn Rand on Israel and the Middle East at Phil Donahue Show* (1979), YOUTUBE, <https://www.youtube.com/watch?v=2uHSv1asFvU> (last visited May 7, 2016); and Yaron Brook & Peter Schwartz, *Israel has a Moral Right to Its Life*, AYN RAND INSTITUTE (Jun. 24, 2002), <https://ari.aynrand.org/issues/foreign-policy/middle-east/Israel-Has-a-Moral-Right-to-Its-Life>. For a critique of Ayn Rand’s views of the Israeli situation, see Murray N. Rothbard, *Rand on the Middle East* (1971), LEWROCKWELL.COM, <http://www.lewrockwell.com/2014/08/murray-n-rothbard/ayn-rands-monstrous-views-on-the-middle-east/> (last visited May 7, 2016).
7. A brief summary can be found at: *List of Modern Conflicts in the Middle East*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_modern_conflicts_in_the_Middle_East (last visited May 8, 2016).

And what of the ones in which Israel did take part? It is our contention that Mr. Libertarian's⁸ analysis of these conflagrations was erroneous.

The authors of the present paper are all great admirers of the work of Murray N. Rothbard. We are his students, and he is our mentor, when it comes to economics, politics, history, philosophy, law, and, certainly, libertarianism. However, we part company from him on this one particular subject.⁹

8. We do not at all characterize Murray Rothbard as "Mr. Libertarian" sarcastically. We maintain that he is a giant of liberty, and has done more to promote, and, yes, create, the philosophy of libertarianism than any other person. We, however, do take the position that his analysis of the Israeli-Palestinian conflict is mistaken.
9. We do so with admiration and respect. The paragraph in the text only hints at our stupendous intellectual and ethical debt to him. He was one of the best political economists in history. But, we intend to use the paths he blazed with regard to private property rights based on homesteading, to undermine his analysis of the Israeli situation. Rothbardianism is not a cult. His followers, such as we the present authors, are allowed to disagree with the master, as in the present essay. *Also see* in this regard Walter E. Block, *A Libertarian Case for Free Immigration*, 13 J. LIBERTARIAN STUD. 167 (1998); Walter E. Block, *Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein*, 17 J. LIBERTARIAN STUD. 39 (2003); Walter E. Block et. al., *The Division of Labor under Homogeneity: A Critique of Mises and Rothbard*, 66 AM. J. ECON. & SOCIOLOGY 457 (2007); Walter E. Block, *Libertarian Punishment Theory: Working for, and Donating to, the State*, 1 LIBERTARIAN PAPERS ART. 17 (2009); Walter E. Block, *Toward a Libertarian Theory of Guilt and Punishment for the Crime of Statism*, in *PROPERTY, FREEDOM AND SOCIETY: ESSAYS IN HONOR OF HANS-HERMANN HOPPE* 137-48 (Jorg Guido Hulsmann & Stephan Kinsella eds., 2009); Walter E. Block, *Hoppe, Kinsella and Rothbard II on Immigration: A Critique*, 22 J. LIBERTARIAN STUD. 593 (2011); Walter E. Block, *Rejoinder to Hoppe on Immigration*, 22 J. LIBERTARIAN STUD. 771 (2011); Walter E. Block, *The Human Body Shield*, 22 J. LIBERTARIAN STUD. 625 (2011); Walter E. Block, *Interview with Daniel Rothschild: A Critique of Fractional Reserve Banking and of Murray N. Rothbard's Analysis of Israeli Land Claims*, YOUTUBE (Aug. 5, 2014), <https://www.youtube.com/watch?v=q4A5hpzYb94>; William Barnett II & Walter E. Block, *Money: Capital Good, Consumers' Good, or (Media of) Exchange Good?*, 18 REV. OF AUSTRIAN ECON. 179 (2005); William Barnett II & Walter E. Block, *Mises, Rothbard and Salerno on Costs*, 3 CORPORATE OWNERSHIP AND CONTROL 204 (2005-06); William Barnett II & Walter E. Block, *Rothbard on V Shaped Average and Total Cost Curves*, 9 Q. J. AUSTRIAN ECON. 61 (2006); William Barnett II & Walter E. Block, *On Hayekian Triangles*, 3 PROCESOS DE MERCADO: REVISTA EUROPEA DE ECONOMIA POLITICA 39 (2006); William Barnett II & Walter E. Block, *Saving and Investment: A Praxeological Approach*, 3 NEW PERSPECTIVES

The authors of the present article are all either anarcho-capitalists or minarchists, and thus do not particularly approve of what the government of Israel does to the people under its control, Jew or Arab, when it comes to taxation, the draft, etc. On the contrary, we support what it *does not* do, i.e. the liberties that it does allow its citizens and others under its thumb to maintain.

In this paper we offer no views whatsoever about the U.S.-Iranian agreement (2015); concerning who should be the Prime Minister of Israel; involving the foreign or domestic policy of this country; regarding U.S.-Israeli relations, etc. We are solely concerned with the Israeli right to exist, and its territorial claims.

In section II we offer the basic premise of our analysis. The burden of section III is to discuss the British and World War I. In section IV we study the relationship of Zionism to our subject. Section V is given over to our analysis of the birth of the state of Israel and how this impacts criticisms of it offered by Rothbard. In section VI we focus on the Arab leaders and in VII on the state of war. Jewish claims are presented in section VIII. We conclude in section IX.

ON POLITICAL ECON. 129 (2007); Walter E. Block et al., *Relationship between Wealth or Income and Time Preference is Empirical, Not Apodictic: Critique of Rothbard and Hoppe*, 19 REV. AUSTRIAN ECON. 69 (2006); Walter E. Block & Gene Callahan, *Is There A Right to Immigration? A Libertarian Perspective*, 5 HUM. RTS REV. 46 (2003); Walter E. Block et al., *The Division of Labor under Homogeneity: A Critique of Mises and Rothbard*, 66 AM. J. ECON. & SOCIOLOGY 457 (2007). Another follower and student of Rothbard who took a very different path from his mentor on the very establishment of libertarianism is Hoppe, see Hans-Hermann Hoppe, *On the Ultimate Justification of the Ethics of Private Property*, 2 LIBERTY 20 (1988); Hans-Hermann Hoppe, *The Justice of Economic Efficiency*, 2 AUSTRIAN ECON. NEWSLETTER 1 (1988); Hans-Hermann Hoppe, *From the Economics of Laissez Faire to the Ethics of Libertarianism*, in MAN, ECONOMY AND LIBERTY: ESSAYS IN HONOR OF MURRAY N. ROTHBARD 56 (1988); Hans-Hermann Hoppe, *Utilitarians and Randians vs Reason*, 2 LIBERTY 53 (1988); HANS-HERMANN HOPPE, THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY (1993); HANS-HERMANN HOPPE, ECONOMIC SCIENCE AND THE AUSTRIAN METHOD (1995).

II. THE BASIC PREMISE

Rothbard begins his discussion by pointing out that, although every conflict is to be *ultimately* blamed in the existence of states, many libertarians usually use this principle in order to *avoid* taking any sides in any conflict that may arise. As “sectarians,” they tend to become irrelevant by taking this position (e.g., *no position*), and thus fail to recognize that in any given conflict *not every party is equally guilty*. By not taking sides with the “less guilty” one, Rothbard implies that those libertarians actually promote the perpetuation of war. They offer no solution apart from the “mantra” that “states are the cause of war”.

This thesis is only *partly* true. States are overwhelmingly *often* the main cause of war, but such battles may arise as well between non-governmental organizations. In the particular case of Israel, what might well be characterized as a state of war began many years *before* there was any state. In fact, a large part of the Arab population bitterly opposed any sort of Jewish *presence* in the area, entirely apart from the creation of any Jewish state. As an example, multiple attacks were carried against Jewish settlements and neighborhoods in the cities of Palestine¹⁰ resulting in the murder of hundreds of Jews, such as the Hebron “*Pogrom*”¹¹ of 1929, an example of such hatred:

April, 1920 (Easter Sunday). Savage attacks were made by Arab rioters in Jerusalem on Jewish lives and property. Five Jews were killed and 211 injured. . . .¹²

1st May, 1921. Arabs of Jaffa murderously attacked Jewish inhabitants of the town and Arab raids were made on five Jewish rural settlements; the disorders were suppressed by the police and military forces. Forty-seven Jews were killed and 146 wounded, mostly by Arabs, and 48 Arabs were killed and 73 wounded, mostly by police and military action . . .¹³

10. E.g. Ricki Hollander, *Anti-Jewish Violence in Pre-State Palestine/1929 Massacres*, CAMERA (Aug. 23, 2009), http://www.camera.org/index.asp?x_context=2&x_outlet=118&x_article=1691; and other sources at THE MIDDLE EAST PIECE, <http://www.middleeastpiece.com/palestinianviolence.html>.
11. For a full report on the Hebron Massacre (Aug. 23, 1929), see JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/History/hebron29.html> (last visited May 8, 2016).
12. 1 ANGLO-AM. COMM. OF INQUIRY, A SURVEY OF PALESTINE 17 (1946).
13. *Id.* at 18.

1932. The year was marked by refusal of the Arabs to co-operate with the Jews in every field. The Arab Executive declared a boycott of the “Levant Fair” at Tel Aviv. Arabs invited to serve as members on a Government education committee declined to accept and two Arab members of the Road Board resigned.¹⁴

August, 1933. A campaign against Jewish immigration¹⁵ was begun in the Arab press and developed in intensity during the following months.

September, 1933. The President of the Arab Executive (Musa Ivasem Pasha Hussein) at the Moslem festival of Nebi Bubin made a violent speech against Jewish immigration. This was followed by Arab agitation, fostered by means of press articles and public meeting.¹⁶

18th May, 1936 . . . During May and June the strike was effectively imposed; Jaffa port was put out of action; there were intermittent local demonstrations and assaults on Jews; there was destruction of Jewish property and sniping at Jewish settlements; sporadic attacks were made on the railway lines, two trains were derailed, roads barricaded and telephone wires cut; and armed bands, swelled by volunteers from Syria and Iraq, made their appearance in the hills.¹⁷

6th August, 1938 . . . During 1938 the Arab campaign of murder and sabotage gathered strength; gang warfare was gradually developed in the hills on organized lines and was accompanied by increased terrorism in the towns; the roads became unsafe for use and the economic and social life of the country was seriously disrupted. The campaign received its momentum from the political leaders who had found refuge in Syria, the Lebanon and Iraq and from their supporters in those countries; arms and money were smuggled across the frontiers into Palestine, and gangsters and assassins were recruited, equipped and issued with instructions by rebel organizations in Beirut and Damascus; in an endeavour to check the movement across the frontier a barbed wire barrier was constructed in June, on the advice of Sir Charles Tegart, along the northern and northeastern boundaries of Palestine. The great majority of Arabs who had hitherto been prominent in the life of the country and who had not either been deported, excluded from Palestine or detained under Emergency Regulations found it prudent to leave; any who remained and attempted loyalty to Government or refused assistance to the rebels were subjected to intimidation, abduction and murder; pressure was

14. *Id.* at 30.

15. For a critique of Rothbard’s position in general against free immigration, see Block, *A Libertarian Case for Free Immigration* . . . *supra* note 9; Block & Callahan, *supra* note 9; Block, *Rejoinder* . . . *supra* note 9; Block, *Hoppe, Kinsella and Rothbard II* . . . *supra* note 9; Anthony Gregory & Walter E. Block, *On Immigration: Reply to Hoppe*, 21 J. LIBERTARIAN STUD. 25 (2007).

16. ANGLO-AM. COMM. OF INQUIRY, *supra* note 12, at 31.

17. *Id.* at 35-36.

brought to bear in particular on village mukhtars and police personnel, many of whom paid with their lives for their connections with Government.¹⁸

This hatred was by no means only held by specific religious groups, but by Arabs in general:

The hostility shown towards the Jews during the riots was shared by Arabs of all classes; Moslem and Christian Arabs, whose relations had hitherto been uneasy, were for once united. Intense excitement was aroused by the wild anti-Jewish rumours which were spread during the course of the riots¹⁹

One Foreign Office cable . . . spoke of Arab hatred of the Jews as being greater than that of the Nazis. The AHC . . . issued an "ultimatum" and threatened "jihad." . . . The publication of the report triggered violent demonstrations in Baghdad and Palestine. . . . At least one Baghdad newspaper called for jihad Another called on the Arabs to "annihilate all European Jews in Palestine".²⁰

The most common argument in Arab anti-Zionist literature is that Zionism is an appendix of imperialism and lacks any ideological originality. Common terms for the imperialist-Zionist strategy of usurpation are *matami'* (ambitious designs, schemes), *mukhattafa!* (plans, strategies) and *gham* (incursion, aggression). Quite a few historians extend their rejection of Zionism beyond the Middle East and contest the legitimacy of Zionism even in the European context. They try to show that the Jews themselves are

18. *Id.* at 44-45.

19. *Id.* at 19.

20. BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR 34-35 (2008); THE MIDDLE EAST PIECE, <http://www.middleeastpiece.com/palestinianviolence.html>. AHC stands for Arab High Committee.

responsible for the rise of anti-Semitism²¹ in Europe.²²

Thus, Rothbard begins his analysis on the wrong foot. There was no state of Israel that could be blamed for the detestation of the Jews on the part of the Arab population before the birth of the state of Israel in 1948.

III. THE BRITISH AND WORLD WAR I

Rothbard points out that the root of the conflict is based on British Imperialism,²³ of which Zionism was supposedly a branch. The British

21. On Anti-Semitism or Judeophobia see Gustavo D. Perednik, *Judeophobia-Anti-Semitism, Jew-Hate and anti-”Zionism”*, ZIONISM & ISR. INFO. CTR, available at <http://www.zionism-israel.com/his/judeophobia.htm> (last visited May 7, 2016). Rose Wilder Lane said on this subject:

Today the people called Jews . . . have in common only one thing, a tradition. It is the tradition that Americans have—an inheritance from men who once asserted, against the whole world, that men are free. With reason, the Old World hates the Jews. Four thousand years ago, a Jew said that men are free. Two thousand years ago, a Jew preached that men are free. In medieval Europe, the Jews came from Spain, knowing that men are free. That knowledge will destroy the whole Old World concept of the universe and of man, it will break up the foundations of Old World nations and States, and shatter the very basis of their subjects’ lives. So they are afraid of the Jew. They ward him off; they shut him out; they build walls around him; they kill him. Their actions show that they are afraid. Every attack upon Jews, from exclusion from this country’s public universities to the ghettos and the massacres in Poland today, are the acts of men who are afraid. And who leads these attacks? A tyrant. Wherever tyranny is strongest—in 15th-century Spain, in Czarist Russia, in Nazi Germany—attacks upon the Jew are most mercilessly atrocious. All over the Old World, again and again, for two thousand years, hatred of the Jews has flared up. It is always the hatred that comes from fear, and always—every time, in every instance—it is begun and fostered by men who are afraid of the knowledge that men are free.

ROSE WILDER LANE, *THE DISCOVERY OF FREEDOM* 79-80 (1943).

22. Maurus Reinkowski, *Late Ottoman Rule over Palestine: Its Evaluation in Arab, Turkish and Israeli Histories, 1970-90*, 35 MIDDLE EASTERN STUD. 66, 68 (1999).
23. He states: “Into the heart of the peasant and nomadic Arab world of the Middle East there thus came as colonists, and on the backs and on the bayonets of Brit-

promised the Arabs a “land free from Turkish domination”, but at the same time their real objective was to secure a Jewish state in the “Arab Palestine”, which, as Rothbard points out, was a land emphatically not connected to Jews (and nor, therefore, to Zionists). But this is not true:

For one thing, Jewish colonization during its first forty years took place in the Ottoman Empire. It was not part of the process of imperial expansion in search for power and markets. Moreover, it did not come about as a consequence of industrialization and financial interests. Indeed, as numerous scholars have noted, Jewish settlement was so unprofitable that it was judged then, and at times still is, to be economically irrational. The scathing critique of Zionism then, is not a direct outgrowth of Fieldhouse’s analysis of colonialism but rather an analysis of revisionist scholars who have wrenched a concept out of context²⁴ in keeping with their own ideological agenda.²⁵

The reality is that Jewish presence in the land of Palestine was almost *uninterrupted*²⁶ since the great exile²⁷ started in 135 C.E.:²⁸

Even after the destruction of the Second Temple in Jerusalem, and the beginning of the exile, Jewish life in the Land of Israel continued and often flourished. Large communities were reestablished in Jerusalem and Tiberias by the ninth century. In the 11th century, Jewish communities grew in Rafah, Gaza, Ashkelon, Jaffa and Caesarea. The Crusaders massacred many Jews during the 12th century, but the community rebounded in the next two centuries as large numbers of rabbis and Jewish pilgrims immigrated to Jerusalem and the Galilee. Prominent rabbis established communities in Safed, Jerusalem and elsewhere during the next 300 years. By the early 19th century—years before the birth of the modern Zionist movement—more than 10,000 Jews lived throughout what is today Israel.²⁹

The population in Jerusalem from mid-nineteenth century shows an example of Jewish presence in Palestine.

ish imperialism, a largely European colonizing people”. Rothbard, *supra* note 4, at 23.

24. See AYN RAND, *THE VIRTUE OF SELFISHNESS* (1964), on “context-dropping” in note 140 below.
25. Ilan Troen, *Jewish Settlement in the Land of Palestine*, JEWISH VIRTUAL LIBRARY (Jul., 2011), <https://www.jewishvirtuallibrary.org/jsource/isdf/text/troen.html>.
26. See *infra* Maps V, VI and VII in Appendix B.
27. The main source of these “interruptions” was initiatory violence against Jews.
28. See also *infra* Table V.
29. MITCHELL G. BARD, *MYTHS AND FACTS: A GUIDE TO THE ARAB ISRAELI CONFLICT 1* (2012) (one of our best sources to refute common myths against Israel).

I. Population in Jerusalem							
Year	Jews	%	Muslims	%	C h r i s - tians	%	Total
1844	7120	45.91%	5000	32.24%	3390	21.86%	15510
1876	12000	47.94%	7560	30.20%	5470	21.85%	25030
1896	28112	61.89%	8560	18.85%	8748	19.26%	45420
1905	40000	66.67%	7000	11.67%	13000	21.67%	60000
1910	47400	64.40%	9800	13.32%	16400	22.28%	73600
1922	33971	54.29%	13413	21.43%	14699	23.49%	62578
1931	51222	56.63%	19894	21.99%	19335	21.38%	90451
1948	100000	60.61%	40000	24.24%	25000	15.15%	165000
1967	195700	74.32%	54963	20.87%	12646	4.80%	263309
1970	215000	74.39%	61600	21.31%	11500	3.98%	289000
1987	340000	71.58%	121000	25.47%	14000	2.95%	475000
1990	378200	72.12%	131800	25.13%	14400	2.75%	524400
2009	476000	62.57%	247800	32.57%	15200	2.00%	760800

Source: Data from ISI LEIBLER, *THE CASE FOR ISRAEL* 65 (1972); and MITCHELL G. BARD, *MYTHS AND FACTS: A GUIDE TO THE ARAB ISRAELI CONFLICT* 189 (2012).

Even the actual word to designate the land of Judah (Palestine) is the result of a *Roman* edict³⁰ in order to destroy any link the Jews may have had with the land.³¹ There are thousands of references to the

30. Rothbard, *supra* note 4, at 21. “The chronic Middle East crisis goes back—as do many crises—to World War I”. We beg to differ. In our view, while World War I and its aftermath were indeed important in analyzing the situation, incidents occurring centuries before that time are also highly relevant. Rothbard does indeed “go back still further in history” but still not far enough, we contend. How far back does he go at this point in his essay? In the paragraph he mentions the need to “go back still further in history” he gives no specific dates. But in the next paragraph, he mentions “the late 19th and the turn of the 20th centuries.” This is better, but we attempt to go far further back, see above and below. Indeed, this is our main criticism of this author: he does not go far back enough into history. But, at least Rothbard casts his net as far back as to the late 19th century. Robert Parry, *Yes, Hillary Clinton Is a Neocon*, LEWROCKWELL.COM (Apr. 29, 2016), <https://www.lewrockwell.com/2016/04/robert-parry/hillary-dangerous-neocon-warhawk/>, goes back only to 1940.

31. BARD, *supra* note 29, at 2. “The term ‘Palestine’ is believed to be derived from the Philistines, an Aegean people who, in the 12th Century B.C.E., settled along the Mediterranean coastal plain of what are now Israel and the Gaza Strip. In the second century C.E., after crushing the last Jewish revolt, the Romans first applied the name Palaestina to Judea (the southern portion of what is now called the West Bank) in an attempt to minimize Jewish identification with the

Land of Israel in Jewish texts and practices, also including the fact that religious Jews pray three times a day in order to get back to Israel and all prayers are done pointing to Jerusalem. Furthermore, it is difficult to see why Rothbard discusses an Arab Palestine when the area was almost *unpopulated* and their cities were less than third rank spots in the Arab world:

For many centuries, Palestine was a sparsely populated, poorly cultivated and widely-neglected expanse of eroded hills, sandy deserts and malarial marshes. As late as 1880, the American consul in Jerusalem reported the area was continuing its historic decline. "The population and wealth of Palestine has not increased during the last forty years" he said. The Report of the Palestine Royal Commission quotes an account of the Maritime Plain in 1913: "The road leading from Gaza to the north was only a summer track suitable for transport by camels and carts . . . no orange groves, orchards or vineyards were to be seen until one reached [the Jewish village of] Yabna [Yavne] . . . Houses were all of mud. No windows were anywhere to be seen. . . . The ploughs used were of wood. . . . The yields were very poor. . . . The sanitary conditions in the village were horrible. Schools did not exist. . . . The western part, towards the sea, was almost a desert. . . . The villages in this area were few and thinly populated. Many ruins of villages were scattered over the area, as owing to the prevalence of malaria, many villages were deserted by their inhabitants".³²

Surprisingly, many people who were not sympathetic to the Zionist cause believed the Jews would improve the condition of Palestinian Arabs. For example, Dawood Barakat, editor of the Egyptian paper *Al-Ahram*, wrote: "It is absolutely necessary that an entente be made between the Zionists and Arabs, because the war of words can only do evil. The Zionists are necessary for the country: The money which they will bring, their knowledge and intelligence, and the industriousness which characterizes them will contribute without doubt to the regeneration of the country".³³

land of Israel. The Arabic word Filastin is derived from this Latin name."

32. *Id.* at 4-5.

33. *Id.* at 5-6. "Even a leading Arab nationalist believed the return of the Jews to their homeland would help resuscitate the country. According to Sherif Hussein, the guardian of the Islamic Holy Places in Arabia: 'The resources of the country are still virgin soil and will be developed by the Jewish immigrants. One of the most amazing things until recent times was that the Palestinian used to leave his country, wandering over the high seas in every direction. His native soil could not retain a hold on him, though his ancestors had lived on it for 1000 years. At the same time we have seen the Jews from foreign countries streaming to Palestine from Russia, Germany, Austria, Spain, America. The cause of causes could not escape those who had a gift of deeper insight. They knew that the country was for its original sons (*abna'ihilasliyin*), for all their

This, then, was the picture of Palestine in the closing decades of the 19th century and up to the First World War: a land that was overwhelmingly desert, with nomads continually encroaching on the settled areas and its farmers; a lack of elementary facilities and equipment; peasants wallowing in poverty, ignorance and disease, saddled with debts (interest rates at times were as high as 60 per cent) and threatened by warlike nomads or neighbouring clans. The result was a growing neglect of the soil and a flight from the villages, with a mounting concentration of lands in the hands of a small number of large landowners, frequently residing in such distant Arab capitals as Beirut and Damascus, Cairo and Kuwait. Here, in other words, was a social and economic order that had all the earmarks of a medieval feudal society.³⁴

The result can be found in the British Palestine Exploration Fund (PEF) map of 1880, which at its time was the most detailed survey and map of the country, done by officers of the Royal Engineers in 1871-77. The map, which was printed in color on 26 sheets at a scale of 1:63,360, marked Bedouin tribes in a special font and placed them astride the parts of the country in which the surveyors had found them prevalent. It showed approximately 67 Bedouin tribes within the borders of what became Mandatory Palestine. It also reveals that the areas dominated by the Bedouin had increased, with the result that the rural environment was less settled and less cultivated than it had been 400 years before.³⁵

The same is true about the idea that there were a *specific people demanding a specific state* in Palestine. This is one of the consequences of talking about the entire Middle East when the *only* subject that is being touched is Israel. A majority of Arabs did not identify themselves as “Palestinians”³⁶ nor was there any specific area comprising “Palestine”. Actually, it was nothing more than an area without any specific borders or nationality.³⁷ The only time Palestine had a specific identity was

differences, a sacred and beloved homeland. The return of these exiles (*jaliya*) to their homeland will prove materially and spiritually [to be] an experimental school for their brethren who are with them in the fields, factories, trades and in all things connected with toil and labor”.

34. Moshe Aumann, *Land Ownership in Palestine 1880—1948*, in THE CASE FOR ISRAEL 117, 119 (The Executive Council of Australian Jewry, The Globe Press ed., 1972), available at <http://wordfromjerusalem.com/wp-content/uploads/2008/11/the-case-for-israel-appendix2.pdf>.
35. Seth J. Frantzman & Ruth Kark, *Bedouin Settlement in Late Ottoman and British Mandatory Palestine: Influence on the Cultural and Environmental Landscape, 1870-1948*, 1 NEW MIDDLE EASTERN STUD. 1, 4 (2011), available at <http://www.brismes.ac.uk/nmes/wp-content/uploads/2011/06/NMES2011FrantzmanKark.pdf> (last visited May 17, 2016).
36. We will analyze this subject more in detail further below in the text.
37. BARD, *supra* note 29, at 3-4. “Over the last 2,000 years, there have been massive

precisely after World War I when the British decided to divide the land. This is particularly relevant to this discussion, since most of the Arab population of that area identified themselves simply as Arabs, or as “citizens of Great Syria”.³⁸

It is significant that the early Arab nationalists never referred to Palestine, but described it as Southern Syria. On July 2, 1919 the Syrian General Congress adopted a resolution stating: We ask that there should be no separation of the southern part of Syria, known as Palestine, nor of the Littoral Western zone which includes Lebanon, from the Syrian country. We desire that the unity of the country should be guaranteed against partition under whatever circumstances.

As late as May 1947 Arab representatives at the UN General Assembly stated that: Palestine was part of the province of Syria . . . politically the Arabs of Palestine were not independent in the sense of forming a separate political entity.

Even later, on May 31, 1956, Ahmed Shukairy, the Saudi Arabian delegate to the UN, told the Security Council: It is common knowledge that Palestine is nothing but Southern Syria.³⁹

By the end of World War I in November 1918, however, the notion of a Syrian nation had made considerable headway among the Arabs of Palestine. They agreed almost unanimously on the existence of a Syrian nation. With few exceptions, they identified with the Syrian Arab government in Damascus, headed by Prince Faysal, a member of the Hashemite family. Palestinian enthusiasm for Pan-Syrian unity steadily increased through mid-1920. There is ample evidence for this enthusiasm. Three major Palestinian organizations propounded Pan-Syrian ideas in the immediate aftermath of World War I: the Arab Club, the Literary Club, and the Muslim-Christian Association. (Note that none of these names makes any mention of Palestine.) The first two groups went furthest, calling outright for unity with Syria under Faysal. Even the Muslim-Christian Association, an organization of traditional leaders—men who would expect to rule if Palestine became independent—demanded incorporation in Greater Syria. The Muslim-Christian Association held a congress in January-February 1919 to draw up demands to submit to the Paris Peace Conference. Representatives of fourteen Palestinian cities and

invasions (e.g., the Crusades) that killed off most of the local people, migrations, the plague, and other manmade or natural disasters. The entire local population was replaced many times over. During the British mandate alone, more than 100,000 Arabs emigrated from neighboring countries and are today considered Palestinians”.

38. See Daniel Pipes, *Palestine for the Syrians?*, COMMENTARY (Dec. 1, 1986), <https://www.commentarymagazine.com/articles/palestine-for-the-syrians/>.

39. ISI LEIBLER, *THE CASE FOR ISRAEL* 9-10 (1972).

towns presented a petition calling for Southern Syria to be “inseparable from the independent Arab Syrian government”. The congress declared Palestine “nothing but part of Arab Syria and it has never been separated from it at any stage”. The delegates saw Palestine tied to Syria by “national, religious, linguistic, moral, economic, and geographic bonds”. On the basis of this view, they called for a Palestine that would remain “undetached from the independent Arab Syrian Government”. Musa Kazim al-Husayni, head of the Jerusalem Town Council (in effect, mayor) told a Zionist interlocutor in October 1919: “We demand no separation from Syria”. According to Ahmad ash-Shuqayri (the man who headed the PLO in the 1960s), the ubiquitous slogan of 1918-19 was “Unity, Unity, From the Taurus [Mountains] to Rafah [in Gaza], Unity, Unity”. The same appeal echoed from all corners. A singer in Ramla encouraged her “enraptured listeners” to join Faysal’s forces. From San Salvador, of all places, a protest in March 1919 went out from the “Syrian Palestinians” to international leaders calling for “no separation between Syria and Palestine” and expressing hope that “Syria and Palestine remain united”. The Salvadorans declared: “We trust that if Syria and Palestine remain united, we will never be enslaved by the Jewish yoke”.⁴⁰

Saying that the British had to stay in the area of Palestine in order to “fulfill its promise”⁴¹ to Zionism is to ignore the fact that the Zionists were the ones who particularly fought to expel the British. Apart from the *Balfour Declaration* there was no such thing as a British promotion of Jewish settlements in Palestine.⁴² Indeed, the very opposite was the case:

Moreover, as British historian Paul Johnson noted, Zionists were hardly tools of imperialists given the powers’ general opposition to their cause. “Everywhere in the West, the foreign offices, defense ministries and big business were against the Zionists”. Emir Faisal also saw the Zionist movement as a companion to the Arab nationalist movement, fighting against imperialism, as he explained in a letter to Harvard law professor and future Supreme Court Justice Felix Frankfurter on March 3, 1919, one day after Chaim Weizmann presented the Zionist case to the Paris conference. Faisal wrote: “The Arabs, especially the educated among us, look with deepest sympathy on the Zionist movement. . . . We will wish the Jews a hearty welcome home. . . . We are working together for a reformed and revised Near East and our two movements complete one another. *The Jewish movement is nationalist and*

40. Daniel Pipes, *The Year the Arabs Discovered Palestine*, 21 MIDDLE EAST REV. 37 (1989), <http://www.danielpipes.org/8025/the-year-the-arabs-discovered-palestine>.

41. All such otherwise unidentified quotes refer to Rothbard, *supra* note 4.

42. See BARD, *supra* note 29, at 12-15. Also see RONALD SANDERS, *THE HIGH WALLS OF JERUSALEM: A HISTORY OF THE BALFOUR DECLARATION AND THE BIRTH OF THE BRITISH MANDATE FOR PALESTINE* (1984).

not imperialist. And there is room in Syria for us both. Indeed, I think that neither can be a real success without the other [emphasis in the original].” In the 1940s, the Jewish underground movements waged an anti-colonial war against the British. The Arabs, meanwhile, were concerned primarily with fighting the Jews rather than expelling the British imperialists.⁴³

About Jewish Immigration, Bard continues:

The British response to Jewish immigration set a precedent of appeasing the Arabs, which was followed for the duration of the Mandate. The British placed restrictions on Jewish immigration while allowing Arabs to enter the country freely. Apparently, London did not feel that a flood of Arab immigrants would affect the country’s absorptive capacity. During World War I, the Jewish population in Palestine declined because of the war, famine, disease and expulsion by the Turks. In 1915, approximately 83,000 Jews lived in Palestine among 590,000 Muslim and Christian Arabs. According to the 1922 census, the Jewish population was 84,000, while the Arabs numbered 643,000. Thus, the Arab population grew exponentially while that of the Jews stagnated. In the mid-1920s, Jewish immigration to Palestine increased primarily because of anti-Jewish economic legislation in Poland and Washington’s imposition of restrictive quotas. The record number of immigrants in 1935 . . . was a response to the growing persecution of Jews in Nazi Germany. The British administration considered this number too large, however, so the Jewish Agency was informed that less than one-third of the quota it asked for would be approved in 1936. The British gave in further to Arab demands by announcing in the 1939 White Paper that an independent Arab state would be created within 10 years, and that Jewish immigration was to be limited to 75,000 for the next five years, after which it was to cease altogether. *It also forbade land sales to Jews in 95 percent of the territory of Palestine*. The Arabs, nevertheless, rejected the proposal. . . . By contrast, throughout the Mandatory period, Arab immigration was unrestricted. In 1930, the Hope Simpson Commission, sent from London to investigate the 1929 Arab riots, said the British practice of ignoring the uncontrolled illegal Arab immigration from Egypt, Transjordan and Syria had the effect of displacing the prospective *Jewish* immigrants.”⁴⁴ (emphasis added by present authors)

Rothbard says “Great Britain seized control of Palestine and used its sovereign power to promote, encourage, and abet the expropriation of Arab lands for Zionist use and for Zionist immigration. Often old Turkish land titles would be dredged up and purchased cheaply,⁴⁵ thus expropriating the Arab peasantry on behalf of European Zionist

43. BARD, *supra* note 29, at 9-10.

44. *Id.* at 14-15.

45. It is curious that Rothbard, obviously an opponent of price controls, would object to the price of a transaction.

immigration. Into the heart of the peasant and nomadic Arab world of the Middle East there (sic) thus came as colonists, and on the backs and on the bayonets of British imperialism, a largely European colonizing people". But this is not correct:

In 1914 the Jewish Colonization Association (J.C.A.), was granted a concession by the Ottoman government of over 25,510 dunams of Kabara swamp land. One of the main objectives was to dry and develop the swamps, which accounted for 6,000 dunams. The actual draining of the swamp was completed only in the 1920s, after the Mandate authorities maintained the Ottoman concession. Prior to the Mandate the J.C.A. also bought about 3,000 dunams, which were later provided to the local Bedouin, who lived on this land and constructed the new village of Jisr al-Zarqa (Bridge over the Zarqa), which exists today.⁴⁶

And all this is offset by the fact that the British restricted Jewish immigration throughout the entire period of the British Mandate. If the Jews obtained more land than they somehow deserved due to this Turkish short cut, they received less because of the latter factor. This is shown by several White Papers on immigration restriction.⁴⁷ In this regard:

Herbert Samuel, a British Jew who served as the first High Commissioner of Palestine, placed restrictions on Jewish immigration "in the 'interests of the present population' and the 'absorptive capacity' of the country".⁴⁸ The influx of Jewish settlers was said to be forcing the Arab fellahin (native peasants) from their land. This was at a time when less than a million people lived in an area that now supports more than nine million. The British actually limited the absorptive capacity of Palestine when, in 1921, Colonial Secretary Winston Churchill severed nearly four-fifths of Palestine—some 35,000 square miles—to create a brand new Arab entity, Transjordan. As a consolation prize for the Hejaz and Arabia (which are both now Saudi Arabia) going to the Saud family, Churchill rewarded Sherif Hussein's son Abdullah for his contribution to the war against Turkey by installing him as Transjordan's emir. The British went further and placed restrictions on Jewish land purchases in what remained of Palestine, contradicting the provision of the Mandate (Article 6) stating that "the Administration of Palestine . . . shall encourage, in cooperation with the Jewish Agency . . . close settlement

46. Frantzman & Kark, *supra* note 35, at 7-8.

47. See, e.g. British White Paper, May, 1939, Palestine Statement of Policy Presented by the Secretary of State for the Colonies to Parliament by Command of His Majesty.

48. AHARON COHEN, ISRAEL AND THE ARAB WORLD 172 (1970); HOWARD SACHAR, A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME 146 (1979); quoted at Bard, *supra* note 29, at 12.

by Jews on the land, including State lands and waste lands not acquired for public purposes". By 1949, the British had allotted 87,500 acres of the 187,500 acres of cultivable land to Arabs and only 4,250 acres to Jews. Ultimately, the British admitted the argument about the absorptive capacity of the country was specious. The Peel Commission said: "The heavy immigration in the years 1933–36 would seem to show that the Jews have been able to enlarge the absorptive capacity of the country for Jews"⁴⁹

But more importantly, Arabs were immigrating to Palestine at the same time and because of the economic development that the Jews created. "From 1922, Arabs began migrating to Palestine from Syria, Iraq, Lebanon, Trans-Jordan and Egypt. Between World War I and World War II the increase in Arab population was extraordinary, particularly in areas of Jewish concentration and development such as Haifa, where the increase was no less than 216 per cent. Where there was no Jewish development the population increase was much less, such as 32 per cent in Bethlehem and 42 per cent in Nablus. Palestine's overall Arab population more than doubled, from 565,000 in 1922 to over 1,200,000 in 1947—an increase which stood in stark contrast to the record of other Arab countries such as Trans-Jordan . . ." ⁵⁰

Alongside this was the creation of sixty villages by Bedouin in Late Ottoman and Mandate Palestine. The Bedouin villages were founded predominantly in places that became part of Israel in 1948. The reason for this is that Jewish land purchases and Bedouin settlement took place during the same period and in the same low lying areas, which formed part of the 'fluid inventory' of land. Jewish Zionist purchasing organizations, in general, purchased lands in the low country of Palestine where Arab settlement, in the form of nucleated villages, was relatively sparse but where the Bedouin were predominant.⁵¹

It is an important claim that a large part of what is now Israeli land was purchased by Jews from their owners, but under Turkish rule. These property titles were illegitimate, in that the land was really owned by Palestinian Arabs, since they had supposedly homesteaded it.⁵² We respond in several ways. One, at that time, this was the only lawful way to purchase property. What were Jews to do who wanted to buy land, other than go through the official channels? Two, these Turkish land titles had *some limited* validity, given that they were the only

49. BARD, *supra* note 29, at 12.

50. LEIBLER, *supra* note 39, at 11.

51. Frantzman & Kark, *supra* note 35, at 21.

52. But, as we have seen, most of that land was not homesteaded by Arabs. See Aumann, *supra* note 34.

ones available at the time. Three, more important, yes, several empires stole the land of Palestine from one another, from the Ottomans to the Romans, but the Romans improperly seized it from guess who? Yes, from the Jews (Judah).⁵³ So, contrary to Rothbard, the Jews were and still are the rightful owners of these lands. There was no need to purchase them, under Turkish land titles or any other. These purchases then can be interpreted almost as charitable giving even if we accept the claim that the Jews did not homestead those territories. But, as we have seen, this was not the case.

IV. ZIONISM

Rothbard's discussion of Zionism is also problematic. First he comments on the situation in the 19th century, explaining that the Ghetto Jews now had the chance to assimilate and abandon their Yiddish culture and Jewish religiosity.⁵⁴ Continuing, he asserts that this was not the case in Eastern Europe, where certain movements (such as the "Bund" and the "Territorialists") had certain "rational" ideas of what to do in order to secure Jewish survival and continuity. "The one Jewish movement that made no sense," says Rothbard, "was Zionism, a movement which began blended with Jewish Territorialism".

In our view, Zionism is in effect the Movement of National Liberation of the Jewish People.⁵⁵ The Jewish idea of coming back to the land of Israel to live there is not new. Zionism is not, and certainly was not in the 19th Century,⁵⁶ a homogeneous movement.

53. See PAUL JOHNSON, *A HISTORY OF THE JEWS* (1988).

54. Which for Rothbard in America and Europe "was clearly the rational course". Rothbard, *supra* note 4, at 22. However, he does not specifically explain what is wrong with remaining tied to any kind of Jewish religiosity.

55. Zionism is sometimes associated with the view that the U.S. should support Israel, whether militarily, or in term of foreign aid, etc. We do not associate ourselves with this understanding of that concept. Rather, we support Ron Paul's call for an end to *all* U.S. military and foreign aid, certainly including that earmarked for Israel.

56. See, e.g. of support for Jewish Home in Palestine the Letter to the Jewish Nation from the French Commander-in-Chief Buonaparte (1799), <http://www.mid-eastweb.org/napoleon1799.htm>.

The first writings in what later came to be known as Zionism appeared in the mid-1800s. In 1840 the Jews of Eastern Europe and the Balkans had been aroused by rumors that the messianic era was at hand. Various writers, most prominently Rabbi Judah Alkalai and Rabbi Zevi Hirsch Kalisher but including many others, were impressed by the nationalist fervor of Europe that was creating new nation-states and by the resurgence of messianic expectations among Jews. Kalisher wrote that Jewish nationalism was directly akin to other nationalist movements and was the logical continuation of the Jewish enlightenment that had begun in France in 1791 when Jews were granted civil liberties. Alkalai consciously altered his expectations from a miraculous messianic salvation to a redemption by human effort that would pave the way for the arrival of the messiah. Both authors urged the development of Jewish national unity, and Kalisher in particular foresaw the ingathering to Palestine of many of the world's Jews as part of the process of emancipation.⁵⁷

In fact, the source of Zionism could be traced back to the Babylonian exile, and after the great deportations of 135 C.E. many types of Zionism emerged. Until the 19th Century Jewish immigration and presence in Israel responded mainly to religious phenomena. Later other views appeared:⁵⁸

The first Jew to articulate a political Zionist platform was . . . Leo Pinsker, reflecting the disappointment of other Jewish maskalim [Jewish Enlightenment], wrote in a pamphlet entitled *Auto-Emancipation* that anti-Semitism was a modern phenomenon, beyond the reach of any future triumphs of "humanity and enlightenment". Therefore Jews must organize themselves to find their own national home wherever possible, not necessarily in their ancestral home in the Holy Land. Pinsker's work attracted the attention of Hibbat Tziyyon (Lovers of Zion), an organization devoted to Hebrew education and national revival. Ignoring Pinsker's indifference toward the Holy Land, members of Hibbat Tziyyon took up his call for a

57. Helen C. Metz, *Zionist Precursors*, in *ISRAEL: A COUNTRY STUDY* (Library of Congress, 1988), <http://countrystudies.us/israel/8.htm>.
58. See, e.g. of different types of Zionism (Spiritual, Cultural, Political, etc.) LEON-PINSKER, *AUTO-EMANCIPATION* (1882); SHLOMO AVINERI, *THE MAKING OF MODERN ZIONISM* (1981); AHAD HA'AM, *THIS IS NOT THE WAY* (1889), http://www.zionismontheweb.org/ehad_haam1.htm (last visited May 4, 2016); AHAD HA'am, *An Open Letter to My Brethren in the Spirit: Pinsker and His Pamphlet Auto-Emancipation* (1891), available at http://www.zionismontheweb.org/achadhaam_letterpinsker.htm (last visited May 4, 2016); AHAD HA'AM, *NATIONALISM AND THE JEWISH ETHIC: BASIC WRITINGS OF AHAD HA'AM* (1962); THEODORE HERZL, *THE JEWISH STATE* (Dover Publications, 1989) (1896); ATHUR HERTZBERG, *THE ZIONIST IDEA: A CONCEPTUAL ANALYSIS AND READ-ER* (1959); VLADIMIR Z. JABOTINSKY, *THE IRON WALL* (1923).

territorial solution to the Jewish problem. Pinsker, who became leader of the movement, obtained funds from the wealthy Jewish philanthropist, Baron Edmond de Rothschild—who was not a Zionist—to support Jewish agricultural settlement in Palestine at Rishon LeZiyyon, south of Tel Aviv, and Zikhron Yaaqov, south of Haifa⁵⁹

Rothbard seems to be specifically talking about *Political Zionism*, championed by Theodore Herzl and later Chaim Weizmann, but even so he is not accurate in his description. The Political Zionists were not talking only about Palestine, since even Herzl presented other proposals such as Uganda⁶⁰ (which, despite the prior statement of Zionism being obsessed with “Palestine alone”, Rothbard later recognizes)⁶¹ and a territory in Argentina.⁶² The objective was to give millions of persecuted Jews a secure home land out of the reach of abusive state apparatuses.⁶³

59. Helen C. Metz, *Political Zionism*, in ISRAEL: A COUNTRY STUDY (Library of Congress, 1988), <http://countrystudies.us/israel/9.htm>.
60. Louis Lipsky, *Introduction*, in HERZL, *supra* note 58, at 3, 5.
61. In 1903, the British offered territory in Uganda for Jewish colonization, and the rejection of this offer by the Zionists polarized the Zionist and Territorialist movements which previously had been fused together. From then on, the Zionists would be committed to the blood- and-soil mystique of Palestine, and Palestine alone, while the Territorialists would seek virgin land elsewhere in the world”. Rothbard, *supra* note 4, at 23.
62. Stephan Kinsella, *New Israel: A Win-Win-Win Proposal*, LEWROCKWELL.COM (Oct. 1, 2001), <http://archive.lewrockwell.com/orig/kinsella5.html>. Suggests moving the Jewish state to Utah and Wyoming, while Stephan Kinsella, *Yet more on “New Israel”*, STEPHAN KINSELLA (Apr. 2, 2003), <http://www.stephankinsella.com/2003/04/yes-more-on-new-israel/> cites several other authors with transportation suggestions of this sort for Israelis. All we have to say about this (as minimum), apart from the obvious injustice of forcing Jews to abandon their property and homes, is that it would necessarily involve involuntary transfers (unless one thinks the Israelis will accept such a move, which is absurd), and therefore the violation of the non-aggression principle.
63. Metz, *supra* note 59. “The new state would be modeled after the post-emancipation European state. Thus, it would be secular in nature, granting no special place to the Hebrew language, Judaism, or to the ancient Jewish homeland in Palestine In 1897 Herzl convened the First Zionist Congress in Basel, Switzerland. The first congress adopted the goal: ‘To create for the Jewish people a home in Palestine secured by Public Law’. The World Zionist Organization (WZO) was founded to work toward this goal, and arrangements were made for future congresses. The WZO established a general council, a central executive, and a congress, which was held every year or two. It developed member societies worldwide, continued to encourage settlement in Palestine, registered a bank in London, and established the Jewish National Fund (Keren Kayemet)

The impetus to the founding of a Zionist organization with specific goals was provided by Theodor Herzl The turning point in Herzl's thinking on the Jewish question occurred during the 1894 Paris trial of Alfred Dreyfus, a Jewish officer in the French army, on charges of treason (the sale of military secrets to Germany). Dreyfus was convicted, and although he was eventually cleared, his career was ruined. The trial and later exoneration sharply divided French society and unleashed widespread anti-Semitic demonstrations and riots throughout France. To Herzl's shock and dismay, many members of the French intellectual, social, and political elites—precisely those elements of society into which the upwardly mobile emancipated Jews wished to be assimilated—were the most vitriolic in their anti-Semitic stance. The Dreyfus affair proved for Herzl, as the 1881 pogroms had for Pinsker, that Jews would always be an alien element in the societies in which they resided as long as they remained stateless. He believed that even if Jewish separateness in religion and social custom were to disappear, the Jews would continue to be treated as outsiders. Herzl put forth his solution to the Jewish problem in *Der Judenstaat* (The Jewish State) published in 1896. He called for the establishment of a Jewish state in any available territory to which the majority of European Jewry would immigrate.⁶⁴

The fact is that the Jewish population was not only subjected to anti-Semitism and violence as second class citizens, but specifically in Eastern Europe to mass slaughter in the “pogroms.”⁶⁵ For Political Zionists, which land was to be the shelter for Jews was not that relevant, although Palestine was the obvious choice due to the millennia connection between the Jewish People and *Eretz Yisroale* (the land of Israel). The main point was to find a secure place for Jews to live free from persecution under a State.⁶⁶

to buy land in Palestine . . .” (emphasis added by present authors).

64. Metz, *supra* note 59.

65. For a brief description on the history and nature of pogroms see *Pogroms*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/History/pogroms.html>.

66. For other Zionists, such as Ahad Ha'am, the “. . . solution was cultural Zionism: the establishment in Palestine of small settlements aimed at reviving the Jewish spirit and culture in the modern world. In the cultural Zionist vision, a small number of Jewish cadres well versed in Jewish culture and speaking Hebrew would settle in Palestine. Ahad Ha'am believed that by settling in that ancient land, religious Jews would replace their metaphysical attachment to the Holy Land with a new Hebrew cultural renaissance. Palestine and the Hebrew language were important not because of their religious significance but because they had been an integral part of the Jewish people's history and cultural heritage”. Helen C. Metz, *Cultural Zionism in ISRAEL: A COUNTRY STUDY* (Library of Congress, 1988), <http://countrystudies.us/israel/10.htm>.

Since Rothbard does not specify what is to be understood as Palestine territory, it is not possible to know whether or in which way it was occupied by “Arab peasantry”. We must say here that grouping an entire territory as “occupied” is wrong on libertarian grounds, since its homesteading theory does not group entire tracts as “occupied” or not. It only says that whatever is homesteaded is occupied and owned, and whatever is not, *is not*. So Rothbard may not selectively point to a territory and call it “occupied”. He may say certain areas are homesteaded by Arabs, and that is certainly true. But the Jews did not come in and destroy Arab towns and build over previously homesteaded territory. The fact is Jews for the most part homesteaded unoccupied areas. To say that an entire terrain is occupied⁶⁷ (and also talking about

67. Also this term, often used for Israel as such, is misleading (as we explained in the note number 5).

The United Nations Population Division’s 2000 revised population projections adopt the caption “Occupied Palestinian Territories” instead of the previous label of “West Bank and Gaza”. The decision to change denominations reflected discussions at the U.N. Legal Office, Department of Political Affairs, Office of the Secretary General, and General Assembly following a request from the Palestinian Authority supported by the group of Arab States. That led to a 1999 instruction to the Population Division to report statistics according to the new denomination. The decision is documented in a series of internal memoranda based on a more general decision by the General Assembly that does not refer specifically to statistical reporting. The label “Occupied Palestinian Territories”, besides being politically oriented, is neither geographically clear nor accurate. In the current (2001) political-military reality of the whole territory of Palestine between the Mediterranean sea and the Jordan river, and following the 1993 Oslo agreements, there are four types of geopolitical situations: 1. The State of Israel: Full Israeli sovereignty; 2-4. The Palestinian Territories, subdivided into: 2. The “A” zones: these areas, including all main Palestinian cities in the West Bank and Gaza and 64% of the Palestinian Territories’ population, are in full administrative and security control by the Palestinian Authority and host no Israeli military or civilian settlement; 3. The “B” zones: 33% of population, Palestinian administrative responsibility, Israel army’s security responsibility; 4. The “C” zones: 3% of population, full responsibility by the Israeli army. Only the “B” and “C” zones host both a military and a civilian presence of Israelis and can accurately be described as “occupied territory”, but as noted most Palestinians live in the “A” zones. To be faithful to the U.N. terminology, two separate sets of statistical data should be provided for “Occupied Palestinian Territories” and “Autonomous Palestinian Territories”. In Middle Eastern political rhetoric the State of Israel itself has often been referred to as “Occupied Palestinian Territory”. Were that line of thought implemented, how would the U.N. Population Division be instructed to label Israel’s population data?

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“Arab land”) is an expression of unwarranted collectivism, something explicitly opposed in Rothbard’s work. He seems to be replacing homesteading (and therefore legitimate land ownership) by *definition*. And the definition of “occupied” would imply a previous homesteading of the land by Arabs, which was not the case.

As we have seen (and will see more in detail later), the area of our focus was widely unpopulated. Even the places that were effectively acquired by Israel via the use of force (during the War of Independence in 1948) was done with defensive actions: “They drove out the occupants of Tireh, who had the bad habit of shooting up Jewish traffic on the Haifa-Tel Aviv highway, and they drove out the occupants of Kastel and other villages that bloodied the Jerusalem-Tel Aviv road. So as to open up the sea roads to the arms markets and refugee camps of Europe, they took the seaport of Haifa; to free Tel-Aviv from continual gunfire, they took Jaffa; to cut the Palestinians off from their Lebanese and Syrian armorers, they conducted operation Hiram and took the Galilee”.⁶⁸ The right of self-defense, after all, is an integral aspect of libertarian theory.

Then, Rothbard makes a surprising statement, saying that the Zionists were intended to substitute Ghetto Yiddish culture with a “new culture and a new language based on an artificial secular expansion of ancient religious Hebrew”. In fact, many Zionists were in favor of German being the spoken language in the Jewish State (especially Herzl himself). Hebrew was a development orchestrated mainly by Eliezer Ben Yehuda.⁶⁹

The idea of a Jewish State in the land of Palestine was due to the fact

There are several other territorial conflicts around the world, and the notion of “Occupied Territory” applies to many other places—at least from the point of view of one of the contending parties. Exclusive use by the U.N.—including its Population Division—of the term “Occupied” only for parts of Palestine does not serve any scientific standards nor adds to data reliability.

DellaPergola, *supra* note 5, at 3. See P. Fargues, *Des Cartes dans Quel Jeu? Les Accords Israélo-Palestiniens et la Démographie*, 75 REVUE D’ETUDES PALESTINIENNES 53 (2000).

68. D. Gutmann, *The Arab Lie Whose Time Has Come*, FRONT PAGE MAGAZINE, (Apr. 21, 2004), <http://archive.frontpagemag.com/readArticle.aspx?ARTID=13508>. See also on this subject Seth J. Frantzman, *Review of The Ethnic Cleansing of Palestine*, by Ilan Pappé, 15 MIDDLE EAST Q. 70 (2008) (book review).

69. ROBERT ST. JOHN, *TONGUE OF THE PROPHETS: THE LIFE STORY OF ELIEZER BEN YEHUDA* (1952).

of the millennia long Jewish connection, both cultural and physical in the Diaspora, with this particular land. Such enterprise was not to be achieved through conquest, but through negotiation and purchase.⁷⁰ In fact, most of the Jewish settlements that were created did so in lands purchased by Jewish philanthropists in order to promote Jewish immigration.⁷¹

Despite the growth in their population, the Arabs continued to assert they were being displaced. From the beginning of World War I, however, part of Palestine's land was owned by absentee landlords who lived in Cairo, Damascus and Beirut. About 80 percent of the Palestinian Arabs were debt-ridden peasants, semi-nomads and Bedouins. Jews actually went out of their way to avoid purchasing land in areas where Arabs might be displaced. They sought land that was largely uncultivated, swampy, cheap and, most important, without tenants. In 1920, Labor Zionist leader David Ben-Gurion expressed his concern about the Arab *fellahin*, whom he viewed as "the most important asset of the native population". Ben-Gurion said "under no circumstances must we touch land belonging to *fellahs* or worked by them". He advocated helping liberate them from their oppressors. "Only if a *fellah* leaves his place of settlement", Ben-Gurion added, "should we offer to buy his land, at an appropriate⁷² price". It was only after the Jews had bought all of the available uncultivated land that they began to purchase cultivated land.⁷³ Many Arabs were willing to sell because of the migration to coastal towns and because they needed money to invest in the citrus industry. When John Hope Simpson arrived in Palestine in May 1930, he observed: "They [Jews] paid high prices for the land, and in addition they paid to certain of the occupants of those lands a considerable amount of money⁷⁴ which they were not legally bound to pay". In 1931, Lewis French conducted a survey of landlessness for the British government and offered new plots to any Arabs who had been "dispossessed". British officials received more than 3,000 applications, of which 80 percent

70. Suppose, contrary to fact conditional coming up, that the Jews took this land by force (after first asking nicely, of course). It is our contention that they still would have been justified in doing precisely that, since, we maintain, they were the first homesteaders of it, some 2000 years ago. *See infra* on this.
71. BARD, *supra* note 29, at 16-18.
72. Again with the prices, but this time from a non-libertarian. From the libertarian perspective, *any* mutually agreed upon price is a legitimate one
73. Had it been precisely the other way around, that, too, would have been completely compatible with libertarian law.
74. We hate to be repetitive, but the according to libertarian doctrine, of which Rothbard is virtually the founding father, the amount of money that changes hands in any deal is irrelevant to whether the commercial interaction is licit or not. All that is necessary is that there were no threats, no duress, and the deal was voluntary on both sides.

were ruled invalid by the Government's legal adviser because the applicants were not landless Arabs. This left only about 600 landless Arabs, 100 of whom accepted the Government land offer. In April 1936, a new outbreak of Arab attacks on Jews was instigated by a Syrian guerrilla named Fawzi al-Qawukji, the commander of the Arab Liberation Army. By November, when the British finally sent a new commission headed by Lord Peel to investigate, 89 Jews had been killed and more than 300 wounded. The Peel Commission's report found that Arab complaints about Jewish land acquisition were baseless. It pointed out that "much of the land now carrying orange groves was sand dunes or swamp and uncultivated when it was purchased. . . . there was at the time of the earlier sales little evidence that the owners possessed either the resources or training⁷⁵ needed to develop the land". Moreover, the Commission found the shortage was "due less to the amount of land

75. We acknowledge that the wherewithal to develop land is irrelevant to legitimacy, from the (Rothbard's and our) libertarian point of view. All that is necessary is well founded ownership, based on homesteading principles. On the latter see Walter E. Block, *Earning Happiness Through Homesteading Unowned Land: A Comment on "Buying Misery with Federal Land" by Richard Stroup*, 15 J. SOC. POL. & ECON. STUD. 237 (1990); Walter E. Block, *Homesteading City Streets; An Exercise in Managerial Theory*, 5 PLANNING & MARKETS 18 (2002); Walter E. Block, *On Reparations to Blacks for Slavery*, 3 HUM. RTS. REV. 53 (2002); Walter E. Block & Michael R. Edelstein, *Popsicle Sticks and Homesteading Land for Nature Preserves*, 7 ROMANIAN ECON. & BUS. REV. 7 (2012); Walter E. Block & Guillermo Yeatts, *The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform*, 15 J. NATURAL RESOURCES & ENV'T'L. L. 37 (1999-2000); Walter E. Block & Richard Epstein, *Debate on Eminent Domain*, 1 NYU J. L. & LIBERTY 1144 (2005); Per Bylund, *Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership* (June, 2005) (Unpublished Master Thesis, Lund University); Per Bylund, *Man and Matter: How the Former Gains Ownership of the Latter*, 4 LIBERTARIAN PAPERS 73 (2012); HUGO GROTIUS, *LAW OF WAR AND PEACE* (A.C. Campbell trans., 1814) (1625); Hoppe, *supra* note 9; Hoppe, *supra* note 2; Stephan Kinsella, *A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability*, 17 J. LIBERTARIAN STUD. 11 (2003); Stephan Kinsella, *How We Come to Own Ourselves*, MISES INSTITUTE (Sep. 7, 2006), <http://www.mises.org/story/2291>; John Locke, *An Essay Concerning the True Origin, Extent and End of Civil Government*, in JOHN LOCKE, *SOCIAL CONTRACT* 17 (E. Barker, ed., Oxford University Press, 1948); ELLEN F. PAUL, *PROPERTY RIGHTS AND EMINENT DOMAIN* (1987); SAMUEL PUFENDORF, *NATURAL LAW AND THE LAW OF NATIONS* (1673); Rothbard, *supra* note 1, at 32; Michael S. Rozeff, *Original Appropriation and Its Critics*, LEWROCKWELL.COM (Sep. 1, 2005), <https://www.lewrockwell.com/2005/09/michael-s-rozeff/original-appropriation-and-its-critics/>; Carl Watner, *The Proprietary Theory of Justice in the Libertarian Tradition*, 6 J. LIBERTARIAN STUD. 289 (1982). For the Talmudic equivalent of this literature, see the TRACTATE BABA METZIA.

acquired by Jews than to the increase in the Arab population.” The report concluded that the presence of Jews in Palestine, along with the work of the British Administration, had resulted in higher wages, an improved standard of living and ample employment opportunities.⁷⁶ . . . Even at the height of the Arab revolt in 1938, the British High Commissioner to Palestine believed the Arab landowners were complaining about sales to Jews to drive up prices for lands they wished to sell. Many Arab landowners had been so terrorized by Arab rebels they decided to leave Palestine and sell their property to the Jews. The Jews were paying exorbitant prices to wealthy landowners for small tracts of arid land. “In 1944, Jews paid between \$1,000 and \$1,100 per acre in Palestine, mostly for arid or semiarid land; in the same year, rich black soil in Iowa was selling for about \$110 per acre.”⁷⁷ By 1947, Jewish holdings in Palestine amounted to about 463,000 acres. Approximately 45,000 of these acres were acquired from the Mandatory Government; 30,000 were bought from various churches and 387,500 were purchased from Arabs. Analyses of land purchases from 1880 to 1948 show that 73 percent of Jewish plots were purchased from large landowners, not poor *fellahin*. Those who sold land included the mayors of Gaza, Jerusalem and Jaffa. As’ad el- Shuqeiri, a Muslim religious scholar and father of PLO chairman Ahmed Shuqeiri, took Jewish money for his land. Even King Abdullah leased land to the Jews. In fact, many leaders of the Arab nationalist movement, including members of the Muslim Supreme Council, sold land to Jews.⁷⁸

These were emphatically not “Arab lands.”⁷⁹ In the most pure sense of the concept, these lands were *homesteaded* by the Jews who arrived to those locations in several “Aliyot” or immigration waves.⁸⁰ Not only were they purchased,⁸¹ but they were very often the worst lands in

76. Again, not exactly relevant, at least from a libertarian point of view.
77. So here, too, Rothbard’s contention that the Jews were buying cheaply is not consistent with the facts.
78. BARD, *supra* note 29, at 16-18. We make the case below that these sales in effect exploited the Jews, since they were the rightful owners, and were only buying land they already owned, de jure but of course not de facto.
79. As we can see throughout this work, there was no such thing as a policy of expropriation by Zionists. See Ami Isseroff, *The Land Question in Palestine, Zionism and Israel: Encyclopedic Dictionary*, ZIONISM-ISRAEL, http://www.zionism-israel.com/dic/Land_question_in_Palestine.htm (last visited May 9, 2016).
80. For data on waves of immigration to Palestine, see JEWISH VIRTUAL LIBRARY, https://www.jewishvirtuallibrary.org/jsourc/Immigration/First_Aliyah.html (last visited May 8, 2016).
81. As Transjordan’s King Abdullah said, “*It is made quite clear to all, both by the map drawn up by the Simpson Commission and by another compiled by the Peel Commission, that the Arabs are as prodigal in selling their land as they are in useless wailing and weeping*” (emphasis in the original). BARD, *supra* note 29, at

Palestine.⁸² It is difficult to see why Rothbard would prefer a *collectivist* national concept as a justification for land ownership such as “Arab land” rather than concrete homesteading of land and purchase. Israel is unique in this regard, since it is the only known country that *was built by spontaneous order of free individuals that decided to immigrate not to invade nor conquer, but to build and cooperate peacefully* not only with other Jews, but with the Arabs of the area. This is precisely Rothbard’s view of how propriety is to be regarded as legitimate, and yet his attitude towards Israel is extremely negative despite its congruence with his own eminently correct theoretical views on this subject.⁸³

There is another question that also arises: How is it that if the land of Palestine was so deeply populated that they allowed the Jews (which as we have seen were very few in number and had to figure how to work the land, also not knowing anything of how to defend themselves) to come in and “conquer”? It is difficult to say. Actually, most of the Arab population of Palestine by the first half of the 20th century arrived to the land *because* of Zionist growth and development. The same Arab population that was, according to Rothbard, being “expropriated” was actually *moving* to Palestine in order to work with the Jews:

Statistics published in the Palestine Royal Commission Report (p. 279) indicate a remarkable phenomenon: Palestine, traditionally a country of Arab emigration, became after World War I a country of Arab immigration. In addition to recorded figures for 1920-36, the Report devotes a special section to illegal Arab immigration. While there are no precise totals on the extent of Arab immigration between the two World Wars, estimates vary between 60,000 and 100,000. The principal cause of the change of direction was Jewish development, which created new and attractive work opportunities and, in general, a standard of living previously unknown in the Middle East. .

17.

82. See Daniel Pipes, *Not Stealing Palestine but Purchasing Israel*, NAT’L REV. ONLINE (Jun. 21, 2011), <http://www.danielpipes.org/9931/palestine-israel-stealing-purchasing>.
83. We do not for a moment contend that each and every square inch of territory came into Jewish possession in this immaculate manner. Joke: The economist was asked, “how is your wife?” Came the answer, “compared to what?” In like manner, a contrast with the creation of Israel and the inception of virtually any other county on the planet will incline wildly in favor of the former on these libertarian grounds. If we want to compare this country with the ideal homesteading theory, Israel will undoubtedly be found wanting. But if it is contrasted with any other nation on the face of the earth, a very different story emerges.

. . . Jewish development served as an incentive not only to Arab entry into Palestine from Lebanon, Egypt, Syria and other neighbouring countries, but also to Arab population movements within the country—to cities and areas where there was a large Jewish concentration. Some idea of this phenomenon may be gained from the following official figures:

Changes in towns: The Arab population in predominantly Arab towns rose only slightly (if at all) between the two World Wars: in Hebron—from 16,650 in 1922 to 22,800 in 1943; Nablus—from 15,931 to 23,300; Jenin—from 2,737 to 3,900; Bethlehem—from 6,658 to 8,800. Gaza's population actually decreased from 17,426 in 1922 to 17,045 in 1931. On the other hand, in the three major Jewish cities the Arab population shot up during this period, far beyond the rate of natural increase: Jerusalem—from 28,571 in 1922 to 56,400 (97 per cent); Jaffa—from 27,437 to 62,600 (134 per cent); Haifa—from 18,404 to 58,200 (216 per cent). . . .

During World War II, the Arab population influx mounted apace, as is attested by the *UNRWA Review*, Information Paper No. 6 (September 1962): "A considerable movement of people is known to have occurred, particularly during the Second World War, years when new opportunities of employment opened up in the towns and on military works in Palestine. These wartime prospects and, generally, the higher rate of industrialization in Palestine attracted many new immigrants from the neighbouring countries, and many of them entered Palestine without their presence being officially recorded".⁸⁴

During most of the 20th century Jewish immigration constituted a main engine of economic growth and modernization in the whole area. Immigration functioned primarily as a reinforcing mechanism that allowed for further Jewish immigration to be absorbed, but also stimulated economic change that allowed for large scale employment of Palestinian Arabs and, especially during the British Mandate, for Arab immigration from neighboring countries. Consequently, on the one hand, an Arab labor force became one of the essential prerequisites for the construction of a modern Jewish state. On the other hand, were it not for the state of Israel, a large share of the Palestinian labor force would have missed the possibility to find employment locally, thus having to seek for alternative markets through emigration elsewhere. Indeed, sustained emigration of about 140,000 occurred during the 1960s from the West Bank—at the time under Jordan. After the 1967 Israeli occupation and until 1989, 171,000 Palestinians emigrated from the West Bank and 114,000 from Gaza, in connection with the new opportunities that were created in the booming economy of the Gulf States. After the Gulf war about 30,000 returned, and 30,000 mostly related to the Palestinian Authority's military forces returned after the Oslo agreements.⁸⁵ Between 1967 and 1987, a

84. Aumann, *supra* note 34, at 125-26.

85. E. Zureik, *The Trek Back Home: Palestinians Returning Home and Their Problems of Adaptation*, in *CONSTRUCTING AND ORDER: PALESTINIAN ADAPTATION TO REFUGEE LIFE* 79-102 (A. Hovdenak et al. eds., Oslo, FAFO Institute for

growing number of Palestinian commuter workers amounting to up to 200,000 were employed within Israel's territory.⁸⁶

This phenomenon of “voting with the feet” is crucially important in determining the truth of Rothbard's charges of abuse, exploitation, danger, etc. It sheds light on all sorts of mistreatment all around the world. For example, there was migration from East to West Germany, not the reverse. There was emigration from North to South Korea, not the reverse. There was an exodus of Jews out of Nazi Germany, not the reverse. During the Jim Crow era, there was a mass movement of black people from the south to the north, not the reverse. The underground railway pointed in one direction, not the other. In all of these cases, we are unambiguously able to say that things were better for the migrants. Now, as we have seen there was migration of Arab people from other countries into what later became Israel, not the reverse. And, within this supposedly vicious territory, there was migration of Arab people to the cities containing the highest amount of the supposedly evil Jews, not the reverse. Surely, if this phenomenon gives correct answers in all these other contexts, the one under our present focus would not be an exception to this rule.

Jewish immigration for work and homesteading increased capital equipment, which in turn boosted the wages of everyone due to increased productivity.⁸⁷

The British Royal Commission of 1937 clearly related Arab development and progress with the Jewish presence. The prosperity of Arab villages was in direct ratio to their nearness to Jewish settlements. Arabs benefited from Jewish capital and were taught by Jewish farmers how to use machines. Arab industry expanded likewise; wages were higher, hours of labour less, and illiteracy declined. The budget of the Mandatory Administration was financed 70 per cent by Jewish tax-payers (who formed less than half of the population) and 30 per cent by Arab tax-payers. Yet Arabs benefited from more than 80 per cent of the budget expenditure, especially in social welfare

Allied Social Science, Report 236, 1997).

86. DellaPergola, *supra* note 5, at 9.

87. On the Israeli Economy today see George Gilder, *Silicon Israel: How Market Capitalism saved the Jewish State*, http://www.city-journal.org/2009/19_3_jewish-capitalism.html (last visited May 4, 2016); GEORGE GILDER, *THE ISRAEL TEST* (2009); SAUL SINGER & DAN SENOR, *START-UP NATION: THE STORY OF ISRAEL'S ECONOMIC MIRACLE* (Twelve, 2011) (2009); and the publications of JERUSALEM INSTITUTE FOR MARKET STUDIES, PUBLICATIONS, <http://www.jims-israel.org/#!publications/jl1zof> (last visited May 4, 2016).

areas such as health. The Jewish community also helped Arabs by providing finance for important non-government social services. In the year 1934 alone the Jewish Agency spent £350,000 on medical services in contrast to the £166,000 that the British Administration spent for the whole population. Similarly, from 1922 to 1925 Jews spent £403,000 on draining swamps and fighting malaria⁸⁸ while the Mandatory Administration spent £85,000 and the Arab community nothing.⁸⁹

Wage rates of 1943 in Palestine illustrate the above statement:

88. Those were the “good old days” when swamps actually existed. Nowadays, they have all been converted into wetlands by the forces of political correctness. Sometimes, the Jews are blamed for draining the swamps, sorry, the wetlands:

Most of the land purchased had not been cultivated previously because it was swampy, rocky, sandy or, for some other reason, regarded as uncultivable. This is supported by the findings of the Peel Commission Report (p. 242): “The Arab charge that the Jews have obtained too large a proportion of good land cannot be maintained. Much of the land now carrying orange groves was sand dunes or swamp and uncultivated when it was purchased . . . there was at the time at least of the earlier sales little evidence that the owners possessed either the resources or training needed to develop the land.” Aumann, *supra* note 34, at 120. “For twenty years (from 1914 to 1934) the Huleh Concession—some 57,000 dunams of partly swamp-infested but potentially highly fertile land in north-eastern Palestine—was in Arab hands. The Arab concessionaires were to drain and develop the land so as to make additional tracts available for cultivation, under very attractive terms offered by the Government (first Turkish, then British). However, this was never done, and in 1934 the concession was sold to a Jewish concern, the Palestine Land Development Company, at a huge profit. The Government added several onerous conditions concerning the amount of land (from the drained and newly developed tracts) that had to be handed over—without reimbursement for drainage and irrigation costs—to Arab tenant-farmers in the area. All told, hundreds of millions of dollars were paid by Jewish buyers to Arab landowners. Official records show that in 1933 £854,796 was paid by Jewish individuals and organizations for Arab land, mostly large estates; in 1934 the figure was £1,647,836 and in 1935, £1,699,488. Thus, in the course of only three years £4,202,180 (more than 20 million dollars at the prevailing rate of exchange) was paid out to Arab landowners (Palestine Royal Commission Report, 1937).

Aumann, *supra* note 34, at 123. In terms of reducing the incidence of Malaria and other such diseases, there can be little doubt as to the benefits of such activities.

89. LEIBLER, *supra* note 39, at 11.

II. Daily Wage Scales, 1943 (in mils)		
	Unskilled Labour	Skilled Labour
Palestine	220-250	350-600
Egypt	30-50	70-200
Syria	80-100	150-300
Iraq	50	70-200

Source: A. KHOUSHY, BRIT POALI ERETZ ISRAEL 25 (1943) quoted in Moshe Aumann, *Land Ownership in Palestine 1880-1948*, in THE CASE FOR ISRAEL 117, 126 (The Executive Council of Australian Jewry, The Globe Press ed., 1972).

Although Rothbard correctly maintains that not every branch of Zionism was in favor of an actual Jewish State, some supported merely a Jewish Home, this does not imply that the creation of a State contradicts that objective. Most were *ultimately* in favor of a Jewish State, but they disagreed with regard to *when* it should arise. Although now we can identify Zionists who are themselves anarcho-capitalists,⁹⁰ the main point here is that a state in itself does not imply the negation of a Jewish Home. The cultural Zionists were in favor of creating such a state once the culture turned deeply Jewish and thus became part of the daily lives of the people. The secular members wanted a Jewish State as fast as possible in order to save Jews in Europe who were facing pogroms and slaughter, especially in Eastern Europe. The idea of a refuge for millions of persecuted Jews seems to be of little to no concern to Rothbard, who interprets this motive almost as an arbitrary caprice (“The one Jewish movement that made no sense was Zionism . . .”). Although our mentor might say that no state is necessary⁹¹ in order to save the Jews, the situation of the world at that time (1930s and 1940s) contradicts such a stance (at least with regard to the issue of Jewish immigrants from Europe). Since in the Evian conference of July 1938, the great majority of nations denied Jews the entrance to their territories.⁹² As Dr. Chaim

90. There are several Libertarian anarcho-capitalists in the Israel New Freedom Movement; see e.g., <https://liberal.co.il/category/english/> (last visited May 8, 2016).

91. In a sense, the present authors agree with that statement if we are to follow anarcho-capitalism. But for purposes of the present paper, we are extrapolating from the pure libertarian theory, and entering into the real world of the politically possible. At that time, even now, there is not sufficient support for a stateless society, so we are forced to resort to an analysis of second best: given statism, what can be justified by the freedom philosophy?

92. According to a highly placed Canadian spokesmen, regarding how many Jews

Weizmann said at the time, “The World seemed to be divided into two parts—those places where the Jews could not live, and those where they could not enter.”⁹³ If there had been a State of Israel in 1938, millions might have been saved from Nazi depredations.⁹⁴

The Zionist Revisionist movement was one of the branches of Zionism, under the lead of Ze'ev Jabotinsky. Far from being a fascist strain and from allegedly “express(ing) great admiration for the militarism and social philosophy of Mussolini’s Fascism”, Jabotinsky was a classical liberal and thus a champion of individual liberty. In fact, he was an enemy of both fascism and communism. As a strong advocate of individualism, he was quoted as saying: “In the beginning, G-d created the individual. Every individual is a king equal to his fellow. Society was created for the good for individuals, not the opposite.”⁹⁵

It was his emphasis on the needs of the private economic sector, articulated the following year in an article entitled *Basta*, which called down on Jabotinsky’s head the wrath of Palestine’s leftist political parties and their economic blunderbuss, the powerful Histadrut Labor Federation. He was labeled the “enemy of labor”, a slur that was to dog him for the rest of his life. In fact, Jabotinsky was a friend of labor. What he deplored was class warfare. In *Basta* he simply exposed what should have been obvious to all—a total disequilibrium among the various social elements in Palestine and the socialists’ transformation of the Histadrut from a labor union into an instrument of the class struggle in which “every Jewish worker should consider himself an enemy of the Jewish capitalist, even though the latter utilizes his capital to build another factory or to purchase a plantation and

could enter that country during the 1930s, “None is too many”. IRVING ABELLA & HAROLD TROPER, *NONE IS TOO MANY: CANADA AND THE JEWS OF EUROPE 1933-1948* (1983).

93. ARI J. SHERMAN, *ISLAND REFUGEE: BRITAIN AND REFUGEES FROM THE THIRD REICH 1933-1939* (1973) (Quoting the *Manchester Guardian*, May 23, 1936).
94. A state itself is not necessary per se, but merely an absence of preventing Jews from entering a given territory is. It’s not the state that would have saved Jews from Nazis in a positive sense (yes, if taxes are spent on saving Jews, but it is conceivable that this is not necessary). The lack of a State that forbids Jews from entering a territory controlled by that state is necessary. Israel’s Right of Return for example is not a positive right—it merely says that the State will not stop you if you are Jewish and you want to live in Israel. Like the U.S. CONST., it limits the State rather than expands it (or so was the intention, once upon a time). But, again, *given the situation at the time*, the State of Israel would have been the only refuge for millions of Jews.
95. MORDECHAI KREMNITZER & AMIR FUCHS, *ZE’EV JABOTINSKY ON DEMOCRACY, EQUALITY, AND INDIVIDUAL RIGHTS* 6 (2013).

employ in his concerns Jewish labor exclusively".⁹⁶

During the 1920s and 1930s, Jabotinsky was often criticized by members of the Jewish intelligentsia for his early and harsh opposition to Communism and class war. Though his role in the struggle against the now discredited Communist ideology is considerable, it must be said that his opposition to Marxism was not because of any lack of sympathy for the working classes, but rather because of a sense of respect for the historic role of the Jew as a merchant. While Jabotinsky developed this and other socioeconomic theories in a number of well-known essays such as "Socialism and the Bible" and 'Social Redemption' nowhere else does he dwell on the historical role of the Jewish trader as in his forgotten 1930 essay, "Shall the Jewish Middleman be Spared". In this essay, which was written in a highly literary style, Jabotinsky expounded on the necessity of the merchant for the economic and cultural well-being of Western civilization while also chiding the efforts of some modern Jews to "bury" the middleman. To such Jews Jabotinsky wrote, "the tradesman is unproductive; he is a middleman who robs both the producer and the consumer; a parasite, a superfluous social figure who has played no creative part in world history? in short, he is 'trefe' from every standpoint. Such ideology, wrote Jabotinsky, is "bad, dangerous and stupid". It was bad he noted, because up until the 1880s, trade was the chief characteristic of the Jews in the world economy, and "it does not sound right when we ourselves condemn our old mode of activity . . . Obviously answering Marxist critics, Jabotinsky argued that the entire development of production from beginning to end, is the result of the work of the trader, and that without him no factory could obtain any raw materials. He further wrote that spiritual culture was also a child of trade, and that astronomy, geography and even literary works like Homer's *Odyssey* were enriched by the actions of the trader, who historically is the true fighter for progress. Though aware of the dangers of Jewish involvement in only a few sectors of economic life, Jabotinsky nevertheless advised caution in dealing with the elimination of a classic Jewish role: "That we Jews have too many tradesmen, for whom there has for a long time not been enough place in the world economy; that it would be a good and healthy thing to increase if possible the number of Jewish land and factory workers; that in Palestine we do not need more than ten percent of traders? All this is true and indisputable. But the anti-commercial ideology, which especially for us Jews is something like a slap in the face, appears to me as a stupid and superfluous accompanying phenomenon. By the grace of God we are descended not only of a people of law givers, prophets and conquerors, but during the past two thousand years also from a people of merchants. Today we are seeking new and wider paths for our national activities, but that doesn't mean that we must shut up our trading stalls. To do this would mean to evacuate a position. Careful!"⁹⁷

96. WILLIAM MEHLMAN, *JABOTINSKY: THE MAN AND THE VISION* 17 (2010), [http://www.afsi.org/pamphlets/JabotinskyPamphlet20100714\[1\].pdf](http://www.afsi.org/pamphlets/JabotinskyPamphlet20100714[1].pdf).

97. Louis Gordon, *The Unknown Essays of Vladimir Jabotinsky*, 9 *JEWISH POL.* 470

A revolution is what I call a liberating uprising but there is no liberation except in freedom of expression, freedom of speech and freedom of assembly. There is no liberation without the right of every citizen to influence, to change the regime; no liberation without equality of rights for every citizen regardless of race, religion and class. My outlook is in essence the negation of the totalistic state. The state system that is the most normal and healthy as well as the most pleasant is the "minimal state". That state acts only in case of real necessity. There is no basis for limiting the right of self-expression in the area of ideas. My "yes" does not prevent you from declaring "no". Of course, there is a need for extra flexibility. In times of war and crisis (economic as well as political), there might arise the need to expand the scope of what is to be considered the minimum. The instinctive ideal of man is a serene anarchy. As long as this ideal cannot be realized, democracy must be recognized as the form closest to the ideal. An individual—this is the supreme concept, the highest value, that which was created "in the image of G-d". The doctrine of communo-fascism states that man is part of state societal mechanism. Our tradition has it that in the beginning, G-d created the individual. Man is intended to be free. Democracy's meaning is freedom and the goal of democracy is to insure the influence of the minority. [V. Jabotinsky, *Introduction to the Theory of Economy—Part Two*, in *NATION AND SOCIETY* 218-19 (1934) (Hebrew)].⁹⁸

Liberalism⁹⁹ is bankrupt. Parliamentarianism's exalted ideas have been shattered. Is it so? We will yet see if Grandpa Liberalism has been buried along with the concepts of freedom, equality and the people's will. The fashion of the "now" will disappear simply because it is evil and because liberalism's prescriptions for society are better and more practical. True these are not the remedies of a pharmacy or a hospital clinic. Occasionally, one falls sick and needs bitter medicine and maybe an operation, but one does not need to make hospital regimen into a way of life. Injections, bandages and diets make up the hospital routine, whereas life is eating what you want and going where you want. Today's therapy and surgery may be successful. It is possible, too, that they will prove misguided. But this I do not comprehend: masses, hysterically saluting in a chloroformed state, a castor-oiled salute in deranged nightshirt dress, this crowd is a gathering of good-for-nothings. Grandpa Liberalism will yet dance at their funeral and the funeral of its "buriers" today. [THE WORLD OF JABOTINSKY 274-75 (Moshe Bella ed., Tel Aviv: Difusim, 1975, in Hebrew) (quoting V. Jabotinsky, *Grandpa Liberalism, Heint* (Warsaw) (Oct. 14, 1932))].¹⁰⁰

STUD. REV. 95, 99-100 (1997).

98. Israel Eldad, *Jabotinsky Distorted*, 16 JERUSALEM Q. 3 (1980), <http://www.saveisrael.com/eldad/eldadjabo.htm>.
99. In the modern era, 2016 the time of this writing, "liberalism" connotes socialism, or communism, or being a "progressive". At the time of Jabotinsky's writing, it was more akin to what we know today as libertarianism.
100. Eldad, *supra* note 98.

The constitution built along these lines will be essentially “liberal and democratic”. It will create a “minimalistic state”, interfering with the individual’s freedom only where an essential defense has to be enacted and avoiding all interference beyond that point. It will especially, safeguard the freedom of expression (foreshadowed, as we have seen, by the free speech of the prophets) expression in every sense of the term. [And also] freedom of speech to associations. (*On State and Social Problems, in FROM THE PEN OF JABOTINSKY* 62 (Cape Town: Unie Volkspers, 1941)).¹⁰¹

Yes, Jabotinsky favored a Jewish State on both sides of the Jordan River not for a caprice, but precisely because he was taking as a model the ancient Kingdom of David, the Balfour Declaration and the geographic area of the British Mandate,¹⁰² since “. . . Palestine is a territory whose ‘chief geographical feature’ is that ‘the Jordan River does not delineate its frontiers but flows through its center’”.¹⁰³ At that time, there was no Jordan, which is an artificial British creation.¹⁰⁴

As Rothbard points out, there were some minority groups that favored a bi-national Jewish-Arab state, but that idea was dismissed not only because the creation of a Jewish state was a vital need for Jews but also because it avoided the main problem, the real cause of conflict: Arab leadership opposition, shared by much of the Arab population, to any Jewish presence in the land, with or without a state.

101. KREMNITZER & FUCHS, *supra* note 95, at 7.

102. *See infra* Maps VIII and X in Annex B.

103. “In March 1921 Winston Churchill, the colonial secretary, found it ‘necessary immediately to occupy militarily Trans-Jordania.’ Rather than use British troops to do this, he decided to control it indirectly. Toward this end, Churchill divided the Palestine Mandate into two parts along the Jordan River, creating the Emirate of Transjordan on the east bank and excluding Jewish immigration there. Churchill offered this territory to Faysal’s older brother, Abdallah, who after some hesitation accepted. The Hashemite dynasty of Abdallah, his son Tallal, and his grandson Husayn have ruled Transjordan (or Jordan, as it was renamed in 1949) ever since. After March 1921, the east bank was no longer Palestine”. Daniel Pipes & Adam Garfinkle, *Is Jordan Palestine?*, COMMENTARY (Oct., 1988), <http://www.danielpipes.org/298/is-jordan-palestine>.

104. For more on Jabotinsky, *see* KREMNITZER & FUCHS, *supra* note 95.

V. THE BIRTH OF THE STATE OF ISRAEL

Resolution 181 by United Nations on November 29th 1947¹⁰⁵ declared the division of the land of Palestine in order to let two states, one Arab and one Jewish, be created. This was not a totally arbitrary decree. The partition plan¹⁰⁶ was designed in order to achieve the creation of those states in accordance with the areas that had a Jewish majority and Arab majority for, respectively, Jewish and Arab states. Two thirds of the land of Palestine was delivered to the Hashemite Kingdom in order to create Jordan two decades before, and thus in no way could it be said that the Balfour Declaration nor the Partition Plan¹⁰⁷ expropriated or betrayed the Arabs. Despite the fact that in their view they got the short end of the stick, the Jews accepted the plan. The Arabs did not, and immediately after the declaration of Independence of the State of Israel on May 14th, 1948, seven Arab armies invaded the newly born state. Therefore, although most Arabs left Palestine because of the guidelines of their leaders (otherwise they were considered traitors¹⁰⁸), the minority that was displaced due to the war should blame their political leaders, not Israel.

This is why it is very difficult to understand Rothbard's analysis at this point. He opines "The U.N. agreement had provided (a) that Jerusalem be internationalized under U.N. rule, and (b) that there be an economic union between the new Jewish and Arab Palestine states. These were the basic conditions under which the U.N. approved partition. Both were promptly and brusquely disregarded by Israel—thus launching an escalating series of aggressions against the Arabs of the Middle East."¹⁰⁹

Contrary to Rothbard, the Jews accepted the partition and the Arabs who already lived in Jewish areas *were an integral part* of the new State of Israel (and treated as such). Arabs were welcome to remain and keep

105. Future Government of Palestine, G.A. Res. 181(II), U.N. GAOR, Supp. No. 1, at 131, UN Doc. A/519 (1947).

106. For a full exposition of the period 1947-49 *see* DAN KURZMAN, GENESIS 1948: THE FIRST ARAB-ISRAELI WAR (Sefer ve Sefel Publishing, 2005) (1970).

107. *See* The Balfour Declaration (Nov. 2, 1917), <http://www.mideastweb.org/me-balfour.htm>. *See also infra* Map XI in Appendix B.

108. *See infra* text accompanying notes 132-44.

109. Rothbard, *supra* note 4, at 25.

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their property (as those who actually stayed did). The partition plan¹¹⁰ was of course not perfectly congruent with Lockean-Rothbardian-Hoppean homesteading theory, but nothing in the real world ever is. However, it was as close as we ever encounter in the real world, and there is no reason why Rothbard or any other libertarian should not support it.¹¹¹ Or at the very least, there is no reason they should single it out as especially evil.

But the Arabs did not accept this partition and that is why seven Arab armies invaded after it was completed. Why should Israel be blamed for the resulting situation when it was only defending itself from outside attack?

Rothbard mentions the “escalating series of aggressions against the Arabs in the Middle East”. It is hard to see what he is referring to here. What is more, there is no explanation of why and how a new state built virtually entirely on homesteaded or purchased areas, labored on and developed by Jewish majorities constitutes an aggression against the collective of Arabs of the entire Middle East:

The Arabs made clear they would go to war to prevent the establishment of a Jewish state. The chairman of the Arab Higher Committee said the Arabs would “fight for every inch of their country”. Two days later, the holy men of Al-Azhar University in Cairo called on the Muslim world to proclaim a *jihad* (holy war) against the Jews. Jamal Husseini, the Arab Higher Committee’s spokesman, had told the U.N. prior to the partition vote the Arabs would

110. “Palestine’s 1947 partition plan suggested the creation of six areas, three with a Jewish majority, three with an Arab majority, plus the Jerusalem-Bethlehem area intended as a corpus separatum under U.N. tutorship. Following the military results of the 1948 war and the 1949 armistice agreements, the Jewish-Israeli side expanded its territorial hegemony at the expenses of the Arab side. As a consequence several enclaves of Arab territory passed under direct Israeli rule. The 1967 war produced further territorial changes, namely the expansion of Israeli rule (civil or military) over the whole of Palestine. As noted, in 1967 Israel annexed East Jerusalem and surrounding territory, and the Israeli legal jurisdiction was subsequently extended to the Golan heights. On the contrary, in the West Bank and Gaza the Israeli administration did not suspend application of the preexisting Jordanian or Egyptian legal frameworks toward the local population. At the same time, Israel promoted an extensive network of Jewish settlements throughout the West Bank, the Gaza area, and the Golan Heights. Consequently, each part of Palestine ended up by having a presence of both Jews and Arabs, though the respective proportions greatly varied.” DelPergola, *supra* note 5, at 7.

111. The perfect is the enemy of the good.

drench "the soil of our beloved country with the last drop of our blood. . .". Hussein's prediction began to come true almost immediately after the U.N. adopted the partition resolution on November 29, 1947. The Arabs declared a protest strike and instigated riots that claimed the lives of 62 Jews and 32 Arabs. Violence continued to escalate through the end of the year. The first large-scale assaults began on January 9, 1948, when approximately 1,000 Arabs attacked Jewish communities in northern Palestine. By February, the British said so many Arabs had infiltrated they lacked the forces to run them back. In the first phase of the war, lasting from November 29, 1947, until April 1, 1948, the Palestinian Arabs took the offensive, with help from volunteers from neighboring countries. The Jews suffered severe casualties and passage along most of their major roadways was disrupted. On April 26, 1948, Transjordan's King Abdullah said: "All our efforts to find a peaceful solution to the Palestine problem have failed. The only way left for us is war. I will have the pleasure and honor to save Palestine". On May 4, 1948, the Arab Legion attacked Kfar Etzion.¹¹² The defenders drove them back, but the Legion returned a week later. After two days, the ill-equipped and outnumbered settlers were overwhelmed. Many defenders were massacred after they had surrendered. This was prior to the invasion by the regular Arab armies that followed Israel's declaration of independence. The U.N. blamed the Arabs for the violence. The U.N. Palestine Commission, which was never permitted by the Arabs or British to go to Palestine to implement the resolution, reported to the Security Council on February 16, 1948, that "powerful Arab interests, both inside and outside Palestine, are defying the resolution of the General Assembly and are engaged in a deliberate effort to alter by force the settlement envisaged therein". The Arabs were blunt in taking responsibility for the war. Jamal Hussein told the Security Council on April 16, 1948: "The representative of the Jewish Agency told us yesterday that they were not the attackers, that the Arabs had begun the fighting. We did not deny this. We told the whole world that we were going to fight". The British commander of Jordan's Arab Legion, John Bagot Glubb admitted: "Early in January, the first detachments of the Arab Liberation Army began to infiltrate into Palestine from Syria. Some came through Jordan and even through Amman . . . They were in reality to strike the first blow in the ruin of the Arabs of Palestine".

Despite the disadvantages in numbers, organization and weapons, the Jews began to take the initiative in the weeks from April 1 until the declaration of independence on May 14. The Haganah captured several major towns including Tiberias and Haifa, and temporarily opened the road to Jerusalem. The partition resolution was never suspended or rescinded. Thus, Israel, the Jewish State in Palestine, was born on May 14,¹¹³ as the British finally left the country. Five Arab armies (Egypt, Syria, Transjordan, Lebanon and

112. A "Kibbutz".

113. At the time, Haganah, Etzel and Lehi united and formed the Israel Defense Forces.

Iraq) immediately invaded Israel. Their intentions were declared by Abd Al-Rahman Azzam Pasha, Secretary-General of the Arab League: "It will be a war of annihilation. It will be a momentous massacre in history that will be talked about like the massacres of the Mongols or the Crusades".¹¹⁴

Rothbard claims that Zionist forces initiated the fight against Palestinian Arabs. "Because of the Arabs resident in Palestine, Zionism had to become in practice an ideology of conquest".¹¹⁵ But as we have seen above, the Arab aggression was previous to the birth of the state of Israel. These forces, *Haganah*, *Etsel* and *Lehi*¹¹⁶ were Jewish self-defense organizations which had the objective of protecting Jewish lives and property. Their goal was not to target or conquer civilian Arab lands, though conquering some areas was a defensive outcome of the War of Independence.¹¹⁷

Also they were private armies and/or police forces, which Rothbard and other libertarians favor.¹¹⁸ It is quite strange that he opposes voluntary, privately financed defense organizations when he continuously defended the very opposite point of view. Here he had a real life example, and it *worked*. These organizations actually defended Jews from attacks:

Jewish self-defense developed in response to growing hostility. The loose organization of "watchmen" (HaShomer) before World War I became increasingly organized and was subsumed by more sophisticated organizations that, in turn, became precursors to the Israeli army established at Independence. Initially, the "watchmen" guarded settlers against the scattered depredations of Bedouin marauders intent on theft. Later, a Muslim urban elite organized attacks. The watershed occurred in 1929 when anti-Jewish riots that began in Jerusalem over the rights of Jews to the Western or

114. BARD, *supra* note 29, at 31-33.

115. Rothbard, *supra* note 4, at 23.

116. See MENACHME BEGIN, *THE REVOLT: STORY OF THE IRGUN* (1951).

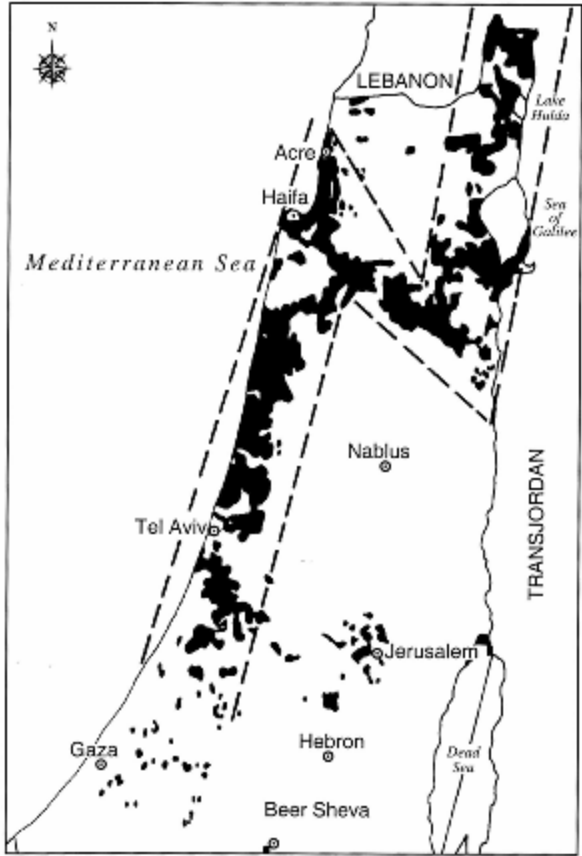
117. By defense, we mean protecting Jewish homesteaded land and property as opposed to harassing and conquering the property of others.

118. See Gregory, *supra* note 2; Guillory & Tinsley, *supra* note 2; Hoppe, *State or Private Law . . . supra* note 2; Huebert, *supra* note 2; Murphy, *supra* note 2; Rothbard, *supra* note 1; Rothbard, *Society without . . . supra* note 2; Rothbard, *THE ETHICS OF . . . supra* note 2; STRINGHAM, *supra* note 2; TANNEHILL & TANNEHILL, *supra* note 2; Tinsley, *supra* note 2; Jakub B. Wiśniewski, *Defense as a Private Good in a Competitive Order*, 1 REV. SOC. & ECON. ISSUES 2 (2014); Jarret B. Wollstein, *Society Without Coercion*, in JARRET B. WOLLSTEIN, *SOCIETY WITHOUT GOVERNMENT* (1969); WILLIAM C. WOOLRIDGE, *UNCLE SAM: THE MONOPOLY MAN* (1970).

Wailing Wall spread to other cities and the countryside. Finally, the extended Arab uprising from 1936-1939 against Jewish settlements, as well as the British, caused a radical transformation in the ways in which Jews organized settlement. These threats resulted in a coordinated policy of settlement designed to protect the Zionist enterprise as a whole, as well as individual communities. . . . The Zionist response to the 1929 attacks was to develop the concept of the "N" of Jewish settlement as illustrated in the map. The clustering of settlements into a discernible N-shaped pattern had characterized Zionist settlement since the 1880s. Since the First Aliyah pioneers had settled on the plains of Eretz Israel: the Sharon or coastal plain, the Jezreel Valley, the Beit She'an Valley below the Sea of Galilee, and up into the finger of the Upper Galilee. This was the base for what would become the "N" of settlement. With the Arab population located largely in the hills and the mountains of Palestine, land could be purchased and settled more readily in the valleys where absentee landlords¹¹⁹ were willing to sell to Jews. What is significant is that even though some Palestinian Arabs initiated violence against Jews, others, members of leading families including that of the Mufti, sold land for Zionist settlement. It is important to note that all the lands on which Zionists established settlements [at that time] were purchased from Arabs, and not taken by conquest or international treaty. The shaded areas within the "N" of settlement represent land purchased or settled by Jews prior to Independence in 1948. Map I also indicates selected purchases and settlements outside this region: near Jerusalem, the northern Negev and the Western Galilee near the Lebanese border. Zionist planners also consciously invested their resources outside the Arab-populated West Bank until independence. This policy effectively established which areas would become part of the Jewish state after Independence.¹²⁰

119. Many political viewpoints oppose absentee landlords, but not the libertarian tradition that the authors of the present paper share with Rothbard.
120. Troen, *supra* note 25.

Map I. The "N" of Zionist Settlement



Source: Troen, 2011.

Next consider Rothbard’s highly critical claim about the “Der Yassin massacre”. Here is what actually happened there:

Deir Yassin was situated on a hill, about 2,600 feet high, which commanded a wide view of the vicinity and was located less than a mile from the suburbs of Jerusalem. On April 6, (1948) Operation Nachshon was launched to open the road to Jerusalem. The village of Deir Yassin was included on the list of Arab villages to be occupied as part of the operation. The following day Haganah commander David Shaltiel wrote to the leaders of the Lehi and Irgun: "I learn that you plan an attack on Deir Yassin. I wish to point out that the capture of Deir Yassin and its holding are one stage in our general plan. I have no objection to your carrying out the operation provided you are able to hold the village. If you are unable to do so I warn you against blowing up the village which will result in its inhabitants abandoning it and its ruins

121. Re-published with permission by Ilan Troen. See Troen, *supra* note 25.

and deserted houses being occupied by foreign forces. . . . Furthermore, if foreign forces took over, this would upset our general plan for establishing an airfield". . . .

Contrary to revisionist histories that say the town was filled with peaceful innocents, evidence shows that both residents and foreign troops opened fire on the attackers. One Irgun fighter described his experience:

"My unit stormed and passed the first row of houses. I was among the first to enter the village. There were a few other guys with me, each encouraging the other to advance. At the top of the street I saw a man in khaki clothing running ahead. I thought he was one of ours. I ran after him and told him, 'advance to that house.' Suddenly he turned around, aimed his rifle and shot. He was an Iraqi soldier. I was hit in the foot."¹²²

The battle was ferocious and took several hours. The Irgun suffered 41 casualties, including four dead. Surprisingly, after the "massacre", the Irgun escorted a representative of the Red Cross through the town and held a press conference. The *New York Times*' subsequent description of the battle was essentially the same as Begin's. The *Times* said more than 200 Arabs were killed, 40 captured and 70 women and children were released. No hint of a massacre appeared in the report. "Paradoxically, the Jews say about 250 out of 400 village inhabitants [were killed], while Arab survivors say only 110 of 1,000".¹²³ A study by Bir Zeit University, based on discussions with each family from the village, arrived at a figure of 107 Arab civilians dead and 12 wounded, in addition to 13 "fighters" evidence that the number of dead was smaller than claimed and that the village did have troops based there. Other Arab sources have subsequently suggested the number may have been even lower. In fact, the attackers left open an escape corridor from the village and more than 200 residents left unharmed . . . The Irgun commander reported, for example, that the attackers "found men dressed as women and therefore they began to shoot at women who did not hasten to go down to the place designated for gathering the prisoners".¹²⁴ Another story was told by a member of the Haganah who overheard a group of Arabs from Deir Yassin who said "the Jews found out that Arab warriors had disguised themselves as women. The Jews searched the women too. One of the people being checked realized he had been caught, took out a pistol and shot the Jewish commander. His friends, crazed with anger, shot in all directions and killed the Arabs in the area".¹²⁵ Contrary to claims from Arab propagandists at the time, and some since, no evidence has ever been produced that any women were raped. On the contrary, every villager ever interviewed has denied these

122. BARD, *supra* note 29, at 138 (quoting IV URI MILSTEIN, HISTORY OF ISRAEL'S WAR OF INDEPENDENCE 262 (1999)).
123. *Id.* at 138 (quoting KURZMAN, *supra* note 105, at 148).
124. *Id.* at 139 (quoting Yehoshua Gorodenchik testimony at Jabotinsky Archives).
125. *Id.* at 139 (quoting MILSTEIN, *supra* note 121, at 276).

allegations.¹²⁶

These stories to the contrary were fabricated by the Arab leadership in order to promote Arabs to leave Palestine and let Arab armies to “throw the Jews to the Mediterranean Sea”. The effect was the opposite: “. . . deliberate propaganda . . . backfired. Hazam Nusseibi, who worked for the Palestine Broadcasting Service in 1948, admitted being told by Hussein Khalidi, a Palestinian Arab leader, to fabricate the atrocity claims. Abu Mahmud, a Deir Yassin resident in 1948 told Khalidi ‘there was no rape,’ but Khalidi replied, ‘We have to say this, so the Arab armies will come to liberate Palestine from the Jews.’ Nusseibeh told the BBC 50 years later, ‘This was our biggest mistake. We did not realize how our people would react. As soon as they heard that women had been raped at Deir Yassin, Palestinians fled in terror¹²⁷’.¹²⁸

Surprisingly, Rothbard does not mention Arab massacres of Jews¹²⁹ nor that Israeli authorities begged the Arabs not to leave the new Israel,¹³⁰ and as several historians have shown, there was no such thing as a plan to expel the Arab population of Israel.¹³¹ It is true that due to battles and war some part of the Arab population left or were displaced during hostilities.¹³² But the great majority of the Arabs departed because they

126. *Id.* at 137-39. The present authors inserted the year “1948” which appears in parentheses at the beginning of this quote.

127. *Id.* at 139 (quoting *Israel and the Arabs: The 50 Year Conflict* (BBC Television Series 1998)).

128. *Id.* at 139.

129. “Just four days after the reports from Deir Yassin were published, an Arab force ambushed a Jewish convoy on the way to Hadassah Hospital, killing 77 Jews, including doctors, nurses, patients, and the director of the hospital. Another 23 people were injured. This premeditated massacre attracted little attention and is never mentioned by those who are quick to bring up Deir Yassin. Moreover, despite attacks such as this against the Jewish community in Palestine, in which more than 500 Jews were killed in the first four months after the partition decision alone, Jews did not flee.” *Id.* at 139.

130. *See infra* notes 142-43.

131. For a full analysis *see* Efraim Karsh, *Benny Morris and the Reign of Error*, 6 MIDDLE EAST Q. 15 (1999); EFRAIM KARSH, *PALESTINE BETRAYED* (2010); Ami Isseroff, *Book Review: Benny Morris, 1948: The first Arab-Israeli War* (Oct. 30, 2008), <http://www.zionism-israel.com/log/archives/00000618.html>.

132. “Only a very small percentage of the overall Arab civilian population left directly as a result of the Israeli Army. This took place in Ramleh and Lydda where the Army was forced to bring about evacuation after the residents had

thought that staying in Israel constituted treason¹³³ to their own people, and they were afraid of being attacked as collaborators by the Arabs themselves if the Arab nations won the war (which was then thought to be the most likely scenario).

Palestinians fled in a wide range of circumstances and for varied reasons. Arab commanders ordered noncombatants out of the way of military maneuvers; or they threatened laggards with treatment as traitors if they stayed; or they demanded that villages be evacuated to improve their standing on the battlefield; or they promised a safe return in a matter of days. Some communities preferred to flee rather than to sign a truce with the Zionists; in the words of Jaffa's mayor, "I do not mind destruction of Jaffa if we secure destruction of Tel Aviv". The mufti's agents attacked Jews to provoke hostilities. Families with the means to do so fled danger. When agricultural tenants heard that their landlords would be punished, they worried about being expelled and preempted by abandoning the land. Bitter internecine enmities hobbled planning. Shortages of food and other necessities spread. Services like water-pumping stations were abandoned. Fears spread of Arab gunmen, as did rumors of Zionist atrocities.¹³⁴

Scholars' best estimates are that 625,000-675,000 Arabs left Israel during the war.¹³⁵ Arab leaders encouraged their people to flee the newly born state. This was done mainly through radio:

An Arab resident of a Palestinian refugee camp explained why his family left Israel in 1948:

The radio stations of the Arab regimes kept repeating to us: "Get away from the battle lines. It's a matter of ten days or two weeks at the most, and we'll bring you back to Ein-Kerem [near Jerusalem]". And we said to ourselves, "That's a very long time. What is this? Two weeks? That's a lot!" That's what we thought [then]. And now 50 years have gone by.¹³⁶

Mahmoud Al-Habbash, a Palestinian journalist wrote in the Palestinian Authority's official newspaper: ". . . The leaders and the elites promised us

continued indulging in acts of armed hostility after the capture of the towns." LEIBLER, *supra* note 39, at 38.

133. See on this subject Daniel Pipes, *Palestinians Blame Arab Leaders for the "Nakba"*, (Jul. 23, 2009), <http://www.danielpipes.org/blog/2009/07/palestinians-blame-arab-leaders-for-the-nakba>.
134. Daniel Pipes, *Palestine Betrayed by Efraim Karsh Reviewed by Daniel Pipes*, NAT'L REV. (May 17, 2010), <http://www.danielpipes.org/8329/palestine-betrayed>.
135. DellaPergola, *supra* note 5, at 4.
136. BARD, *supra* note 29, at 136 (quoting Palestinian Authority TV, Jul. 7, 2009, in PALESTINIAN MEDIA WATCH BULLETIN (Jul. 23, 2009)).

at the beginning of the 'Catastrophe' in 1948, that the duration of the exile will not be long, and that it will not last more than a few days or months, and afterwards the refugees will return to their homes, which most of them did not leave only until they put their trust in those 'Arkuvian' promises made by the leaders and the political elites. Afterwards, days passed, months, years and decades, and the promises were lost with the strain of the succession of events . . . ['Arkuvian' is a reference to Arkuv, a figure from Arab tradition known for breaking promises and lying.]"¹³⁷

There is the obvious counter argument here. An Arab leaving because of a radio message, or for any other reason does not deserve to have his land expropriated by Jews. Running away from one's home is not a crime.

But this evades the fact that those Arabs who left their homes were doing so in order to better enable the Arab armies to commit genocide on the Jewish population in order to not only recover their alleged property, but also steal Jewish homesteaded lands later. Whether these Arabs were conscious of this fact or not does not make it less true. Arabs who remained in Israel are still citizens of the country and they kept their belongings. Those who left were in fact actively assisting Arab armies, and were encouraged and ordered to do so by Arab leaders.

We admit that this argument of ours is a little weak. It may not be totally "svach," (awful, irrational) in Yiddish, but there are flaws in it. As a matter of pure (Rothbardian) principle, departing from one's home during wartime can easily be interpreted as innocently seeking safety. As a matter of Austrian economics, again of the Rothbardian variety,¹³⁸

137. *Id.*

138. States Hayek:

And it is probably no exaggeration to say that every important advance in economic theory during the last hundred years was a further step in the consistent application of subjectivism.

FRIEDRICH A. HAYEK, *THE COUNTER-REVOLUTION OF SCIENCE* 52 (1979). Also see the following on this issue: William Barnett II, *Subjective Cost Revisited*, 3 REV. AUSTRIAN ECON. 137 (1989); Walter E. Block, *Comment on Leland Yeager on Subjectivism*, 2 REV. AUSTRIAN ECON. 199 (1988); JAMES M. BUCHANAN & G. F. THIRLBY, *ESSAYS ON COST* (1981); JAMES M. BUCHANAN, *COST AND CHOICE: AN INQUIRY INTO ECONOMIC THEORY* (1969); James M. Buchanan, *The General Implications of Subjectivism in Economics*, in JAMES M. BUCHANAN, *What Should Economists Do?* (1979); William Butos & Roger Koppl, *The Varieties of Subjectivism: Keynes, Hayek on Expectations*, 29 HIST. POL. ECON. 303 (1997); Roy E. Cordato, *Subjective Value, Time Passage, and the Economics of Harmful Effects*, 12 HAMLIN L. R. 229 (1989); Thomas J. DiLorenzo,

we are not even entitled to attribute any motives whatsoever to these people. As far as we can know for sure, they “went on vacation” at this point in time, and thus are fully entitled to a complete “right of return.” Yet some points can be scored on our side even at this exalted level since as a matter of pure libertarian law the claim can be sustained that the departing Arabs were aiding and abetting the armies of the seven countries so as to make it easier for them to slaughter Jews. But this is an exceedingly difficult case on our part and is open to all sorts of *reductio ad absurdum*.

However, we insist, this is the wrong context in which to view these matters. When dealing with the actions of Israel, we are not analyzing the behavior of private individuals. From the Rothbardian anarchist point of view, Israel is an evil abomination (as are, of course, all other governments, and equally so, since they all partake of statism).¹³⁹ What we are now doing, instead, is focusing on these actions from the point of view of a *government*, which is per se an evil doer according to libertarian theory. We take seriously Rothbard’s injunction against being a “sectarian,” condemning all nation states as wicked, washing our hands of these matters, and walking away from them, and avoiding “bothering about the detailed pros and cons of any given conflict.” No, we avoid nothing here. But, we do so in the *context* that the government of Israel is a government, and must be judged accordingly. Our point

The Subjectivist Roots of James Buchanan’s Economics, 4 REV. AUSTRIAN ECON. 180 (1990); Roger Garrison, *A Subjectivist Theory of a Capital Using Economy*, in *THE ECONOMICS OF TIME AND IGNORANCE* (Gerald P. O’Driscoll & Mario Rizzo eds., 1985); PATRICK J. GUNNING, *THE NEW SUBJECTIVIST REVOLUTION: AN ELUCIDATION AND EXTENSION OF LUDWIG VON MISES’ CONTRIBUTION TO ECONOMIC THEORY* (1990); ISRAEL KIRZNER, *SUBJECTIVISM, INTELLIGIBILITY AND ECONOMIC UNDERSTANDING* (1986); LUDWIG VON MISES, *HUMAN ACTION* (Scholars’ Edition, Mises Institute, 1998) (1949); Mario J. Rizzo, *Uncertainty, Subjectivity, and the Economic Analysis of Law*, in *TIME, UNCERTAINTY AND DISEQUILIBRIUM* 71 (Mario J. Rizzo ed., Lexington Books, 1979); Mario J. Rizzo, *The Mirage of Efficiency*, 8 HOFSTRA L. REV. 641 (1980); Murray N. Rothbard, *Comment: The Myth of Efficiency*, in *TIME, UNCERTAINTY AND DISEQUILIBRIUM* 91 (Mario J. Rizzo ed., Lexington Books, 1979); Murray N. Rothbard, *Toward a Reconstruction of Utility and Welfare Economics*, in 1 *THE LOGIC OF ACTION: METHOD, MONEY AND THE AUSTRIAN SCHOOL* 211 (Edward Elgar, 1997); Edward Stringham, *Economic Value and Cost Are Subjective*, in *THE HANDBOOK OF AUSTRIAN ECONOMICS* 43 (Peter Boettke ed., Edward Elgar Publishing, 2008).

139. See Rothbard, *THE ETHICS OF . . . supra* note 2, at 56-57.

is, the employment of libertarian law must be done differently when judging states on a comparative basis. Let us put the matter differently. To an extent, Rothbard, in declining to do so, takes on not exactly the role of the sectarian he explicitly disavows but something akin to that: he drops context.¹⁴⁰ If Israel is judged on the basis of pure anarcho-capitalism, fine, this country fails. Dismally so. Of course no other country would pass must under such stringent conditions, either. On the other hand, if Israel is put in the dock along with every other

140. “. . . Context. Just as a rational man does not hold any conviction out of context—that is: without relating it to the rest of his knowledge and resolving any possible contradictions—so he does not hold or pursue any desire out of context. And he does not judge what is or is not to his interest out of context, on the range of any given moment. Context-dropping is one of the chief psychological tools of evasion. In regard to one’s desires, there are two major ways of context-dropping: the issues of range and of means. A rational man sees his interests in terms of a lifetime and selects his goals accordingly. This does not mean that he has to be omniscient, infallible or clairvoyant. It means that he does not live his life short-range and does not drift like a bum pushed by the spur of the moment. It means that he does not regard any moment as cut off from the context of the rest of his life, and that he allows no conflicts or contradictions between his short-range and long-range interests. He does not become his own destroyer by pursuing a short-range desire today which wipes out all his values tomorrow.” RAND, *supra* note 24, in THE “CONFLICTS” OF MEN’S INTERESTS 57-65 (1962). “*Human knowledge on every level is relational. It is an organization of elements, each relevant to and bearing on the others. Knowledge is not a juxtaposition of independent items: it is a unity. It is not a heap of self-sufficient atoms of consciousness, each of which can exist or be dealt with apart from the rest. On the contrary, knowledge at each stage is a total, a sum, a single whole . . . Leaving aside the primaries of cognition, which are self-evident, all knowledge depends on a certain relationship: it is based on a context of earlier information. ‘Context’ means ‘the sum of cognitive elements conditioning an item of knowledge.’ This sum is what enables us to reach the new conclusion, to prove it, to interpret it, to apply it. This sum, in short, is what sets the item’s relationship to reality and thus the item’s meaning and proper use. Hence an essential rule of contextual cognition: always hold the context. Or, to put the point negatively: context must never be dropped. Out-of-context claims or proposals, like out-of-context quotations or concepts, are by their nature invalidated. Whenever one treats a conclusion as an atom unrelated to the rest of cognition, one thereby detaches the conclusion, along with the thought process involving it, from reality. If one drops context, one drops the means of distinguishing between truth and fantasy; anyone can then claim to prove anything, however absurd—just as, out of context, anyone can quote anybody to mean anything.” LEONARD PEIKOFF, OBJECTIVISM: THE PHILOSOPHY OF AYN RAND 122-24 (Meridian, 1993) (1991).*

sovereign nation, then matters look quite different.¹⁴¹

So, how would any other state regard the departing Arabs? It is simple. They would regard them as traitors. Not only would such a government refuse them “the right to return”, the more extreme ones would hunt them to the ends of the earth and assassinate them.¹⁴² The less extreme ones would seek extradition, and then punish them when brought to the domestic country.

Let us put this in other words. Here, succinctly, is the case against our position: In 1948 the local Arabs either went “on vacation” or, due to safety considerations, departed from their homes. They were not guilty of any violence against anyone; certainly, they victimized no Jew. When they tried to return after that war, they were told they could not do so. This is blatant land theft. The “right of return” is predicated on libertarian private property rights. How would you like to go on holiday and not be allowed to return?

We offer several arguments in rebuttal. For one thing, these were not real “vacations.” Rather, these people were aiding and abetting the enemies of Israel. When looked at from one point of view, they were entirely innocent. They did no more than (temporarily, they had hoped) departed from their homes and olive gardens. But, when looked upon from this other different perspective, their actions were not quite so innocent. For example, the getaway driver for the robber gang that murders bank employees does nothing “wrong”, objectively. He merely drives an automobile. This chauffeur committed no crime. But he “aids and abets” the criminals, and thus is part and parcel of their crime, in much the same manner as the Arabs who went on “holiday” during this war. For, they were asked to do so by representatives of the armies of (among others) Egypt, Syria, Lebanon, The reason? To enable these armies to more effectively engage in their war against the Jews.

The Jews, in very sharp contrast, actually tried to convince the Arabs not to leave Israel:

. . . in response, the Jewish Haifa Workers’ Council issued an appeal to the Arab residents of Haifa: [See Official British Police Report]: “For years we

141. And Rothbard seems to have no problem in praising the “Anti-imperialist” position of Syria, which would contradict his own viewpoint. For more on this *see infra*.
142. Such as Leon Trotsky, assassinated in Mexico on August 21, 1940, by Ramon Mercader, an assassin hired by Stalin.

have lived together in our city, Haifa. . . . Do not fear: Do not destroy your homes with your own hands . . . do not bring upon yourself tragedy by unnecessary evacuation and self-imposed burdens. . . . But in this city, yours and ours, Haifa, the gates are open for work, for life, and for peace for you and your families".¹⁴³

And again:

The Economist (October 2, 1948) London: During subsequent days the Jewish authorities, who were now in complete control of Haifa (save for limited districts still held by the British troops), urged all Arabs to remain in Haifa and guaranteed them protection and security. As far as I know, most of the British civilian residents whose advice was asked by Arab friends told the latter that they would be wise to stay. However, of the 62,000 Arabs who formerly lived in Haifa, not more than 5,000 or 6,000 remained. Various factors influenced their decision to seek safety in flight. There is but little doubt that the most potent of these factors were the announcements made over the air by the Arab Higher Executive, urging all Arabs in Haifa to quit. . . . It was clearly intimated that those Arabs who remained in Haifa and accepted Jewish protection would be regarded as renegades.¹⁴⁴

There is no doubt that those Arabs who left, whether because of fear or due to real collaboration with the Arab states campaign against Israel, actually were part of that movement functional to the genocidal war that was launched against Israel. It was in effect an act of aggression:

Another Palestinian journalist, Jawad Al Bashiti, explained the cause of the "Catastrophe": "The following happened: the first war between Arabs and Israel had started and the 'Arab Salvation Army' came and told the Palestinians: 'We have come to you in order to liquidate the Zionists and their state. Leave your houses and villages, you will return to them in a few days safely. Leave them so we can fulfill our mission (destroy Israel) in the best way and so you won't be hurt". It became clear already then, when it was too late, that the support of the Arab states (against Israel) was a big illusion. Arabs fought as if intending to cause the "Palestinian Catastrophe"^{145, 146}

143. "April 28, 1948; according to *the Economist* (London), October 1, 1948, only '4000 to 6000' of the '62,000 Arabs who formerly lived in Haifa' remained there until the time of the war". <http://www.eretzyisroel.org/~jkatz/refugees2.html>. The full text of the appeal see YITSCHAK BEN GAD, 3000 QUESTIONS & ANSWERS ON THE MIDEAST CRISIS 306-7 (1991).

144. LEIBLER, *supra* note 39, at 40.

145. BARD, *supra* note 29, at 136 (quoting *Al-Ayyam*, (May 13, 2008), quoted in Itamar Marcus & Barbara Cook, *The Evolving Palestinian Narrative: Arabs Caused the Refugee Problem*, PALESTINIAN MEDIA WATCH (May 20, 2008)).

146. *Id.* at 136.

On the “stealing” of Arab land charge, this is simply not true.¹⁴⁷ Rothbard’s argument does not accord with the facts. We of course cannot say that there was no such thing as expropriation of Arab Land by Jews. The latter were not perfect in this regard (and nothing in the real world ever is). But, as Table III shows¹⁴⁸ a large amount of land was purchased.¹⁴⁹

III. Jewish Land Purchases, 1880-1935 (in dunams*)					
Organization	Total Land Acquired	Government Concessions	From Private Owners	Large Tracts**	Percent (approx.)

PICA (Palestine Jewish Colonization Assoc.)	469,407	39,520	429,887	293,545	70
Palestine Land Development Co.	579,492	66,513***	512,979	455,169	90
Jewish National Fund ****	836,396				
Until 1939			270,084	239,170	90
1931-47			566,312		50
Individual Jews	432,100		432,100		50
*4 dunams = 1 acre.					
**The large tracts often belonged to absentee landlords.					
***Land situated in the sandy Beersheba and marshy Hulch districts.					
****" ... Created on December 25, 1901 . . . "					
***** Government concession: These were land concessions both for Jews and Arabs “to drain and develop the land so as to make additional tracts available for cultivation, under very attractive terms offered by the Government (first Turkish, then British)?”. Aumann, <i>supra</i> note 34, at 123.					
Source: Moshe Aumann, <i>Land Ownership in Palestine 1880-1948</i> , in THE CASE FOR ISRAEL 117, 121 (The Executive Council of Australian Jewry, The Globe Press ed., 1972).					

The Jews bought nearly 9% of the land, and homesteaded it, while the other 91% was, apart from 3.3 % owned by Israeli Arabs and almost

147. For a full analysis on this subject see Aumann, *supra* note 34.

148. *Id.* at 121

149. In any case, as we demonstrate below, there was no need for the Jews to purchase this land. It was theirs by right. It was thus supererogatory that they made any purchases at all.

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16.9% abandoned by Arabs,¹⁵⁰ desert that *was nether owned by Jews nor Arabs*; it became part of Israel when the British left according to the UN partition plan. No libertarian case could be made on that land,¹⁵¹ except from the fact that now that desert was *actually* homesteaded by Jews through work:

The claim is often made that in 1948 a Jewish minority owning only 5 per cent of the land of Palestine made itself master of the Arab majority, which owned 95 per cent of the land. In May 1948 the State of Israel was established in only part of the area allotted by the original League of Nations Mandate. 8.6 per cent of the land was owned by Jews and 3.3 per cent by Israeli Arabs, while 16.9 per cent had been abandoned by Arab owners who imprudently heeded the call from neighbouring countries to 'get out of the way' while the invading Arab armies made short shrift of Israel. The rest of the land—over 70 per cent—had been vested in the Mandatory Power, and accordingly reverted to the State of Israel as its legal heir. (GOVERNMENT OF PALESTINE, SURVEY OF PALESTINE: 1946, 257 (British Government Printer)) The greater part of this 70 per cent consisted of the Negev, some 3,144,250 acres all told, or close to 50 per cent of the 6,580,000 acres in all of Mandatory Palestine. Known as Crown or State Lands, this was mostly uninhabited arid or semi-arid territory, inherited originally by the Mandatory Government from Turkey. In 1948 it passed to the Government of Israel. These lands had not been owned by Arab farmers—neither under the British Mandate nor under the preceding regime. Thus it is obvious that *the contention that 95 per cent of the land—whether of Mandatory Palestine or of the State of Israel—had belonged to Arabs has absolutely no foundation in fact*" (emphasis added by present authors).¹⁵²

Curiously, Rothbard does not mention that the Jewish population of the Arab states, treated as second class citizens and worse, were expelled from their homes and expropriated.

Throughout 1947 and 1948, Jews in Algeria, Egypt, Iraq, Libya, Morocco, Syria, and Yemen (Aden) were persecuted, their property and belongings were confiscated, and they were subjected to severe anti-Jewish riots instigated by the governments. In Iraq, Zionism was made a capital crime. In Syria, anti-Jewish pogroms erupted in Aleppo and the government froze all Jewish bank accounts. In Egypt, bombs were detonated in the Jewish quarter, killing dozens. In Algeria, anti-Jewish decrees were swiftly instituted and in Yemen, bloody pogroms led to the death of nearly 100 Jews. In January 1948, the president of the World Jewish Congress, Dr. Stephen Wise, appealed to U.S. Secretary of State George Marshall: "Between 800,000 and a million Jews in

150. See Aumann, *supra* note 34, at 126-27.

151. At least not any that properly applies to states, as opposed to individuals.

152. Aumann, *supra* note 34, at 126-27. See also Pipes, *supra* note 82.

the Middle East and North Africa, exclusive of Palestine, are in 'the greatest danger of destruction' at the hands of Moslems being incited to holy war over the Partition of Palestine . . . Acts of violence already perpetrated, together with those contemplated, being clearly aimed at the total destruction of the Jews, constitute genocide, which under the resolutions of the General Assembly is a crime against humanity". In May 1948, *the New York Times* echoed Wise's appeal, and ran an article headlined, "Jews in Grave Danger in all Muslim Lands: Nine Hundred Thousand in Africa and Asia face wrath of their foes". With their lives in danger and the situation growing ever more perilous, the Jews of the Arab World fled their homes as refugees. Of the 820,000 Jewish refugees between 1948 and 1972, more than 200,000 found refuge in Europe and North America while 586,000 were resettled in Israel—at great expense to the Israeli government, and without any compensation from the Arab governments who had confiscated their possessions.¹⁵³

153. “. . . The Jewish State, however, never considered turning away the refugees and, over the years, worked to absorb them into society. Overall, the number of Jews fleeing Arab countries for Israel in the years following Israel's independence was nearly double the number of Arabs leaving Palestine. The contrast between the Jewish refugees and the Palestinian refugees grows even starker considering the difference in cultural and geographic dislocation—most of the Jewish refugees traveled hundreds or thousands of miles to a tiny country whose inhabitants spoke a different language and lived with a vastly different culture. Most Palestinian refugees traveled but a few miles to the other side of the 1949 armistice lines while remaining inside a linguistically, culturally and ethnically similar society. Moreover, the value of Jewish property left behind and confiscated by the Arab governments is estimated to be at least 50 percent higher than the total value of assets lost by the Palestinian refugees. In the 1950's, John Measham Berncastle, under the aegis of the United Nations Conciliation Commission for Palestine, estimated that total assets lost by Palestinian refugees from 1948—including land, buildings, movable property, and frozen bank accounts—amounted to roughly \$350 million (\$650 per refugee). Adding in an additional \$100 million for assets lost by Palestinian refugees as a result of the Six Day War, an approximate total is \$450 million—\$4.4 billion in 2012 prices. By contrast, the value of assets lost by the Jewish refugees—compiled by a similar methodology—is estimated at \$700 million—roughly \$6.7 billion today. To date, more than 100 U.N. resolutions have been passed referring explicitly to the fate of the Palestinian refugees. *Not one* has specifically addressed Jewish refugees. Additionally, the United Nations created an organization, UNRWA, to solely handle Palestinian refugees while all other refugees are handled collectively by UNHRC. The U.N. even defines Palestinian refugees differently than every other refugee population, setting distinctions that have allowed their numbers to grow exponentially so that nearly 5 million are now considered refugees despite the fact that the number estimated to have fled their homes is only approximately 400-700,000” (emphasis added by present authors). JEWISH VIRTUAL LIBRARY, http://www.jewishvirtuallibrary.org/jsource/talking/jew_refugees.html (last visited May 8. 2016). In fact, the

This is very important, since in any discussion of expropriation and expulsion, we should include this as an example: About 850,000 Jews from Arab countries were at that time expropriated of assets valued at more than \$300 billion (in today's US dollars according to the President of the World Organization of Jews from Arab Countries, Heskell M. Haddad) and near 100,000 square kilometers of land (nearly four times the size of the State of Israel).¹⁵⁴ Rothbard mentions none of this. Suppose someone were to try to justify massive Arab expropriation of Jewish property and massive expulsion of Jews on the grounds that Israel also did it with the "Palestinians". This would imply collective punishments. The Jews of, for example Baghdad (with more than 2000 years of existence in the country)¹⁵⁵ had something to do with that only

value of Jewish expropriated land and property in Arab countries is, according to other sources much bigger. See *infra* note 154. Nor must we lose sight of two things. First, it is misleading to add Palestinian losses in the Six Day War of 1967 to those of 1948. *Ceteris paribus* requires comparing only those lost by both groups in the earlier date. Second, there can be no question, realistically speaking, about the motivations of the Jewish refugees from Arab countries. They were kicked out and scared out; they were not cooperating with any impending IDF attack on their host countries, where they had lived for thousands of years.

154. See Etgar Lefkowitz, *Expelled Jews hold Deeds on Arab Lands*, JERUSALEM POST (Nov. 16, 2007), <http://www.jpost.com/Jewish-World/Jewish-News/Expelled-Jews-hold-deeds-on-Arab-lands>. For more on this subject, see LEIBLER, *supra* note 39, at 53-54.
155. "The Farhud (meaning 'violent dispossession') . . . paved the way for the dissolution of the 2,600-year-old Jewish community barely 10 years later. . . . Before the victims' blood was dry, army and police warned the Jews not to testify against the murderers and looters. Even the official report on the massacre was not published until 1958. . . . Fear of a second Farhud was a major reason why 90 per cent of Iraq's Jewish community fled to Israel after 1948. . . . The Nazi supporters who planned it had a more sinister objective: the round-up, deportation and extermination in desert camps of the Baghdadi Jews. The inspiration behind the short-lived pro-Nazi government led by Rashid Ali al-Gaylani in May 1941, and the Farhud itself, came not from Baghdad, but Jerusalem. The Grand Mufti, Haj Amin al-Husseini, sought refuge in Iraq in 1939 with 400 Palestinian émigrés. Together, they whipped up local anti-Jewish feeling. An illiterate populace imbibed bigotry through Nazi radio propaganda. Days before the Farhud broke out, the proto-Nazi youth movement, the Futuwwa, went around daubing Jewish homes with a red palm print. Yunis al-Sabawi, who, together with the Mufti and Rashid Ali, spent the rest of the war in Berlin broadcasting propaganda, instructed the Jews to stay in their homes so that they could more easily be rounded up. The Farhud and the coup which preceded it, a failed attempt to spark a pro-Nazi insurgency, cemented a wartime

because they were members of this faith community. But, as we have seen, even this was not the case; Rothbard seemingly does not care about Jewish lives nor property in Arab countries.¹⁵⁶

Let us turn this around. Would the fact that the Arabs abused Jews and their property in their countries justify Israel returning the “favor” to its non-Jewish inhabitants? Certainly not, at least at the level of individual rights. A wrong is a wrong is a wrong, and Arab wrongs do not justify those of Israel. And, *vice versa*: Israeli wrongs to its Arab population¹⁵⁷ do not justify those of Arab nations to Jews. But we should not limit our analysis to a matter of individual rights. We must also consider entering the realm of statism. And here, there is a sort of “balancing” that can indeed be justified. The Arabs stole land from the Jews? The Jews stole land from the Arabs?¹⁵⁸ Why, then, the robbers in both cases are to blame. What is to be done to rectify this situation? One option is for each state to return its stolen property to their rightful owners. This would not work well, since there would be nary a Jew who would be willing to relocate to the Arab land of his fathers. But there is another option: give the land stolen by Israel from Arabs to Jews, and provide the territory unjustifiably taken from Jews by Arab countries to the very Arabs who had their property taken away from by the Jews.¹⁵⁹

Arab-Nazi alliance designed to rid Palestine, and the world, of the Jews. The Mufti had secret plans to build crematoria near Nablus. The Mufti’s postwar legacy endured. Six months after the end of WWII (sic) and before Israel was established, vicious riots broke out in Egypt and Libya—the latter, incited by anti-Jewish hatred, claimed more than 130 lives. . . . The uprooting of the 140,000 Jews of Iraq followed a Nazi pattern of victimisation—dismantlement, dispossession and expulsion. Nuremberg-style laws criminalised Zionism, freezing Jewish bank accounts, instituting quotas and restrictions on jobs and movement. Every Arab state adopted all, or some, of these anti-Jewish measures. The result was the exodus of nearly a million Jews from the Arab world. [during the Farhud] More Jews died than on Kristallnacht.” Lyn Julius, *The Demons of the Farhud Pogrom are with Us Still*, HUFFINGTON POST (May 26, 2015), http://www.huffingtonpost.com/lyn-julius/demons-of-the-farhud-are-_b_7427494.html.

156. Nor in Palestine for that matter.

157. We are now stipulating, *arguendo*, that this is the case.

158. We continue to stipulate, *arguendo*, the truth of this statement.

159. Interestingly, the U.N. and other critics who focus on Israel alone do not support any such thing. No, they would rather see the landless Palestinians suffer in refugee camps for generations, so as to provide a living example of the heart-

As we have seen, and this experience exemplifies, the root of the conflict was not the State of Israel *itself*, but *Jewish presence* in the Middle East in general which the majority of the Arab political leadership and a large portion of its followers hated. In absolute numbers, such expulsion of the Jews was far worse than the *voluntary* leaving of the Arabs from Israel.

Then there is Rothbard's account of the alleged "U.N. internationalization plan discarded" by Israel. This is not true. First of all the Jews accepted the U.N. Partition Plan, and the Arabs did not. Also one can see why this is not the case when one realizes that the old city of Jerusalem was part of Jordan until 1967. Jerusalem remained *mainly* (for example the Old City) in Arab hands until the Six Day War.¹⁶⁰ And this was part of the Arab attack of Israel after the Declaration of Independence:

Sixty-two Jews were murdered by Arabs in the first week after the UN partition plan was passed, and by May 15, 1948, a total of 1,256 Jews had been killed, most of them civilians. These deaths were caused by Arab militias, gangs, terrorists and army units which attacked every place of Jewish inhabitation in Palestine. The attacks succeeded in placing Jerusalem under siege and eventually cutting off its water supply. All Jewish villages in the Negev were attacked, and Jews had to go about the country in convoys. In every major city where Jews and Arabs lived in mixed neighborhoods the Jewish areas came under attack. This was true in Haifa's Hadar Hacarmel as well as Jerusalem's Old City. Massacres were not uncommon. Thirty nine Jews were killed by Arab rioters at Haifa's oil refinery on December 30, 1947. On January 16, 1948, 35 Jews were killed trying to reach Gush Etzion. On February 22, 44 Jews were murdered in a bombing on Jerusalem's Rehov Ben-Yehuda. And on February 29, 23 Jews were killed all across Palestine, eight of them at the Hayotzek iron foundry. Thirty-five Jews were murdered during the Mount Scopus convoy massacre on April 13. And 127 Jews were massacred at Kfar Etzion on May 15, 1948, after 30 others had died defending the Etzion Bloc.¹⁶¹

The United Nations resolved that Jerusalem would be an international city apart from the Arab and Jewish states demarcated in the partition resolution. The 150,000 Jewish inhabitants were under constant military pressure; the 2,500 Jews living in the Old City were victims of an Arab blockade that lasted

lessness and evil status of the Israelis. See more on this below.

160. See Map XIII in Annex B.

161. Seth J. Frantzman, *Ethnic Cleansing in Palestine?*, JERUSALEM POST (Aug. 16, 2007), <http://www.middleeastpiece.com/palestinianviolence.html>. See also Frantzman, *supra* note 68; Efraim Karsh, *Rewriting Israel's History*, 3 MIDDLE EAST Q. 19 (1996).

five months before they were forced to surrender on May 29, 1948. Prior to the surrender, and throughout the siege on Jerusalem, Jewish convoys tried to reach the city to alleviate the food shortage, which, by April, had become critical.¹⁶²

According to Rothbard “the remaining remnant (of the Arab population in Israel), was subject to a harsh military rule.” This is highly problematic. *The Arab citizens of Israel enjoy more freedom in Israel than in any other country in the Middle East*, and are in no way different from Jews with regards to citizenship nor individual rights. Israeli Arabs are as Israeli as Jewish or Christian Israelis.¹⁶³

At this point in his essay Rothbard recognizes the fact that most Arabs left, but he insists on saying that Israel did not allow them to go back. This is far from the truth:

The Israeli government was not indifferent to the plight of the refugees; an ordinance was passed creating a Custodian of Abandoned Property "to prevent unlawful occupation of empty houses and business premises, to administer ownerless property, and also to secure tilling of deserted fields, and save the crops. . .". The implied danger of repatriation did not prevent Israel from allowing some refugees to return and offering to take back a substantial number as a condition for signing a peace treaty. In 1949, Israel offered to allow families that had been separated during the war to return, to release refugee accounts frozen in Israeli banks (eventually released in 1953), to pay compensation for abandoned lands and to repatriate 100,000 refugees.

The Arabs rejected all the Israeli compromises. They were unwilling to take any action that might be construed as recognition of Israel. They made repatriation a precondition for negotiations, something Israel rejected. The result was the confinement of the refugees in camps. Despite the position taken by the Arab states, Israel did release the Arab refugees' blocked bank accounts, which totaled more than \$10 million, paid thousands of claimants cash compensation and granted thousands of acres as alternative holdings.¹⁶⁴

. . . [O]n humanitarian grounds Israel has since the 1950's allowed more than 50,000 refugees to return to Israel under a family reunification program, and between 1967 and 1993 allowed a further 75,000 to return to the West Bank or Gaza. Since the beginning of the Oslo process Israel has allowed another 90,000 Palestinians to gain residence in PA-controlled territory.¹⁶⁵

162. BARD, *supra* note 29, at 136-37.

163. For more on this subject see ALAN DERSHOWITZ, *THE CASE FOR ISRAEL* 154-57 (2003); BARD, *supra* note 29, at 161-66; LEIBLER, *supra* note 39, at 70-73; and Alexander Safian, *Can Arabs Buy Land in Israel?*, 4 *MIDDLE EAST Q.* 11 (1997).

164. BARD, *supra* note 29, at 140-41.

165. Alexander Safian, *Backgrounder: The Palestinian Claim to a "Right of Return"*,

Israel has been benevolent with regard to those refugees who left and lost their property through no fault of their own. But this is far from the so called "Right of Return", which is an arbitrary concept created by Arab leaders in order to bring to Israel anyone who defines himself as Palestinian (nearly 5 million people today).¹⁶⁶ This would obviously destroy the Jewish demographic majority of Israel in order to undermine its identity as a Jewish Home. And while this demand is made without any foundation in historical record, Israel still respects those demands of return that are grounded on facts (just like the Arab relatives living in Israel of those refugees who demand to return, as the previous quote explains). The fact that "Palestinian Arab" refugees still live in refugee camps is due to the policies of the Arab leaders themselves. In fact, they cannot obtain citizenship in most Arab

CAMERA (Sept. 1, 2000), http://www.camera.org/index.asp?x_context=7&x_issue=7&x_article=185.

166. The definition of "Palestinian" by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is:

... [P]ersons 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." This document continues: "UNRWA services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance. 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.

UNRWA, <http://www.unrwa.org/palestine-refugees>. It is easy to see that the concept is vague enough to allow anyone claiming to have been living in Palestine between the dates mentioned in the definition as a "Palestinian". This is far from being an objective standard to property claim. "Until 1967 UNRWA had no means of verifying the eligibility or genuineness of those registered on the rolls. The United Nations Economic Survey Commission reported on December 28, 1949, that the number of bogus refugees on the list at that stage was as high as 160,000. In 1952 UNRWA stated: "Whereas all births are eagerly announced, the deaths, wherever possible, are passed over in silence so that the family may continue to collect rations for the deceased". Henry Labouisse, UNRWA Director, told a Palestinian Refugee Conference in Jerusalem (July 20, 1955): "There are refugees who hold as many as five hundred UNRWA ration cards and there are dealers in UNRWA approved clothing ration cards". LEIBLER, *supra* note 39, at 44.

countries and are treated as second class citizens.¹⁶⁷ As an example, in 1970 King Hussein of Jordan ordered the killing of 20,000 Palestinians (in the words of Arafat), and in 1991 nearly 400,000¹⁶⁸ Palestinians were expelled from Arab countries (especially from Kuwait), due to the PLO support of Saddam Hussein in the First Gulf War.¹⁶⁹ The Arab leaders use Palestinian refugees as an excuse for supporting attacks against Israeli citizens. This fact also points out that the world does not feel any disquiet about actual Palestinians located outside Israel. They are only concerned when Jews are somehow involved in any given situation.¹⁷⁰

On the other side, Jewish refugees who were actually expelled from Arab countries were *integrated* into society. This demonstrates that Israelis wanted to create a society based on peaceful cooperation, while Arab leaders used Palestinian Arab refugees as chess pieces in order to attack and undermine Israel. Refugee integration into society is something that does not occur in Arab countries because they use the Palestinian refugees as a puppet in order to attack the State of Israel. These unfortunates are used as victims in numerous forums so as to garner positive publicity for themselves and negative for

167. There seems to be a contradiction here. Which is it? Is it that these Arabs cannot obtain citizenship, or are they are second class citizens? Both statements are true. In some countries they are citizens but have hard restrictions placed on them. And in other Arab nations they do not even have citizenship nor can they attain it.
168. KHALED ABU TOAMEH, *THE SECRET ETHNIC CLEANSING OF PALESTINIANS*, (Aug. 10, 2015), <http://www.gatestoneinstitute.org/6314/ethnic-cleansing-palestinians>. “When Kuwait was liberated the following year by a U.S.-led coalition, some 200,000 Palestinians were expelled from the oil-rich emirate in retaliation for having supported Saddam Hussein’s invasion of it. An additional 150,000 Palestinians had fled Kuwait before the U.S.-led coalition war. They had suspected a new incursion might be in the offing, and were worried about what would be awaiting them once Kuwait was liberated.”
169. Steven Rosen, *Kuwait Expels Thousands of Palestinians*, 19 *MIDDLE EAST Q.* 75 (2012). “. . . [D]riving PLO chairman Yasser Arafat to declare that ‘what Kuwait did to the Palestinian people is worse than what has been done by Israel to Palestinians in the occupied territories’”.
170. We are tempted to criticize Rothbard on this account too. Why his only concern for Palestinians (supposedly) abused by Jews? Why no defense on his part for all degraded members of this group, from whatever source? However, it would be unfair to hold Rothbard accountable for this oversight. Writers should be criticized for what they write, not for what they do not write. But, still, this lacunae is more than passing curious.

Block, Futerman, & Farber

their enemies. Then, too, this ploy attracts billions of taxpayer dollars from western countries and institutions that are then given to the Palestinian Authority, apart from the U.N. Much of this funding ends up in the hands of corrupt Palestinian leaders, such as the well-known very wealthy Yasser Arafat.¹⁷¹ No truer words on this topic were said than these: “The refugees are the corner-stone in the Arab struggle against Israel. The refugees are the armaments of the Arabs and Arab nationalism.”¹⁷²

Many of the same research issues apply to Jewish populations, namely those who left Arab countries and immigrated to Israel. The majority of Jews who ever immigrated to Israel would indeed qualify for the status of refugees, having lost most of their belonging and being unable to return to the countries of origin. A significant difference is that Jewish immigrants in Israel were incorporated into a major public effort of absorption within the mainstream of Israeli society. In the case of the Palestinians, a major effort was instead invested in refraining from solving the social problems of immediate relevance while postponing and subordinating those issues to the final solution of the Israeli-Arab conflict.¹⁷³

VI. THE ARAB LEADERS

Rothbard recognizes the fact that British-created Jordan ultimately controlled the areas that later refugees would reclaim as theirs. But there was no such thing as a Palestinian state nor a Palestinian nationality. Surprisingly, the Jews themselves were the ones called “Palestinians”:

Ironically, before local Jews began calling themselves Israelis in 1948 (the name “Israel” was chosen for the newly-established Jewish state), the term “Palestine” applied almost exclusively to Jews and the institutions founded by new Jewish immigrants in the first half of the 20th century, before

171. Trici McDermott, *Arafat's Billions: One Man's Quest to Track Down Unaccounted-For Public Funds*, CBS NEWS (Nov. 07, 2003), <http://www.cbsnews.com/news/arafats-billions/>. “Jim Prince and a team of American accountants—hired by Arafat’s own finance ministry—are combing through Arafat’s books. . . . So far, Prince’s team has determined that part of the Palestinian leader’s wealth was in a secret portfolio worth close to \$1 billion—with investments in companies like a Coca-Cola bottling plant in Ramallah, a Tunisian cell phone company and venture capital funds in the U.S. and the Cayman Islands.”

172. LEIBLER, *supra* note 39, at 47 (quoting RADIO CAIRO (July 19, 1957)).

173. DellaPergola, *supra* note 5, at 6.

independence. Some examples include:

The Jerusalem Post, founded in 1932, was called *the Palestine Post* until 1948.

Bank Leumi L'Israel was called the "Anglo-Palestine Bank", a Jewish Company.

The Jewish Agency—an arm of the Zionist movement engaged in Jewish settlement since 1929—was called the Jewish Agency for Palestine.

The house organ of American Zionism in the 1930s was called *New Palestine*.

Today's Israel Philharmonic Orchestra, founded in 1936 by German Jewish refugees who fled Nazi Germany, was called the "Palestine Symphony Orchestra, composed of some 70 Palestinian Jews".

The United Jewish Appeal (UJA) was established in 1939 as a merger of the United Palestine Appeal and the fundraising arm of the Joint Distribution Committee.¹⁷⁴

Rothbard says that "The acknowledged leader of the Palestinian Arabs, their Grand Mufti Haj Amin el-Husseini, was summarily deposed by the long-time British tool, King Abdullah of Trans-Jordan, who simply confiscated the Arab regions of east-central Palestine, as well as the Old City of Jerusalem". This is remarkable because Haj Amin el-Husseini is the perfect example of the root of the conflict and of *true* war guilt. He was a well-known collaborator of the Nazis who even asked Hitler to extend the "Final Solution" to the Land of Palestine and recruited Palestinians into the Arab branch of the SS:

In 1941, Haj Amin al-Husseini, the Mufti of Jerusalem, fled to Germany and met with Adolf Hitler, Heinrich Himmler, Joachim Von Ribbentrop and other Nazi leaders. He wanted to persuade them to extend the Nazis' anti-Jewish program to the Arab world. The Mufti sent Hitler 15 drafts of declarations he wanted Germany and Italy to make concerning the Middle East. One called on the two countries to declare the illegality of the Jewish home in Palestine. He also asked the Axis powers to "accord to Palestine and to other Arab countries the right to solve the problem of the Jewish elements in Palestine and other Arab countries in accordance with the interest of the Arabs, and by the same method that the question is now being settled in the Axis countries". In November 1941, the Mufti met with Hitler, who told him the Jews were his foremost enemy. The Nazi dictator rebuffed the Mufti's requests for a declaration in support of the Arabs, however, telling him the time was not right. The Mufti offered Hitler his "thanks for the sympathy

174. Eli E. Hertz, *Palestine is a Geographical Area, Not a Nationality*, THINK-ISRAEL (Jan. 8, 2009), <http://www.think-israel.org/hertz.ersatzpeople.html>; Eli E. Hertz, *The "Palestinian Nation" Fallacy*, ISR. NAT'L NEWS (Feb. 25, 2014), <http://www.israelnationalnews.com/Articles/Article.aspx/14573#.VDLwPWd5Pkc>.

which he had always shown for the Arab and especially Palestinian cause, and to which he had given clear expression in his public speeches. . . . The Arabs were Germany's natural friends because they had the same enemies as had Germany, namely. . . . the Jews. . . ." Hitler told the Mufti he opposed the creation of a Jewish state and that Germany's objective was the destruction of the Jewish element residing in the Arab sphere. In 1945, Yugoslavia sought to indict the Mufti as a war criminal for his role in recruiting 20,000 Muslim volunteers for the SS, who participated in the killing of Jews in Croatia and Hungary. He escaped from French detention in 1946, however, and continued his fight against the Jews from Cairo and later Beirut.¹⁷⁵

Basically Husseini opposed *any* Jewish presence, not only in the land of Palestine, but in *any land* whatsoever. Rothbard ignored this fact, while at the same time mentioning Husseini as a somewhat legitimate representative of the Arab people. *The fact that Husseini actually was a respected leader by Palestinian Arabs goes a long way in explaining why there was a war in the first place.*

VII. THE STATE OF WAR

Rothbard correctly identifies the fact that the state of war continued after the armistice of 1949. At the same time, he argues that “. . . Egypt, from 1949 on, continued to block the Straits of Tiran—the entrance to the Gulf of Aqaba—to all Israeli shipping and to all trade with Israel. In view of the importance of the blocking of the Gulf of Aqaba in the 1967¹⁷⁶ war, it is important to remember that nobody griped at this Egyptian action: nobody said that [apart from Jews and Israelis] Egypt was violating international law by closing this [in Rothbard's words] ‘peaceful international waterway.’” Our author continues: “(Making any waterway open to all nations, according to international law, requires two conditions: (a) consent by the powers abutting on the water way, and (b) no state of war existing between any powers on the waterway. Neither of these conditions obtained for the Gulf of Aqaba: Egypt has never consented to such an agreement, and Israel has been in a state of war with Egypt since 1949, so that Egypt blocked the Gulf to Israeli shipping un-challenged from 1949 on)”.

175. BARD, *supra* note 29, at 20-21.

176. On the situation after the Six Day War, and the Yom Kippur War in October 1973 see CHAIM HERZOG, *THE WAR OF ATONEMENT* (1975).

We beg to differ:

In 1956, the United States gave Israel assurances that it recognized the Jewish State's right of access to the Straits of Tiran. In 1957, at the U.N., 17 maritime powers declared that Israel had a right to transit the Strait. Moreover, the blockade violated the Convention on the Territorial Sea and Contiguous Zone, which was adopted by the U.N. Conference on the Law of the Sea on April 27, 1958. The closure of the Strait of Tiran was the *casus belli* in 1967. Israel's attack was a reaction to this Egyptian first strike.¹⁷⁷

This was an explicit violation of international law. But even apart from international law, as a libertarian who champions the Non-Aggression Principle, it is highly strange that Rothbard mischaracterizes such an act of aggression by Egypt. The fact was that Egypt was physically preventing Israeli commerce on open waters, and this is an explicit violation of the Non-Aggression Principle. Israel had a right to defend itself, and this is fully compatible with libertarian principle.

In Rothbard's view, Israel should have acquiesced in the blockade of the Straits. Since the Jewish state declined to act so passively it takes on guilt for the war. There can be no libertarian foundation for this argument. Nor did Egypt block the Straits from 1949 on. Israel was importing Iranian oil from 1949 through 1967 through this body of water. Michael Oren explains "... Thus, Nasser needed a pretext to eject the UN peacekeepers from Sinai and save face. His pretext came on May 12, 1967, when the USSR misinformed the Egyptians that Israeli forces were massed on Israel's northern border, ready to destroy Syria. With the threat of war looming, Nasser, evicted the peacekeepers from Sinai, closed the Straits of Tiran, thereby blocking Israel's oil imports."¹⁷⁸

Surprisingly Rothbard argues that Israel *copied* the "blitzkrieg" method of attack by the Nazis. This is misleading because the Nazis' "blitzkrieg" attacks were *offensive* while the Israeli actions were *defensive*. It is problematic that this eminent author all but equates *the Nazis with their main victims*.¹⁷⁹

177. BARD, *supra* note 29, at 46-47.

178. Michael Oren, *Making Sense of the Six-Day War*, MIDDLE EAST FORUM (May 6, 2002), <http://www.meforum.org/210/making-sense-of-the-six-day-war>.

179. In Murray N. Rothbard, *The Massacre*, 16 LIBERTARIAN FORUM (1982), <https://www.lewrockwell.com/2014/07/murray-n-rothbard/the-massacre/>. Rothbard again identifies Israeli actions with the Nazis. On the relation between Anti-Semitism and Anti-Zionism see Perednik, *supra* note 21, ch. 14. Based on this type of logic, we can prove that the Israelis were also Communists: The

What is particularly irksome about this comparison is that it seems gratuitous and simply there for the emotional shock value of comparing the Israel Defense Forces to Nazis. There is little reason for Rothbard to compare the 1967 bombing of military war planes which Nasser had publicly threatened to use against Israel to the Nazi blitzkrieg other than for emotional effect. Such a comparison is akin to saying that both Israel and the Nazis used guns to kill people in wars. This is true, but it is a useless comparison meant to raise ire by putting both Nazis and the Jewish army in the same sentence.

Further, Rothbard's use of this comparison seems to betray his motives, which are to cast Israel as totally and absolutely evil, regardless of the evidence.

About the actions of Israel in 1956, the truth is that it was a defensive strike:

Egypt had maintained its state of belligerency with Israel after the armistice agreement was signed. The first manifestation of this was the closing of the Suez Canal to Israeli shipping. On August 9, 1949, the UN Mixed Armistice Commission upheld Israel's complaint that Egypt was illegally blocking the canal. UN negotiator Ralph Bunche declared: "There should be free movement for legitimate shipping and no vestiges of the wartime blockade should be allowed to remain, as they are inconsistent with both the letter and the spirit of the armistice agreements". On September 1, 1951, the Security Council ordered Egypt to open the Canal to Israeli shipping. Egypt refused to comply. The Egyptian Foreign Minister, Muhammad Salah al-Din, said early in 1954 that: "The Arab people will not be embarrassed to declare: We shall not be satisfied except by the final obliteration of Israel from the map of the Middle East". In 1955, Egyptian President Gamal Abdel Nasser began to import arms from the Soviet Bloc to build his arsenal for a future confrontation with Israel. In the short-term, however, he employed a new tactic to prosecute Egypt's war with Israel. He announced it on August 31, 1955: "Egypt has decided to dispatch her heroes, the disciples of Pharaoh and the sons of Islam and they will cleanse the land of Palestine. . . . There will be no peace on Israel's border because we demand vengeance, and vengeance is Israel's death". These "heroes" were Arab terrorists, or *fedayeen*, trained and equipped by Egyptian Intelligence to engage in hostile action on the border, and to infiltrate Israel to commit acts of sabotage and murder. The *fedayeen* operated mainly from bases in Jordan, so that Jordan would bear the brunt of Israel's retaliation, which inevitably followed. The terrorist attacks violated the armistice agreement provision that prohibited the initiation of hostilities by paramilitary forces; nevertheless, it was Israel that was condemned by the U.N. Security Council for its counterattacks. The escalation continued

Jewish state used guns. So did the USSR. Ergo, the Israelis are Communists.

with the Egyptian blockade of Israel's shipping lane in the Straits of Tiran, and Nasser's nationalization of the Suez Canal in July 1956. On October 14, Nasser made clear his intent: "I am not solely fighting against Israel itself. My task is to deliver the Arab world from destruction through Israel's intrigue, which has its roots abroad. Our hatred is very strong. There is no sense in talking about peace with Israel. There is not even the smallest place for negotiations". Less than two weeks later, on October 25, Egypt signed a tripartite agreement with Syria and Jordan placing Nasser in command of all three armies. The blockade of the Suez Canal and Gulf of Aqaba to Israeli shipping, combined with the increased *fedayeen* attacks and the bellicosity of Arab statements, prompted Israel, with the backing of Britain and France, to attack Egypt on October 29, 1956. The Israeli attack on Egypt was successful, with Israeli forces capturing the Gaza Strip, much of the Sinai and Sharm al-Sheikh. A total of 231 Israeli soldiers died in the fighting. Israeli Ambassador to the UN Abba Eban explained the provocations to the Security Council on October 30: "During the six years during which this belligerency has operated in violation of the Armistice Agreement there have occurred 1,843 cases of armed robbery and theft, 1,339 cases of armed clashes with Egyptian armed forces, 435 cases of incursion from Egyptian controlled territory, 172 cases of sabotage perpetrated by Egyptian military units and fedayeen in Israel. As a result of these actions of Egyptian hostility within Israel, 364 Israelis were wounded and 101 killed. In 1956 alone, as a result of this aspect of Egyptian aggression, 28 Israelis were killed and 127 wounded."¹⁸⁰

Rothbard avers "The 1967 crisis emerged from the fact that, over the last few years, the Palestinian Arab refugees have begun to shift from their previous bleak and passive despair, and begun to form guerrilla movements which have infiltrated the Israeli borders to carry their fight into the region of their lost homes. Since last year, Syria has been under the control of the most militantly anti-imperialist government that the Middle East has seen in years. Syria's encouragement to the Palestinian guerrilla forces led Israel's frenetic leaders to threaten war upon Syria and the conquest of Damascus—threats punctuated by severe reprisal raids against Syrian and Jordanian villages . . ."¹⁸¹

There are problems here. Even Rothbard recognizes that there was

180. BARD, *supra* note 29, at 39-41.

181. ROTHBARD, *supra* note 4, at 27.

a state of war¹⁸² since the armistice of 1949.¹⁸³ He cannot deny that the Egyptians, as well as the Syrians, were being armed by the USSR. The degree of bellicosity from the Arab nations surely rose to the level of a threat.¹⁸⁴ It is thus difficult to see why Israel was supposed to quietly *wait to be attacked*. As we have seen, the Egyptian forces *were preparing to attack* Israel along with the Syrians and Jordanians:

In addition to Nasser's verbal threats, Israel was under actual attack from Arab terrorists. In 1965, 35 raids were conducted against Israel. In 1966, the number increased to 41. In just the first four months of 1967, 37 attacks were launched. Meanwhile, Syria's attacks on Israeli kibbutzim from the Golan Heights provoked a retaliatory strike on April 7, 1967, during which Israeli planes shot down six Syrian MiGs. Shortly thereafter, the Soviet Union—which had been providing military and economic aid to both Syria and Egypt—gave Damascus information alleging a massive Israeli military buildup in preparation for an attack. Despite Israeli denials, Syria decided to invoke its defense treaty with Egypt. On May 15, Israel's Independence Day, Egyptian troops began moving into the Sinai and massing near the Israeli border. By May 18, Syrian troops were prepared for battle along the Golan

182. Consider now Rothbard's second criterion for the justification of the naval blockade: "(b) no state of war existing between any powers on the waterway". Rothbard, *supra* note 4, at 26-27. But there was a state of war between Egypt and Israel. In Rothbard's view, this justified the sea closure. If so, then it also justified the attack of the latter nation on the former. After all, if a state of war exists between two belligerents, it is surely not unjustified that one would attack the other. Rothbard cannot have it both ways. He cannot have his cake and eat it too. He logically may not aver two contradictory statements. One, that Egypt was justified in closing the waterway since a state of war existed between it and Israel, and, two, that the latter was unjustified in attacking the former given that a state of war existed between the two nations.
183. As Nasser himself said, "(May 28, 1967): We will not accept. . . co-existence with Israel. . . Today the issue is not the establishment of peace between the Arab states and Israel . . . The war with Israel is in effect since 1948". LEIBLER, *supra* note 39, at 60.
184. "To the sea," indeed. "The Secretary-General of the Arab League, Azzam Pasha, assured the Arab peoples that the occupation of Palestine and Tel Aviv would be as simple as a military promenade", said Habib Issa in the New York Lebanese paper, *Al Hoda* (June 8, 1951). "He pointed out that they were already on the frontiers and that all the millions the Jews had spent on land and economic development would be easy booty, for it would be a simple matter to throw Jews into the Mediterranean. . . . Brotherly advice was given to the Arabs of Palestine to leave their land, homes and property and to stay temporarily in neighboring fraternal states, lest the guns of the invading Arab armies mow them down". BARD, *supra* note 29, at 134.

Heights. Nasser ordered the UN Emergency Force, stationed in the Sinai since 1956, to withdraw on May 16. Without bringing the matter to the attention of the General Assembly, as his predecessor had promised, Secretary-General U Thant complied with the demand. After the withdrawal of the UNEF, the Voice of the Arabs proclaimed (May 18, 1967):

As of today, there no longer exists an international emergency force to protect Israel. We shall exercise patience no more. We shall not complain any more to the UN about Israel. The sole method we shall apply against Israel is total war, which will result in the extermination of Zionist existence.

An enthusiastic echo was heard on May 20 from Syrian Defense Minister Hafez Assad: "Our forces are now entirely ready not only to repulse the aggression, but to initiate the act of liberation itself, and to explode the Zionist presence in the Arab homeland. The Syrian army, with its finger on the trigger, is united. . . . I, as a military man, believe that the time has come to enter into a battle of annihilation".

On May 22, Egypt closed the Straits of Tiran to all Israeli shipping and all ships bound for Eilat. This blockade cut off Israel's only supply route with Asia and stopped the flow of oil from its main supplier, Iran. The following day, President Johnson declared the blockade illegal and tried, unsuccessfully, to organize an international flotilla to test it. Nasser was fully aware of the pressure he was exerting to force Israel's hand. The day after the blockade was set up, he said defiantly: "The Jews threaten to make war. I reply: Welcome! We are ready for war".

Nasser challenged Israel to fight almost daily. "Our basic objective will be the destruction of Israel. The Arab people want to fight," he said on May 27. The following day, he added: "We will not accept any . . . coexistence with Israel . . . Today the issue is not the establishment of peace between the Arab states and Israel. . . . The war with Israel is in effect since 1948". King Hussein of Jordan signed a defense pact with Egypt on May 30. Nasser then announced: "The armies of Egypt, Jordan, Syria and Lebanon are poised on the borders of Israel . . . to face the challenge, while standing behind us are the armies of Iraq, Algeria, Kuwait, Sudan and the whole Arab nation. This act will astound the world. Today they will know that the Arabs are arranged for battle, the critical hour has arrived. We have reached the stage of serious action and not declarations".

President Abdur Rahman Aref of Iraq joined in the war of words: "The existence of Israel is an error which must be rectified. This is our opportunity to wipe out the ignominy which has been with us since 1948. Our goal is clear—to wipe Israel off the map". On June 4, Iraq joined the military alliance with Egypt, Jordan and Syria. The Arab rhetoric was matched by the mobilization of Arab forces. Approximately 250,000 troops (nearly half in Sinai), more than 2,000 tanks and 700 aircraft ringed Israel. By this time, Israeli forces had been on alert for three weeks. The country could not remain

fully mobilized indefinitely, nor could it allow its sea lane through the Gulf of Aqaba to be interdicted. Israel's best option was to strike first. On June 5, 1967, the order was given to attack Egypt.¹⁸⁵

Israeli intelligence identified that an attack, especially by the Egyptian Air Forces (much superior in numbers to the IDF Air Forces), would destroy Israeli possibilities of any effective defense. In the face of a state of war and an imminent attack, *there was no other choice* but to defend Israeli citizens by obviating the Egyptian attack while their air forces were still on the ground. This in no way qualifies as a violation of the NAP, since the actual aggression had already been started by Egypt through blockading the Straits of Tiran. In any case, according to libertarian theory, a credible threat alone, even in the absence of actual use of physical force, is equivalent to initiatory violence in the justification of a response. To think otherwise is to believe that the Israelis should have let themselves be murdered. It is also to misconstrue libertarian theory.

If there is any injustice with regard to land in the Middle East, the fact that Israel retreated from Sinai in 1956 and 1979 (after Eisenhower's pressure and the peace accord with Egypt,¹⁸⁶ respectively) and Gaza in 2005 (the "Disengagement Plan") with the subsequent forced evacuation of Israeli citizens should be included on that list. The single civilized country in that area of the world won this bit of real estate fair and square. It fought a defensive war, and won.

There are two countries, A and B. All is well. Whereupon A attacks B unjustly. In the war, B wins some of A's territory. Is B justified in keeping it? Yes. If there were two individuals, A and B, and the former gratuitously attacked the latter, libertarian punishment theory would certainly support A paying B damages. Here, there is a strong analogy between the two situations.¹⁸⁷

We should reiterate here that we are speaking within the realm of statism. The point of this paper is not that Israel is a perfect libertarian model, but that it is much less evil as a state than almost any other, by libertarian standards. That's why it is so strange that Rothbard singles it out for criticism. So this example too is talking within the context of

185. BARD, *supra* note 29, at 45-46.

186. On this we may add that, at least until now with regard to Egypt, such peace has been respected. *See id.* at 266-75.

187. *See infra*, near note 202 for further elaboration.

statism, and we concede that individual rights (from the point of view of Anarcho capitalism) are still not respected through this logic, but that is the situation with states.

Rothbard connects the Six Day War and Palestinians. If this were the case, it would be unclear why the Egyptians were the ones who actually fought the War. Rothbard mentions the refugees “carry(ing) their fight in to the region of their lost homes.” This is difficult to understand. The Egyptian army fought, not Palestinian refugees. The Egyptians controlled the Gaza Strip and had no intention of creating a Palestinian State there. Their real objective was to destroy Israel and kill the Jews. The idea (widely held nowadays)¹⁸⁸ regarding the so called “Israeli-Palestinian conflict” is that the source of the conflict is the absence of a Palestinian State (or the “Occupation”). But this avoids asking why there was no movement to declare a Palestinian State *before* 1967, nor in the Gaza Strip (controlled by Egypt) nor in Judea and Samaria (controlled by Jordan). It is only after Israel conquered these territories after 1967 that this became to be understood as the common sense view. However it does not make any sense: the real cause of the problem is the Arab political leadership’s rejection of any Jewish presence in the area whatsoever (and therefore the nature of Israel as a Jewish State).

Rothbard also claims that the Palestinians wanted to “Carry their fight into the region of their lost homes”. But the question arises: What lost homes? Egypt did not lose any houses in 1948, the Palestinian Arabs did not begin the 1967 war, and Israel fought the Egyptian, Jordanian and Syrian armies. There is no connection between these subjects, and Rothbard conflates them all. He treats the subject in collective categories (as “Arabs” who lost “their homes”). By writing about the entire collective of Arabs as being expropriated by Jews throughout his paper, Rothbard in effect equates Palestinians with Egyptians and Jordanians. A Palestinian state in order to regain their “lost home” was an idea that no Arab had, at the time. But in order to show that the Arab aggression (by Egypt, Syria and Jordan) was justified, Rothbard links it with the “lost rights” of Palestinians. The one had nothing much to do with the other. Certainly, they were not linked in reality anywhere near as strongly as our author claims.

188. We write in mid-2016.

The fact that Israel increased its size by three¹⁸⁹ after the 1967 war does not imply that there was any “imperialist” position, nor that there was not a *willingness* to retreat if peace was assured. This is easily shown by the fact that Israel *retreated* from the Sinai Peninsula in 1979 after the peace treaty with Egypt.¹⁹⁰ Whether this was actually helpful for peace or not is still an open question, as the Jewish community of Yamit was forcibly evacuated in 1979, and Jewish homesteaded property was destroyed for the sake of a treaty with another State run by a dictatorship. The treaty was opposed by the populace to the point where the Egyptian Premier who signed it, Anwar Sadat, was assassinated. The future of the peace treaty is still in doubt considering the recent 2011 Egyptian revolution. Nevertheless there has been no state of war between Israel and Egypt since.

Rothbard maintains “One of the most repellent aspects of the 1967 slaughter is the outspoken admiration for the Israeli conquest by almost all Americans, Jew and non-Jew alike”.¹⁹¹ This is unjustified according to Rothbard because “The one thing that Americans must not be lured into believing is that Israel is a ‘little’ ‘underdog’ against its mighty Arab neighbors. Israel is a European nation with a European technological standard battling a primitive and undeveloped foe”

This cannot be denied. But, against this is the fact that the Arab Nations condemned Palestinian Arabs to be eternal refugees by not allowing them citizenship and rights, in order to justify their numerous attacks on Israel.¹⁹² And following that pattern, today Palestinian groups such as the Hamas place their guns and rocket launchers near

189. See Map XII in Annex B.

190. This episode should not be confused with the events of 1956, when Eisenhower forced the Israelis to vacate the Sinai. We are now discussing the second time the IDF removed itself from the Sinai. This was the Israeli Peace Treaty with Egypt agreed to by Menachem Begin and Anwar Sadat under the Carter Presidency in 1979.

191. Rothbard, *supra* note 4, at 28.

192. ABU TOAMEH, *supra* note 168. “Not only do the Arab countries despise the Palestinians, they also want them to be the problem of Israel alone. That is why, since 1948, Arab governments have refused to allow Palestinians permanently to settle in their countries and become equal citizens. Now these Arab countries are not only denying Palestinians their basic rights, they are also killing and torturing them, and subjecting them to ethnic cleansing. And this is all happening while world leaders and governments continue to bury their heads in the sand and point an accusing finger at Israel.”

schools and hospitals, making shields out of their own population.¹⁹³ If that is not “repellent” then nothing is. Also, there is the fact that in terms of sheer numbers at least¹⁹⁴ Israel cannot but be considered an “underdog”. Then there is the fact that Israel never targeted civilians directly,¹⁹⁵ while the Arab states did precisely that with the desire of “dancing on the ruins of Tel Aviv”. As Nasser said in March 8, 1965, “We shall not enter Palestine with its soil covered in sand, . . . We shall enter it with its soil saturated in blood”.¹⁹⁶ But, since the real Arab objective was destroying Israel, if they had won, Husseini’s dream of Jewish mass slaughter would have been attained. An Arab victory would have meant mass slaughter of Jews, at least judging by the words of Nasser.

In sharp contrast, the IDF has prevailed in more than just a few wars with the Arabs, and nothing of the sort has ever occurred. Yes, as Rothbard clearly sees, battle between Jews and Arabs pits an advanced civilized nation,¹⁹⁷ against an uncivilized unaccomplished one¹⁹⁸ with blood in its eye, intent upon the utter and total destruction of the other. Thus, these wars are akin to a weaponless adult fighting a young, rabid, armed pre-teenager. The latter is intent upon killing the former, while the former only wants to stop the latter, not really harm him. Israel is fighting the Arabs with one and three quarters of its two arms tied

193. For more on this subject see Amnon Rubinstein & Yaniv Roznai, *Human Shields in Modern Armed Conflicts: The Need for a Proportionate Proportionality*, 22 STAN. L. & POL’Y REV. 93 (2011); ISR. MINISTRY OF FOREIGN AFF., THE 2014 GAZA CONFLICT 7 JULY-26 AUGUST 2014: FACTUAL AND LEGAL ASPECTS, 58-105, (May, 2015), <http://mfa.gov.il/protectiveedge/pages/default.aspx>. For a libertarian critique of this technique, see Walter E. Block, *Response to Jakobsson on Human Body Shields*, 2 LIBERTARIAN PAPERS ART. 25 (2010); Block, *The Human Body Shield . . . supra* note 9.

194. See BARD, *supra* note 29, at 266-75 for a full analysis of the Balance of Forces in the Middle East.

195. Indeed, it took unprecedented pains to avoid any such outcome. And this policy continues up to today, such as the guidelines of operation followed by the IDF in Operation Cast Lead in 2014, by dropping leaflets, warning telephone calls, etc. See ISR. MINISTRY OF FOREIGN AFF., THE 2014 GAZA CONFLICT . . . *supra* note 193, at 137-215. Which other nation engages even remotely in acts of this sort? The government of the country that dropped atomic bombs on civilians?

196. BARD, *supra* note 29, at 43 (quoting SACHAR, *supra* note 48, at 616).

197. Which only wishes peace with its neighbors.

198. CHARLES MURRAY, HUMAN ACCOMPLISHMENT: THE PURSUIT OF EXCELLENCE IN THE ARTS AND SCIENCES, 800 B.C. TO 1950 (2003).

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behind its back, and these knots are self-inflicted. If the one relatively liberal state in the Middle East wished to totally annihilate its enemies as Arab states had wished it could do to Israel in 1967, Israel could do so not in a matter of months, nor weeks, nor even days. It would only take a few hours; maybe not even that long. The Arabs are indeed lucky in their choice of an enemy. If they had tried their tactics on any other advanced nation, they would have only had the opportunity to perpetrate their behavior once.

Let us see what Arab leaders themselves have said on this matter.

Cairo Radio, "Voice of the Arabs" stated: (May 18, 1967): "As of today there no longer exists any international emergency force to protect Israel. We shall exercise patience no more. We shall not complain to the United Nations about Israel. The sole method we will apply against Israel is a total war which will result in the final extermination of Zionist existence".

Syrian Defence Minister, Hafez Asad, stated (May 20, 1967): "Our forces are now entirely ready not only to repulse the aggression, but to initiate the work of liberation itself and to exploit the Zionist presence in the Arab homeland. The Syrian Army with its finger on the trigger is united. I, as a military man, believe that the time has come to enter into the battle of annihilation".

Nasser told the Egyptian Army in Sinai (May 22, 1967): "The Israeli flag shall not go through the Gulf of Aqaba. Our sovereignty over the entrance to the Gulf cannot be disputed. If Israel wishes to threaten war we will tell her 'You are welcome'".

Nasser (May 27, 1967): "Our basic objective will be the destruction of Israel. The Arab people want to fight . . . The meaning of Sharm el Sheikh is a confrontation with Israel. Adopting this measure obligates us to be ready to embark on a general war with Israel".

President Aref of Iraq (May 31, 1967): "The existence of Israel is an error which must be rectified. This is our opportunity to wipe out the ignominy which has been with us since 1948. Our goal is clear—to wipe Israel off the map".¹⁹⁹

The real objective of the Arab states was genocide, not any so-called "righteous fight". It is difficult to see how such a plan can be supported on libertarian grounds by pinning the war guilt on Israel. Said Azzam Pasha, Secretary General of the Arab League in Cairo. (May 15, 1948): "This will be a war of extermination and a momentous massacre which

199. LEIBLER, *supra* note 39, at 60-61. If words could kill, the Arab leadership would be the most powerful military force on the planet. Has any responsible Israeli leader ever said anything even remotely resembling these rabid statements? To ask this is to answer it.

will be spoken of like the Mongolian massacres and the crusades”²⁰⁰

Rothbard charges that the IDF used napalm. But the real question is who is the aggressor and who the victim. One cannot analyze this fact out of context. As an example of what happened before the Six Day War, and again on the charge of Israel using napalm, see the following complaint that Syria presented to the U.N. Security Council:

Syria complained to the United Nations Security Council today against Israel's air and ground actions of last Friday, *in defense of Israeli farmers who had been attacked by Syrian fire-while cultivating their own lands in a demilitarized zone of the Israeli-Syrian frontier. It claimed that Israel bombed eight Syrian villages, using bombs of half-ton weight, including napalm.*

Today's letter to the Council did not request a meeting on the issue and was a direct reversal of a statement made during the weekend by Syrian President Nurieddin Al-Atassi, who had announced at a Damascus rally that his Government would file no more complaints with the Security Council.

The letter, sent to the Security Council president, George Ignatieff, of Canada, by Syria's Ambassador George J. Tomeh, accused Israel of "aggression with the traditional planning and brutality which have become a feature of the Israeli war crimes", The communication did not mention the fact that *Israel's jet planes, defending Israel against Syrian attacks, had shot down six, Soviet-made MIG-21's, flown by the Syrians.* The letter stated that Israel's planes had "penetrated deeply beyond" the Israeli-Syrian armistice lines, and claimed that "Syrian planes were able to meet them and defeat their intent.

Mr. Tomeh mentioned that Syria had filed a complaint last Friday night with the Israeli-Syrian Mixed Armistice Commission, but failed to indicate that, since, Syria had *withdrawn* that complaint (emphasis added by present authors).²⁰¹

200. *Id.* at 15.

201. *Syria Complains to Security Council; Says Israel Used Napalm*, JEWISH TELEGRAPHIC AGENCY (Apr. 11, 1967), <http://www.jta.org/1967/04/11/archive/syria-complains-to-security-council-says-israel-used-napalm>. And another example of this charge after the War:

... Israel's Aug. 4 reprisal air attack on El Fatah bases near the Jordanian town of Salt. Mohammad H. el-Farra, the representative of Jordan, accused Israel of using napalm and fragmentation bombs in the attack and also claimed that the israeli(sic) planes hit Red Crescent (Jordanian Red Cross) ambulances that were aiding the wounded, killing and wounding their occupants. Israel's representative Ambassador Yosef Tekoah hotly denied that the Israeli planes hit civilian targets. He cited eye-witness accounts of a group of British volunteer students working in the Jordan Valley who, according to the London Telegraph, watched the Israeli attack on the El Fatah headquarters and guerrilla training

According to Robert Neer in his 2013 *Napalm: An American Biography*: "Where (napalm) has been used: In most of the world's major military conflicts since its creation: most frequently, widely, in the greatest quantities and over the longest period of time by the United States, but also by Cuba, Peru, Bolivia, Brazil, Britain, France, the Soviet Union, Portugal, Israel, Egypt, Turkey, Iraq, India, Ethiopia, Thailand, El Salvador, and Argentina, among others. Its first use in combat was on 15 December 1943 in Sicily when U.S. troops incinerated a wheat field believed to shelter Germans. Napalm bombs first saw combat on 15 February 1944 when the U.S. attacked Japanese forces in the town of Pohnpei, capital of the eponymous Micronesian island 2,500 miles southwest of Hawaii and 1,800 miles northeast of Australia. Its most recent use was by U.S. forces during the 2003 invasion of Iraq." Legal status: "Napalm is legal to use on the battlefield under international law. Its use against 'concentrations of civilians' is a war crime."

Not for the first time in this essay of his do we find Rothbard dropping context. First of all, Egyptians targeted civilians directly; Israel did not. Second, a full dozen and a half countries have employed

camp. He said that the planes were specifically ordered to avoid hitting civilian targets and that all the casualties in the raid were El Fatah members or military personnel. Mr. Tekoah said that his Government had decided to release confidential information which demonstrated that the Jordanian Government and armed forces not only permitted terrorist acts against Israel from their territory but fully collaborated with them. He said that Jordanian military posts provided the marauders with information on Israeli troop deployment and provided covering fire for them when they encountered Israeli forces. He said Jordanian soldiers mounted roadblocks in collaboration with El Fatah and recognized El Fatah passes as entry permits for guerrillas coming from Syria. The sum of the situation, Mr. Tekoah declared, is that the guerrilla organizations are maintained and supported by the Arab governments in an expression of unabated belligerence. He said that the cease-fire agreements of June, 1967 imposed an obligation on all parties to cease all military activities in the area. The Government which offers the use of its territory as a base for warfare is violating the cease-fire, he said, adding that international law and opinion leave no doubt that the cease-fire must be maintained on the basis of complete reciprocity. . . .

Israel Denies Jordan's Security Council Charge that it Deliberately Attacked Civilians, JEWISH TELEGRAPHIC AGENCY (Aug. 13, 1968), <http://www.jta.org/1968/08/13/archive/israel-denies-jordans-security-council-charge-that-it-deliberately-attacked-civilians>.

napalm; why, once again, single out the IDF in this manner?

Rothbard denigrates the alliance between Israel and the US, however, the financial aid that this nation gives to Arab countries (mostly enemies of Israel) is much larger.²⁰² Nor does the US always blindly side with Israel. Often, the very opposite is the case:

Raphaeli estimated in 2005 that for each dollar of military aid to Egypt, Israel must spend between 1.6 and 2.1 dollars in order to maintain its qualitative military advantage, yet receives only 1.5 dollars for every dollar invested in Egypt. Some of the resources invested in order to stave off a potential Egyptian threat are deployed on other fronts as well. Raphaeli estimated that for every dollar of American aid to neighboring countries which translates into support for their armies, Israel needs to spend between 1.3 and 1.4 dollars in order to preserve the balance. In this sense, Israel has a lower return on investment than Egypt for every dollar spent, due to the greater amount of military goods it must acquire. Not only does American assistance not provide Israel with an economic advantage, it requires Israel to expend additional amounts from its own internal security reserves.

The benefits of Israel's grant are thus greatly diminished, and perhaps canceled out altogether, if weighed beside the costs which accompany America's aid to Israel's neighbors.²⁰³

Then, too, there was that little matter of Eisenhower in effect forcing the Israelis to return the Sinai to Egypt in 1956. Had this not occurred, greater Israel would have been far larger in size than at present.

President Eisenhower was upset by the fact that Israel, France and Great Britain had secretly planned the campaign to evict Egypt from the Suez Canal. Israel's failure to inform the United States of its intentions, combined with ignoring American entreaties not to go to war, sparked tensions between the countries. The United States subsequently joined the Soviet Union (ironically, just after the Soviets invaded Hungary) in a campaign to force Israel to withdraw. This included a threat to discontinue all U.S. assistance, U.N. sanctions and expulsion from the U.N. . . . U.S. pressure resulted in an Israeli withdrawal from the areas it conquered without obtaining any

202. See Walter E. Block, *An Open Letter to the Jewish Community in Behalf of Ron Paul* (Nov. 3, 2007), <http://archive.lewrockwell.com/block/block88.html>; WALTER E. BLOCK, YES TO RON PAUL AND LIBERTY ch. 29 (2012); Walter E. Block, *A Libertarian War in Afghanistan?*, LEWROCKWELL.COM (Jul. 30, 2007), <http://www.lewrockwell.com/block/block80.html>.

203. Yarden Gazit, Jerusalem Institute for Market Stud., *Economic and Strategic Ramifications of American Assistance to Israel*, (Jan. 2011), http://media.wix.com/ugd/a11bde_deb21ac9cc134fc48786aca9ff340e18.pdf.

concessions from the Egyptians. This sowed the seeds of the 1967 war.²⁰⁴

Rothbard talks of the government of Syria as *anti-imperialist*. He says: "Syria has been under the control of the most militantly anti-imperialist government that the Middle East has seen in years."²⁰⁵ But this is incompatible (among other things) with Syrian involvement in the Lebanon Civil War which caused near 100,000 deaths during the nineteen seventies and eighties. It cannot be denied that Israel is the only place in the Middle East where individual rights are respected to the same degree as most western nations:

Arabs in Israel have equal voting rights; in fact, it is one of the few places in the Middle East where Arab women may vote. Arabs in 2011 held 14 seats in the 120-seat Knesset. Israeli Arabs have also held various government posts, including one who served as Israel's ambassador to Finland and the deputy mayor of Tel Aviv. Oscar Abu Razaq was appointed Director General of the Ministry of Interior, the first Arab citizen to become chief executive of a key government ministry. Ariel Sharon's original cabinet included the first Arab minister, Salah Tarif, a Druze who served as a minister without portfolio. An Arab is also a Supreme Court justice. In October 2005, an Arab professor was named Vice President of Haifa University. Arabic, like Hebrew, is an official language in Israel. More than 300,000 Arab children attend Israeli schools. At the time of Israel's founding, there was one Arab high school in the country. Today, there are hundreds of Arab schools. The sole legal distinction between Jewish and Arab citizens of Israel is that the latter are not required to serve in the Israeli army. This is to spare Arab citizens the need to take up arms against their brethren. Nevertheless, Bedouins have served in paratroop units and other Arabs have volunteered for military duty. Compulsory military service is applied to the Druze and Circassian communities at their own request. Some economic and social gaps between Israeli Jews and Arabs result from the latter not serving in the military. Veterans qualify for many benefits not available to non-veterans. Moreover, the army aids in the socialization process. On the other hand, Arabs do have an advantage in obtaining some jobs during the years Israelis are in the military. In addition, industries like construction and trucking have come to be dominated by Israeli Arabs. Although Israeli Arabs have occasionally been involved in terrorist activities, they have generally behaved as loyal citizens. During the 1967, 1973 and 1982 wars, none engaged in any acts of sabotage or disloyalty. Sometimes, in fact,

204. BARD, *supra* note 29, at 41-42. For more on this see Daniel Pipes, *Eisenhower and Israel: U.S.-Israeli Relations, 1953-1960*, 1 MIDDLE EAST Q. (1994), <http://www.meforum.org/816/eisenhower-and-israel-us-israeli-relations-1953>; Daniel Pipes, *The Hell of Israel is Better than the Paradise of Arafat*, 12 MIDDLE EAST Q. 43 (2005); Eric Rozenman, *Israeli Arabs and the Future of the Jewish State*, 6 MIDDLE EAST Q. 15 (1999); Safian, *supra* note 163.

205. Rothbard, *supra* note 4, at 27.

Arabs volunteered to take over civilian functions for reservists²⁰⁶

Rothbard's obsession with Israel is hard to understand, especially the fieriness of his prose and the fact that he even promotes Arab attacks as a "long range opportunity". He says ". . . the Arabs can shift their strategic emphasis from hopeless conventional war with a far better armed foe to a protracted mass people's guerrilla war. Armed with light weapons, the Arab people could carry out another 'Vietnam,' another 'Algeria'—another people's guerrilla war against a heavily armed occupying army" ²⁰⁷ Despite the fact that Rothbard typically hates warmongering, this is precisely what he advocates in this case. Why his obsession to support war against Israel? He thinks the Jews stole land from the Arabs, and are justifiably trying to get it back. We, as fellow libertarians, would join him, if we thought his analysis correct. Of course, even under these conditions, we would not favor the "annihilation" continuously mentioned by Arab spokesmen of innocent Jews. We part company from him, only, because we believe the very opposite: the Jews were the victims of land theft, not the Arabs. In certain individual cases the opposite was true, but by and large the Jews were the victims, not the Arabs. We also eschew the word "terrorist" since it has come to refer to pretty much anyone the speaker strongly opposes; this word sheds heat, not light (despite of the fact that we could define terrorism as deliberate attacks on civilians in order to promote political change).

According to Rothbard, "Israel, therefore, faces a long-run dilemma which she must someday meet. Either to continue on her present course, and, after years of mutual hostility and conflict be overthrown by Arab people's guerrilla war. Or to change direction drastically, to cut herself loose completely from Western imperial ties, and become simply Jewish citizens of the Middle East. If she did that, then peace and harmony and justice would at last reign in that tortured region. There is ample precedent for this peaceful coexistence. For in the centuries before 19th and 20th century Western imperialism, Jew and Arab had always lived well and peacefully together in the Middle East. There is no inherent enmity or conflict between Arab and Jew. In the great centuries of Arab civilization in North Africa and Spain, Jews took a happy and prominent part—in contrast to their ongoing persecution

206. BARD, *supra* note 29, at 161-62.

207. Rothbard, *supra* note 4, at 30.

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by the fanatics of the Christian West. Shorn of Western influence and Western imperialism, that harmony can reign once more".²⁰⁸

In effect, Rothbard's recommendation is that the nation Israel must disappear and then the Arab rejection of a Jewish presence in the Middle East would vanish. However, Arab hatred for Jews in fact existed long before the State of Israel was born, as we have demonstrated again and again. Of course, it is always possible that this phenomenon would radically change were Jews to have no state of their own, and instead become a minority demographic in some sort of greater Palestine in which the "right of return" were fully respected. This is a matter of prudential judgement, and, we must say, ours diverges widely from Rothbard's in this matter.

There is another difficulty with this perspective. In the view of Rothbard the *pre-state* Jewish presence in Palestine was illegitimate.²⁰⁹ If so, it is difficult to see why the post-state Jewish presence in Palestine would be legitimate. What would the Jews have done in the interim period to deserve any but the smallest occupation of this new Arab country? No, it would appear that the implication of Rothbard's analysis

208. The assertion that Israel had ties with "Western imperialism" is wrong:

The suggestion that Israel is a "settler society" is a distortion. "Settler societies" were intended "replicas" of the home society and "true reproductions of European society". In the case of Algeria, the French even tried to incorporate the colony into the home country. In sharp contrast, Zionist settlements were at once distinct from Europe and different from Arab society. While European and American technology, political ideas and other aspects of modern culture were transferred to Palestine, Zionist society consciously recast and transformed them in a unique mold dedicated to creating the "new Jew". This was, as we have seen, at the core of the idea of reconstitution.

Troen, *supra* note 25. This is true, among other things, because of the language (Hebrew, being spoken again after 2000 years), the Jewish calendar, etc. The model was a new Jewish home, not a European replica.

209. Rothbard claims that "Into the heart of the peasant and nomadic Arab world of the Middle East there thus came as colonists, and on the backs and on the bayonets of British imperialism, a largely European colonizing people." Rothbard, *supra* note 4, at 23. Thus, he is saying that he did not approve of pre-State Jewish presence and immigration in Palestine. He also talks about Jewish Presence being negative for Arabs during Turkish domination. "In the great centuries of Arab civilization in North Africa and Spain, Jews took a happy and prominent part". *Id.* at 30; but omits the fact that although Jews were comparatively less persecuted in Arab countries; nevertheless that hardly made it a utopia.

is for virtually all members of this religious community to vacate the premises.

Until Arab rejection of Jewish presence in the Middle East ends (and all its expressions, including war and intifadas), peace will not be attained. We must acknowledge that during the Middle Ages, compared to Europe *in general*, the Jews were *safer* in Arab countries; although they often had a second rank status as citizens. They were often expelled, taxed discriminatorily, and expropriated²¹⁰ but this was often better than their treatment to the north. However, the idea that Jews were historically living peacefully and protected in Arab countries is false.

Ironically, even this self-reliance and the determination of the halutzim to undertake themselves the manual labor entailed in both building and agricultural work, has given rise to charges against the Zionist enterprise in its entirety. Critics interpret the economic and cultural separation between Jews and Arabs as the sole responsibility of Zionist ideology and praxis. The contemporary indictment of Israel as an "apartheid state" follows from this charge. An examination of the historic context makes a very different case. In Arab lands, Muslims for centuries separated themselves from Jews by defining them as dhimmis, or tolerated but second-class members of the community. This normative separation between Jews and Muslims throughout the Arab Muslim world was imposed by the Muslim Turks and their predecessors after the rise of Islam in the seventh century and has continued through the present. It is absurd to expect a handful of Jews living in remote agricultural colonies under Turkish rule to rebel against such deeply engrained and accepted practices. To delegitimize their efforts as failures because they did not create an egalitarian and integrated civil society that had yet to be actualized even in the United States is a malevolent fantasy, but one recognizable as this generation's operative paradigm.²¹¹

Rothbard was no great supporter of private Jews (in their pre-state

210. See, e.g. Letter Concerning the Damascus Blood Libel: To Messrs de Rothschild in London (Mar. 27, 1840), http://www.zionism-israel.com/hdoc/Damascus_Blood_Libel.htm; Collection of the Jizya: Forced Conversion of Aden Jews (1815), http://www.zionism-israel.com/hdoc/Jizya_Mogadore_Conversion_.htm (last visited May 7, 2016); Order for the Deportation of Safed Jews to Cyprus (Oct. 8, 1576), http://www.zionism-israel.com/hdoc/Safed_Deportation_1576.htm; Al-Malik Al-Salih, Decree Against the Dhimmi (1354), http://zionism-israel.com/hdoc/Decree_Against_Dhimmi.htm (last visited May 4, 2016); A Report on Blood Libels in Damanhur Egypt (Sep. 15, 1879), http://zionism-israel.com/hdoc/Damanhur_Blood_Libels.htm (last visited May 4, 2016).

211. Troen, *supra* note 25.

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existence), living in this area. Certainly, he was a bitter opponent of the State of Israel itself.²¹² Did Rothbard support a Jewish presence in Palestine at all, even theoretically? The final paragraph of “War Guilt in the Middle East”, in which Rothbard says that Israel should “become simply Jewish citizens of the Middle East”, a suggestion we agree with (and which in fact happens in the context of the State of Israel), supports the contention that he did. Also, his general support of homesteading virgin land would require him to support a Jewish presence in Palestine provided that that presence was made on virgin or purchased land, which in most cases it was.

However, some of his writings contradict that assertion, and even private Jews homesteading land before 1948 was illegitimate for Rothbard, or at minimum he openly resented it even if it was legitimate by libertarian standards.

Another argument concerns the draining of the swamps. The criticism is that the Arab Palestinians were peacefully working in these “wetlands” when along came the Jews who made it impossible for them to earn a living in this manner. The Jews drove the Arabs off this watery land, and claimed it for themselves, in a blatant land grab. Our response to this charge is that the titles to those swamps were not at all as clear as the critics would have it.

Posit, *arguendo*, that Rothbard is 100% correct in all of his charges. Does this establish his conclusion that therefore Israel is an illegitimate state?²¹³ Not a bit of it. For even if our author’s analysis is without flaw,

212. It is not strange that Rothbard’s ideas on Israel attracted anti-Semites, since “[w]e are aware of what has been written on whether you can be anti-Zionistic with no Judeophobic leanings. Anti-Zionism singles out the national feelings and movement of the Jews—and only of the Jews—and considers Israel—and only Israel—an illegitimate state. It proposes actions which would bring death to millions of Jews. Although from a strictly theoretical point of view you could be anti-Zionistic and not Judeophobic, in the real world the two come together”. Perednik, *supra* note 21, ch. 14.

213. For anarcho-capitalists of the Rothbardian persuasion, no government can be legitimate. Certainly, then, for anarcho-capitalism the Israeli state is an illicit one (as is every state), for, by its very nature as a government, it necessarily violated the non-aggression principle of libertarianism. However, this will not do, since the same exact conclusion would apply to each and every other government on the planet. We are then, for the sake of argument, following Rothbard’s suggestions. We are eschewing “sectarianism” and “bother(ing) (our) selves with the more detailed or proximate causes”. That is, we are leaving off

surely, this does not apply to 100% of the land held legitimately by Jews in Israel. Suppose, then, that Jews properly pass muster under strict Rothbardian libertarian property rights theory for, say, 5% of the land mass they actually claim. Do they have a right to form a government based on these proper land titles? It is difficult to see how this can be denied, given that we are not now taking an anarchist position where we condemn all such institutions, equally. Rather, if everyone else may form a state, why, then, so may the Jews.²¹⁴ Now for a bit of contrary to fact history. Suppose that in 1947 the Jews laid claim not to the land given them by the U.N. Partition Plan²¹⁵ but merely the, say, 5% of the

the high theory that would condemn all apparatuses of the state equally. We are looking carefully at “the detailed pros and cons of any given conflict”. We are not “evading the responsibility of knowing what is going on in any specific war or international conflict . . .” We do not “leap unjustifiably to the conclusion that, in any war, all states are equally guilty”. See Rothbard, *supra* note 4, at 20-21.

214. Following this approach, Brook & Schwartz, *supra* note 6, representing the Objectivist position, say that “Only Israel has a moral right to establish a government in that area—on the grounds, not of some ethnic or religious heritage, but of a secular, rational principle. Only a state based on political and economic freedom has moral legitimacy. Contrary to what the Palestinians are seeking, there can be no ‘right’ to establish a dictatorship. As to the rightful owners of particular pieces of property, Israel’s founders—like the homesteaders in the American West—earned ownership to the land by developing it. They arrived in a desolate, sparsely populated region and drained the swamps, irrigated the desert, grew crops and built cities. They worked unclaimed land or purchased it from the owners. They introduced industry, libraries, hospitals, art galleries, universities—and the concept of individual rights. Those Arabs who abandoned their land in order to join the military crusade against Israel forfeited all right to their property. And if there are any peaceful Arabs who were forcibly evicted from their property, they should be entitled to press their claims in the courts of Israel, which, unlike the Arab autocracies, has an independent, objective judiciary—a judiciary that recognizes the principle of property rights”.
215. See *The Palestine Mandate: The Council of the League of Nations* (Jul. 24, 1922), available at <http://www.mideastweb.org/mandate.htm> (last visited May 7, 2016); *1947–48 Civil War in Mandatory Palestine*, WIKIPEDIA, http://en.wikipedia.org/wiki/1947%E2%80%9348_Civil_War_in_Mandatory_Palestine (last visited May 8, 2016). It must be taken into account that the Resolution, in turn, was based on previous legislation, because “Israel’s juridical claims have their origins in the Balfour Declaration issued in November 1917 by the British Government which states: ‘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,

land to which even Rothbard, we are supposing, would grant them title. Would the forces of the Arab nations that had actually attacked nascent Israeli Defense Forces held back? Would they have said to themselves, “Oh, well, we are all libertarians now; Rothbard is our mentor on matters of this sort. The Jews have clear title to that 5% of the land the Partition Plan gives them. That is all they are claiming. Hey, live and let live, say we Arabs about them thar Jews”. Or might they have declaimed: “The Jews are vermin; they are a pestilence. Screw Rothbard and his theories. The only good Jew is a dead Jew, or, at least, one far removed from our presence”. To see these two options before us is to respond, Why, the latter of course. Not for the Arabs the niceties of Rothbardianism.²¹⁶

The point we are making is that Rothbard’s attack on Israel, even if correct (which as we try to show, is not),²¹⁷ is *irrelevant*. The *reason* the Arab nations invaded Israel in 1948 were absolutely unrelated to libertarian theories concerning justice in land titles. They would have tried to conquer even the far smaller amount of land over which Rothbard himself, we stipulate for argument’s sake, would credit the Jews. In this regard, a good example is Major Salah Salem, a spokesman for the Egyptian Government, who said “(January 27, 1955): Egypt will serve to erase the shame of the Palestinian War, even if Israel should fulfil the United Nations resolutions; it will not sign a peace treaty with her even if Israel should consist only of Tel Aviv.”²¹⁸

Is the Rothbard critique of Israel entirely beside the point? Yes, but

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.’ Subsequent claims derived from the rights surrendered by Turkey under the Lausanne Treaty (1923), conferred on Britain by the League of Nations mandate, and subsequently affirmed to the state of Israel by the United Nations when the latter body gave recognition to the creation of the state by a two-thirds majority in November 1947. Israel’s sovereignty was further confirmed in 1949 by her membership of the United Nations’. LEIBLER, *supra* note 39, at 13. We must also include in this list the San Remo Agreement (1920), the League of Nations Resolution (1922) and the Anglo-American Convention on Palestine (1924).

216. We do not mean to single out the Arabs in this regard. Rothbard’s correct theories of land, title, justification, have not exactly captured any large sector of society, with the exception of libertarians, of course.

217. We have given numerous reasons for calling this into question

218. LEIBLER, *supra* note 39, at 15.

for that conclusion we need one more premise. And this is that when country A, or in this case, countries A, B, C . . . H invade the justly held territory of nation I (Israel in this case), they must be compelled, according to libertarian punishment theory,²¹⁹ to make recompense. That is to say, Premise 1: libertarian punishment theory a la Rothbard is very punitive. Premise 2: The Arabs were wrong in attacking Israel in 1948;²²⁰ at the very least, they did not do so on Rothbardian grounds; they would have done so even if Jewish land claims were limited to

219. See on this: ASSESING THE CRIMINAL: RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS (Randy E. Barnett & J. Hagel III eds., 1977); Walter E. Block, *Libertarian Punishment Theory: Working for, and Donating to, the State*, 1 LIBERTARIAN PAPERS ART. 17 (2009); Walter E. Block, *Toward a Libertarian Theory of Guilt and Punishment for the Crime of Statism*, in PROPERTY, FREEDOM AND SOCIETY: ESSAYS IN HONOR OF HANS-HERMANN HOPPE 137-48 (Jorg Guido Hulsmann & Stephan Kinsella eds., 2009); Stephen Kinsella, *Punishment and Proportionality: The Estoppel Approach*, 12 J. LIBERTARIAN STUD 51 (1996); Stephan Kinsella, *A Libertarian Theory of Punishment and Rights*, 30 LOYOLA L. REV. 607 (1997); Charles B. Olson, *Law in Anarchy*, 12 LIBERTARIAN FORUM 4 (1979); Murray N. Rothbard, *Punishment and Proportionality*, in ASSESING THE CRIMINAL: RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS 259 (R. E. Barnett & J. Hagel III eds., Ballinger Publishing Co., 1977); ROTHBARD, *supra* note 1; Roy Whitehead & Walter E. Block, *Taking the Assets of the Criminal to Compensate Victims of Violence: A Legal and Philosophical Approach*, 5 WAYNE STATE UNIV. L. SCHOOL J. L. SOC'Y 229 (2003). In the view of Rothbard:

It should be evident that our theory of proportional punishment—that people may be punished by losing their rights to the extent that they have invaded the rights of others—is frankly a retributive theory of punishment, a "tooth (or two teeth) for a tooth" theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as "primitive" or "barbaric" and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as "barbaric" can hardly suffice; after all, it is possible that in this case, the "barbarians" hit on a concept that was superior to the more modern creeds.

ROTHBARD, THE ETHICS OF . . . *supra* note 2, at 91-92.

220. We only analyze those wars and operations that are relevant for the context of this paper as a rejoinder to Rothbard on Israel, and we do not analyze, among others, the Yom Kippur War (1973), Operation Peace for Galilee (1982), IDF Withdrawal from Southern Lebanon (2000), Second Lebanon War (2006), Operation Cast Lead (2008), Operation Protective Edge (2014), etc. For these, see HERZOG, *supra* note 176; MARTIN GILBERT, ISRAEL: A HISTORY (HarperCollins, 2008) (1998); BARD, *supra* note 29; ISR. MINISTRY OF FOREIGN AFF., THE 2014 GAZA CONFLICT . . . *supra* note 193.

what Rothbardian theories would permit them, say 5% of what they were given by the Partition Plan. Conclusion: the proper punishment for the invaders would be very serious; the just spoils of war might well include all the land seized by Israel in the aftermath of that altercation.²²¹

Here is another difficulty with Rothbard's analysis. In *The Ethics of Liberty*, he says: "Suppose that, in this world, Jones finds that he or his property is being aggressed against by Smith. It is legitimate, as we have seen, for Jones to repel this invasion by the use of defensive violence. But, now we must ask: is it within the right of Jones to commit aggressive violence against innocent third parties in the course of his legitimate defense against Smith? Clearly the answer must be 'No.' For the rule prohibiting violence against the persons or property of innocent men is absolute; it holds regardless of the subjective motives for the aggression. It is wrong, and criminal, to violate the property or person of another, even if one is a Robin Hood, or is starving, or is defending oneself against a third man's attack."²²²

But this means that, for example, when the Hamas in Gaza place rocket launchers in hospitals or schools, it is illicit for Israelis to attempt to nullify such weaponry, even given that such acts will virtually necessarily kill innocent shields. This is highly problematic. It is a recipe for grabbing innocents and hiding behind them. The IDF could also engage in this practice, but is too civilized to do any such thing.²²³

Another anomaly concerns Rothbard's objection to the Israeli

221. A similar analysis applies to all subsequent wars in which the Arab countries were the initiator; namely, all of them. For example, Israel never should have given up certain territories won by defensive actions. This would render its justly held territory far larger than is now commonly contemplated. Even so Israel was willing to exchange land for the sake of peace. But, as we have seen, since the source of the conflict has almost nothing to do with land, this was a bad policy (which, of course, was understood by Palestinian and Arab war-mongers as a sign of weakness, and ended up perpetuating war). Also, negotiating with the PLO in the beginning of the 1990s ended up delegitimizing Israel and legitimizing the PLO as supposedly a "partner for peace". This policy only created more war, more attacks on Israeli civilians and the Second Intifada (2000-05). Some of these accords are the Israel-PLO Oslo Accords (1993), the Israel-PLO Gaza-Jericho Agreement (1994) and the Disengagement Plan (2005).

222. MURRAY ROTHBARD, *THE ETHICS . . . supra* note 2, at 189.

223. See Block *The Human Body Shield . . . supra* note 2; ISR. MINISTRY OF FOREIGN AFF., *THE 2014 GAZA CONFLICT . . . supra* note 193, at 137-215.

government “outlawing strikes of Arabs”. A strike is not merely a mass quit on the part of labor. Also included in a strike is the forcible prevention of the firm to hire replacement workers (scabs), setting up picket lines to prevent raw materials entering the factory or finished goods leaving it. This is such a basic staple of libertarian theory that one wonders at Rothbard’s position on this matter.²²⁴ This is such a serious breach of libertarian theory, on such an exceedingly simple matter for this philosophical tradition²²⁵ that hopefully we may be forgiven for wondering out loud whether Murray Rothbard really was the author of the essay we have been criticizing.²²⁶

It is now time to make our case that the Jewish purchase of land, the ownership of which is under dispute, was unnecessary. Why? Because the Jews were and are now the rightful owners of it. It was stolen from them some 2000 years ago,²²⁷ and the Hebrews are merely repossessing

224. For a libertarian analysis of labor strikes that sees them as impermissible, see Charles Baird, *American Union Law: Sources of Conflict*, 11 J. LAB. RES. 269 (1990); Charles Baird, *Unions and Antitrust*, 21 J. LAB. RES. 585 (2000); Charles Baird, *American Unionism and Freedom of Association*, 28 J. PRIVATE ENTERPRISE 1 (2013); WALTER E. BLOCK, *LABOR ECONOMICS FROM A FREE MARKET PERSPECTIVE: EMPLOYING THE UNEMPLOYABLE* (2008); Walter E. Block, *Are Unions Criminal Gangs?*, 6 GLOBAL VIRTUE ETHICS REV. 28 (2010); Jason Evans & Walter E. Block, *Labor Union Policies: Gains or Pains*, 9 CROSS CULTURAL MGMT 71 (2002); DANIEL C. HELDMAN, *AMERICAN LABOR UNIONS: POLITICAL VALUES AND FINANCIAL STRUCTURE* (1977); DANIEL C. HELDMAN ET AL., *DEREGULATING LABOR RELATIONS* (1981); W. H. HUTT, *THE STRIKE THREAT SYSTEM: THE ECONOMIC CONSEQUENCES OF COLLECTIVE BARGAINING* (1973); W. H. Hutt, *Trade Unions: The Private Use of Coercive Power*, 3 REV. AUSTRIAN ECON. 109 (1989); SYLVESTER PETRO, *THE LABOR POLICY OF THE FREE SOCIETY* (1957); MORGAN O. REYNOLDS, *POWER AND PRIVILEGE: LABOR UNIONS IN AMERICA* (1984); MORGAN O. REYNOLDS, *MAKING AMERICA POORER: THE COST OF LABOR LAW* (1987); Morgan O. Reynolds, *A History of Labor Unions from Colonial Times to 2009*, MISES INSTITUTE (Jul. 17, 2009), <http://mises.org/daily/3553>; Murray N. Rothbard, *The Union Problem*, 9 FREE MARKET 1 (1991); EMERSON P. SCHMIDT, *UNION POWER AND THE PUBLIC INTEREST* (1973); Brian Shea, *Solidarity Forever: The Power Invested in Worker Collectives under United States Law*, 22 J. LIBERTARIAN STUD. 219 (2010).
225. ROTHBARD, *THE ETHICS . . . supra* note 2, explicitly, even vociferously, supports the view that labor strikes are illicit.
226. If, somehow, Rothbard just “let this one slip,” e.g., a sort of typographical error, then we wonder what else was let slip in this essay of his.
227. Jewish presence in Palestine, as well as Jewish History (originally Judah and Israel) has been well documented, not only by historians but also by archaeol-

ogists. For some of this abundant sources, see ISRAEL FINKELSTEIN, *THE FORGOTTEN KINGDOM: THE ARCHAEOLOGY AND HISTORY OF NORTHERN ISRAEL* (2013); ISRAEL FINKELSTEIN & NEIL A. SILBERMAN, *THE BIBLE UNEARTHED: ARCHAEOLOGY'S NEW VISION OF ANCIENT ISRAEL AND THE ORIGIN OF ITS SACRED TEXTS* (2002); Avraham Biran & Joseph Naveh, *An Aramaic Stele Fragment from Tel Dan*, 43 *ISR. EXPLORATION J.* 81 (1993); Avraham Biran & Joseph Naveh, *The Tel Dan Inscription: A New Fragment*, 45 *ISR. EXPLORATION J.* 1 (1995); Yosef Garfinkel & Saar Ganor, *Khirbet Qeiyafa: Sha'arayim*, 8 *J. HEBREW SCRIPTURE ART.* 22. (2008); Yosef Garfinkel et al., *The Iron Age City of Khirbet Qeiyafa After Four Seasons of Excavations*, in *THE ANCIENT NEAR EAST IN THE 12TH-10TH CENTURIES BCE: PROCEEDING OF THE INTERNATIONAL CONFERENCE HELD AT THE HAIFA UNIVERSITY* 149 (Gershon Galil et. al. eds., 2010); NELSON GLUECK, *RIVERS IN THE DESERT: A HISTORY OF THE NEGEV* (1959); Eilat Mazar, *Did I Find King David's Palace?*, 32 *BIBLICAL ARCHAEOLOGY REV.* 16 (2006), <http://www.biblicalarchaeology.org/daily/biblical-sites-places/jerusalem/did-i-find-king-davids-palace/>; MARTIN GILBERT, *THE ROUTLEDGE ATLAS OF JEWISH HISTORY* (Routledge, 2010) (1969); MARTIN GILBERT, *THE ROUTLEDGE ATLAS OF THE ARAB-ISRAELI CONFLICT* (Routledge, 2012) (1974); MARTIN GILBERT, *EXILE AND RETURN: THE STRUGGLE FOR A JEWISH HOMELAND* (1978); THOMAS CAHILL, *THE GIFTS OF THE JEWS* (Anchor Books/Nan A. Talese 1999) (1998); WERNER KELLER, *DIASPORA: THE POST BIBLICAL HISTORY OF THE JEWS* (1969); LEO TREPP, *HISTORY OF THE JEWISH EXPERIENCE* (Behrman House, Inc., 2001) (1962); for a brief exposition see *JEWISH VIRTUAL LIBRARY*, <http://www.jewishvirtuallibrary.org/jsource/myths3/MFroots.html#2> (last visited May 8, 2016). *According to Phyllis Williams*, *FACTS ABOUT ISRAEL*, available at <http://www.layevangelism.com/reference/chapter32b.htm> (last visited May 7, 2016) "Israel became a nation in 1312 B.C.E., two thousand years before the rise of Islam." See also Maps II, III and IV in Annex B; for Maps of the entire Jewish History see Gilbert, *THE ROUTLEDGE ATLAS OF JEWISH HISTORY . . . supra* note 226. We can also say briefly here that the Jewish society, until the time of the Kings, was a state of anarchy, such as was explained by Wilder Lane:

The great leaders of the Israelites could not even tell them that all men are brothers. They were a very small group, surrounded by powerful pagan empires; Egypt in the south, Armenia, Persia, Chaldea, Babylonia, Assyria, in the north and east, and in the west, Rome. The most promising young Israelites were always falling in love with pagan girls. The pagan achievements awed them all. When you see the incredible walls of Baalbek or Tadmor, in ruins as they are now, and even with the memory of New York's towers behind your eyelids, you are struck dumb. The simple Israelites who saw those gigantic cities in their magnificence, dwarfing their thronging populations, must have been stunned. They would have melted humbly into those pagan multitudes, if their strong men had not stood in the way and driven them back with threats, telling them that they were like no other people, that they were set apart,

what would have come down to them in ordinary inheritance practices, from parents²²⁸ to children.²²⁹

IV. Timeline: Chronology of the Control of the Land of Israel			
Beginning	End	People/Empire/Country	Comments
5000-4000 BCE (?)	2000 BCE	Canaanites	
2000-1800 BCE	1500 BCE	Jews	Abraham and his descendants, the Twelve Tribes (in the area of Judah).
1500 BCE	12th-13th Century-BCE	Amorites and Jebusites	Jews move to Egypt.

chosen to know the truth and hold to it. They wanted to be "like all the other nations". But to be like any other people, they must forget that men are free. That is the truth that they held. Therefore, of course, they were anarchists. They lived and prospered for centuries, with no government whatever

WILDER LANE, *supra* note 21, at 76-78.

228. What is the genetic tie from Jews now living in Israel to those forcibly removed during Roman times? We mention this since there are those who claim there is no connection. If none, the present day modern Jews are not entitled to reparations for lands stolen from them many years ago. But in fact, there also is; *see* note 233. On this *see* Almut Nebel et al., *The Y Chromosome Pool of Jews as Part of the Genetic Landscape of the Middle East*, 69 AM. J. HUM. GENET. 1095 (2001); Michael F. Hammer et al., *Jewish and Middle Eastern Non-Jewish Populations Share A Common Pool of Y-Chromosome Biallelic Haplotypes*, 97 Proc. NAT'L ACAD. SCI. U.S.A. 6769 (2000); DIANA MUIR & PAUL S. APPELBAUM. *THE GENE WARS* (2007), AZURE, <http://spme.org/spme-research/analysis/diana-muir-paul-s-appelbaum-the-gene-wars-azure-winter-5767-2007-no-27/2532/>.
229. But are there no statutes of limitation? Surely, two millennia and counting would more than qualify for any statute of limitations. There is such a thing, for the libertarian, as a "natural" statute of limitations: the further back ones goes into the past, the more difficult it is to encounter any relevant evidence. Since the burden of proof always rests with he who wishes to overturn extant property rights, mere passage of time can serve as a natural limitation. However, there can be no man-made statute in this regard, at least not for the libertarian. If there were, injustice would prevail when the plaintiff can marshal proof that a property title is illicit, and yet the court would not uphold it. This would also spell almost the death knell for reparations, surely a basic element of the libertarian philosophy. *See* on this note 75.

12th-13th Century BCE	586 BCE	Jews	930 BCE Northern Kingdom (Israel), Southern Kingdom (Judah).
586 BCE	539 BCE	Babylon	The Northern Kingdom of Israel falls to Assyria in 736-722 BCE; Judah (and Jerusalem) falls to Babylon in 586 BCE.
539 BCE	536 BCE	Persia	Jews are allowed to return to Judea. Although the "Persian Rule" is presented as a 100 year period, the Jews had sovereignty over the Land.
539 -536 BCE	333 BCE	Jews	
333 BCE	168 BCE	Syrian Hellenic Greeks	
168 BCE - 140 BCE	63 BCE	Jews	Hasmonean Dynasty.
63 BCE	395	Romans	Between 66-73 CE the Jewish Revolt against the Romans ends with the destruction of the Second Temple in Jerusalem. The second Revolt against Romans between 132-135 CE ends with the beginning of Jewish expulsion of the Land of Judah, now called Palestine by Hadrianus Caesar (and Jerusalem is named Aelia Capitolina).
395	638	Byzantines	
638	661	Islamic Rule	Caliph Omar conquers Jerusalem.
661	750	Islamic Rule	Umayyad Caliphate
750	1099	Islamic Rule	Abbasid Caliphate - Seljuk Turks
1099	1187	Christian Crusaders	
1187	1250	Ayyubid Dynasty	Saladin conquers Jerusalem.

1250	1517	Mamluks	Turks and Circassians.
1517	1917	Ottoman Turks	
1917	1948	British Empire	The British Mandate
1948	Today	Jews	The State of Israel
*Dates are approximate and may vary according to the sources. This chronology is concise and many details and specifics (such as different rules by competing Caliphates, Monarchs, etc. during the same periods of time) are not included.			

Sources: MARTIN GILBERT, *THE ROUTLEDGE ATLAS OF JEWISH HISTORY* (Routledge, 2010) (1969); THOMAS CAHILL, *THE GIFTS OF THE JEWS* (Anchor Books/Nan A. Talese 1999) (1998); WERNER KELLER, *DIASPORA: THE POST BIBLICAL HISTORY OF THE JEWS* (1969); LEO TREPP, *HISTORY OF THE JEWISH EXPERIENCE* (Behrman House, Inc., 2001) (1962); Lawrence Auster, *How Strong Is the Arab Claim to Palestine?*, *FRONT PAGE MAGAZINE* (Aug. 31, 2004), <http://archive.frontpagemag.com/readArticle.aspx?ARTID=11607>.

First of all, possession is nine tenths of the law. He who now possesses the land is presumed to be the rightful owner of it. It is up to the one who wants the territory, but does not now occupy it, to make the case for the transfer. The burden of proof²³⁰ rests with him, and the Arabs, Palestinians, have not even come close to making that case. The right of return is typically applied to Arabs who departed from areas now under contention in 1947. Rothbard says they were forced out. We

230. States Hoppe: “As a matter of fact, most private holdings are likely just, irrespective of their history—unless and except in such cases in which a specific claimant can prove that they are not. The burden of proof, however, is on whoever challenges the current property holdings and distribution. He must show that he is in possession of an older title to the property in question than its current owner. Otherwise, if a claimant cannot prove this, everything is to remain as it currently is.” Hoppe continues: “Or: To be more specific and realistic: From the fact that Peter or Paul or their parents, as members of any conceivable group of people, had been murdered, displaced, robbed, assaulted, or legally discriminated against in the past and their current property holdings and social positions would have been different if it had not been for such past injustices, it does not follow that any present member of this group has a just claim (for compensation) against the current property of anyone else (neither from within nor from outside his group). Rather, in each case, Peter or Paul would have to show, in one case after another, that he personally has a better because older title to some specified piece of property than some current, named and identified owner and alleged perpetrator. Certainly, a considerable number of cases exists where this can be done and restitution or compensation is owed.” Hans-Hermann Hoppe, *A Realistic Libertarianism*, LEWROCKWELL.COM (Sep. 30, 2014), <http://www.lewrockwell.com/2014/09/hans-hermann-hoppe/smack-down/>.

say, they cooperated with the Arabs to make it easier for them to kill Jews. In any case, there was an earlier right of return. This one works in behalf of the Jews (now the Israelis).

The situation, as we see it, is this. Some 3300 years ago, the Jews were in possession of the disputed lands (despite the fact that Jewish Tradition teaches Abraham was there in the time of the Canaanites, near 1800 BCE). They were then unjustly dispossessed, forced to go on the Diaspora (finally 2000 years ago), and a spate of other tribes succeeded them, each replacing the other in a series of wars. These groups included, in no particular order: Babylonians, Assyrians, Greeks, Arabians, Crusaders, Seljuks, Mongolians, Persians, Mamluks, Turks and of course Romans.²³¹

V. Population in Palestine West of Jordan River, by Religion Groups, 1st Century-2000-Rough Estimates, Thousands				
Year	Jews	Christians	Muslims	Total ^a
First half 1st century C.E.	Majority	-	-	~2,500
5th century	Minority	Majority	-	>1st century
End 12th century	Minority	Minority	Majority	>225
14th cent., bef. Black death	Minority	Minority	Majority	225
after Black death	Minority	Minority	Majority	150
1533-39	5	6	145	157
1690-91	2	11	219	232
1800	7	22	246	275
1890	43	57	432	532
1914	94	70	525	689
1922	84	71	589	752
1931	175	89	760	1,033
1947	630	143	1,181	1,970
1960	1,911	85	1,090	3,111
1967	2,374	102	1,204	3,716
1975	2,959	116	1,447	4,568
1985	3,517	149	2,166	5,908
1995	4,522	191	3,241	8,112
2000	4,969	217	3,891	9,310

231. Perhaps the most famous battle in the process of expelling the Hebrews was Masada, see JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/jsource/Archaeology/Masada1.html> (last visited May 8, 2016).

^a Including “Others”: Druzes, other small religious minorities, and since 1990, immigrants from the former USSR without religious affiliation
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Sources: Until 1975: R. BACHI, <i>THE POPULATION OF ISRAEL</i> (Jerusalem, CICRED, World Population Year Series 1977); after 1975: Author’s estimates based on: Israel Central Bureau of Statistics; Palestinian Central Bureau of Statistics.
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Source: Sergio DellaPergola, <i>Demography in Israel/Palestine: Trends, Prospects, Policy Implications, in IUSSP XXIV GENERAL POPULATION CONFERENCE SALVADOR DE BAHIA: POPULATION CHANGE AND POLITICAL TRANSITIONS 5</i> (2001).
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As late as of the time of Jesus, Jews were in possession of territory now under dispute (Judah). Jesus himself was a Jew. A few years before (63 BCE) the Romans came, represented by K. Consider the following schema:

ABCDEFGHIJKLMNOPI'

(Work with us here, our alphabetical example can only go so far) who dispossessed the Jewish tribe, which became a wandering trip for 2000 odd years, and then started to return (in large numbers) in the 18th and 19th centuries.

Tribes A-I represent prehistoric groups who killed off each other in turn until we arrive at the first J for Jews, who, sadly, also followed this pattern.²³² Why does J have the right to the land *vis a vis* A-I? Simply because these earlier tribes disappeared in the mists of time. P, the Palestinians²³³ (for want of a better nomenclature; we have disputed

232. This can be seen in the Bible, from books Numbers and Deuteronomy on, and in many sources such as Gilbert, *THE ROUTLEDGE ATLAS OF JEWISH HISTORY . . . supra* note 227; GILBERT, *EXILE AND RETURN . . . supra* note 227; CAHILL, *supra* note 227; KELLER, *supra* note 226; TREPP, *supra* note 227. For a brief exposition see JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/History/hebcanaan.html> (last visited May 8, 2016). “With regard to the extermination of the seven nations of Canaan, . . . sometimes called Canaanites sometimes Amorites, the biblical record is also not of one cloth. The clarification of their status in the Bible requires a systematic treatment of all the data book by book.” Reuven Kimelman, *The Seven Nations of Canaan*, THE SEFORIM BLOG (Jul. 31, 2015), <http://seforim.blogspot.com.ar/2015/07/the-seven-nations-of-canaan.html>.

233. It is also interesting to note that current research on genetics find that modern Jews do have genetic proximity with Arabs, “Given the prevailing context of conflict, an interesting paradox relevant to health patterns relates to the extremely high genetic proximity that exists between Jews and Arabs, particularly the Palestinians. Hammer et al., *supra* note 228; Nebel et al., *supra* note 228. Recent research in population genetics based on DNA comparisons unveiled that Sephardi (Mediterranean-Middle Eastern) and Ashkenazi (Central-Eastern European) Jews and the majority of Middle-Eastern Arab pop-

this appellation above but they come next in the alphabet, so we are making use of this fact) came before J' (the second return of the Jews) but *after* J (and this if we obviate the fact which we presented above on the continued Jewish Presence in Palestine, as well as the Arabs also immigrating to Palestine along with the Jews in the 19th and 20th centuries), the Jews who worked the land long before them. What of groups K-O? These were the peoples²³⁴ who lived there, and killed each other off in succession, from the time the Jews departed roughly 2000 years ago (omitting those that appeared before, after the first appearance of the Jews roughly 3300 years ago, which also killed each other off), and then the Ps came along.

Let us put this into other words, lest we be unclear on this rather novel approach. We assume these were the people occupying the land that is now Israel. K stands for Romans, J for Jews and P for Palestinians. That is, the first occupants of the land were the A's. The B's conquered the A's, and took over their lands. Etcetera. Around 2000 years ago the J's held the land, and then the K's conquered them, and banished them from this territory. Several other peoples then kicked out the Romans in turn, until the P's took over. That is where Rothbard begins his analysis. But this is mistaken. He did not go far back enough in history to satisfy the requirements of libertarianism. We can accept, *arguendo*, everything he says about the Palestinians being there "first" and that the Jews (J') were unjustified in booting them out of land they previously homesteaded. But, we insist, the Jews (plain J) were there *before* that time. And revisionist "scholarship" which tries to deny Jewish connection to the Land of Israel is absurd:

In like manner, revisionist scholarship bolsters its claims with reference

ulations, namely the Palestinians, clearly share common ancestry in spite of wide-ranging international migrations and physical separation and inbreeding over many centuries. Contemporary mortality differences between Jews and Arabs largely reflect cultural and environmental distances between the respective subpopulations." DellaPergola, *supra* note 5, at 11. See Hammer et al., *supra* note 228; Nebel et al., *supra* note 228.

234. Cline claims "assimilation, annihilation and acculturation" through 10 empires and occupancies have left no one in the area today with "a legitimate pedigree definitively extending back to any of the original inhabitants". ERIC H. CLINE, *JERUSALEM BESIEGED: FROM ANCIENT CANAAN TO MODERN ISRAEL* (2005). Also see David Wenkel, *Palestinians, Jebusites, and Evangelicals*, 14 MIDDLE EAST Q. 49 (2007).

to other ideologically driven disciplines to negate the very substantial accomplishments of the Zionist movement. It fuses the insights of post-colonial studies with "liberation theology" that declares Palestinians are a historic people descended from the inhabitants of what was once Palestine two millennia ago and denies the continuity of Jewish peoplehood. It relies on minimalist biblical scholarship that denies the validity of much of the historical narrative of the Old Testament. And it cites the findings—or absence of findings—of revisionist archaeology as evidence that the Bible has no value as a source of historic truth. In other words, the underlying assumption of these critics is that Jews are not a historic people and contemporary Jews can have no legitimate claim to the land. This constitutes an a priori rejection of the entire Zionist enterprise.²³⁵

We readily admit that there is no single Jew who can trace his ownership rights over any specific piece of land from 2000 years ago.²³⁶ And this, indeed, would be the criterion for transfer of land titles if we were discussing individual rights.²³⁷ But we are not now doing so.

235. Troen, *supra* note 25.

236. And, yes, there are certainly specific Palestinians who can trace their "ownership" of specific olive groves, fields, houses, back to the mid 20th century, when they abandoned them. They even have written "titles" to this land. But here there are also problems with these "titles": "A study of Palestine under Turkish rule reveals that already at the beginning of the 18th century, long before Jewish land purchases and large-scale Jewish immigration started, the position of the Palestinian fellah (peasant) had begun to deteriorate. The heavy burden of taxation, coming on top of chronic indebtedness to money-lenders, drove a growing number of farmers to place themselves under the protection of men of wealth or of the Moslem religious endowment fund (Waqf), with the result that they were eventually compelled to give up their title to the land, if not their actual residence upon and cultivation of it. Until the passage of the Turkish Land Registry Law in 1858, there were no official deeds to attest to a man's legal title to a parcel of land; tradition alone had to suffice to establish such title—and usually it did. And yet, the position of Palestine's farmers was a precarious one, for there were constant blood-feuds between families, clans and entire villages, as well as periodic incursions by rapacious Bedouin tribes . . ." Aumann, *supra* note 34, at 117-18. Should whites in the U.S. cede vast tracts of land in that country to the Indians, who were there before them? Perhaps, if we view these matters tribally; no from a libertarian point of view (there were far too few of them to make any large impact upon the land). And, the same applies to territory mainly east of the Mississippi River vis a vis the grandchildren of black slaves and of slave-owning grandparents.

237. For a libertarian theory of land reparations, see Wilton D. Alston & Walter E. Block, *Reparations, Once Again*, 9 HUM. RTS REV. 379 (2007); Taniecea Arce-neaux, *Reparations for Slavery: A Cause for Reparations, A Case Against David Horowitz*, 32 REV. BLACK POL. ECON. 141 (2005); Walter E. Block, *Malcolm X*,

Block, Futerman, & Farber

Instead, we are discussing *tribes*, not individuals. Why are we departing from strict libertarian principles at this point? We do so in order to insert ourselves into the “mainstream” discussion that takes place in the United Nations, in negotiations between various countries, etc. Unfortunately, libertarianism has not yet fully percolated into those august arenas as of yet. We do so in order to perform a *reductio ad absurdum*: if we take the non-libertarian principles circulating in those environs and logically deduce from them,²³⁸ we can demonstrate that according to them Jews are the rightful owners of the terrain under dispute, and that all and any payments made by them in land purchases were supererogatory.

Let us discuss the concept of working the land, versus being a migrant, or a Bedouin. Does merely riding through an area confer ownership rights; or does “mixing your labor” with the land do so? If we return to Locke, the first libertarian, or at least the precursor to libertarian theory in this regard, it is clearly the latter. That is, merely passing through, even again and again throughout history, either confers no rights at all or at the very most, rights far inferior to that of the farmers or homeowners. This fact alone ought to undermine what little claim to the land the Arabs have after the above considerations are taken into account.

We can look at the present imbroglio through yet one more set of eye-glasses: gentrification. When richer, more effective, more efficient people move into any neighborhood, the previous denizens tend to

FRASER FORUM 18 (1993); Walter E. Block, *The Moral Dimensions of Poverty, Entitlements and Theft*, 4 J. MARKETS & MORALITY 83 (2001); Walter E. Block, *On Reparations to Blacks for Slavery*, 3 HUM. RTS. REV. 53 (2002); Block & Yeatts, *supra* note 75; Victor J. Ward, *The Curious Case Of Reparations*, (Sep. 15, 2014), http://www.economicpolicyjournal.com/2014/09/the-curious-case-of-reparations.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+economicpolicyjournal%2FKpwH+%28EconomicPolicyJournal.com%29.

238. Various geographical areas have been bruited about for the home of the Jewish people after World War II: Uganda, Wyoming, Utah, Bavaria (perhaps the latter would be the most justified, in terms of reparations). But in *none* of these cases was it contemplated that land would transfer on an individual basis. All were thought of in terms of *holus bolus*. It is in that spirit we contemplate the analysis in the text. *Proposals for a Jewish State*, WIKIPEDIA, https://en.wikipedia.org/wiki/Proposals_for_a_Jewish_state (last visited May 8, 2016)

resent it.²³⁹ Admittedly, this is not a perfect analogy (which one ever is?). But the similarity is sufficient to shed some light on this situation. Stipulate, *arguendo*, that the Arabs were there “before”; the Jews came “afterward”. Even Rothbard acquiesces in the notion that the latter occupy a high mark in the civilization sweepstakes.²⁴⁰ As with all such cases, the disposed are not happy with their new status. This might account for some, albeit not all, of the Palestinian animosity. This is indicated by that fact that the Arabs, not the Jews, have set up prohibitions on sales of land to members of the other group. Such commercial interactions are punishable by death sentences. Yet, if there is any way to settle the controversy without more bloodshed, it is through the marketplace. Let the Arab leadership stop prohibiting land sales to Jews. Then dollars, not bullets, can move that area in the direction of peace. Does Israel prohibit land sales to Arabs? No it does not; for more on this see Safian.²⁴¹ We may add the fact that Israel is the richer and more efficient also serves as evidence that it is in fact much more liberal, and therefore much closer to libertarian, than any of its Arab neighbors. As relatively liberal States tend to grow faster than relatively illiberal ones, and by any measure Israel is much more developed than any Arab state on Earth, then it seems especially odd that a libertarian would single out the most liberal State in this region as specifically the most evil of States there. We concede that Israel is not a libertarian State—far from it. But it is much closer than any of the surrounding Arab states.

VIII JEWISH CLAIMS

Having established that libertarian homesteading theory can theoretically apply to cases going back even thousands of years provided sufficient evidence is presented of lineage from those original homestead-

239. See Walter E. Block, *The Gentrifier*, LEWROCKWELL.COM (Feb. 9, 2015), <http://www.lewrockwell.com/2015/02/walter-e-block/gentrification-makes-the-world-a-better-place/>.

240. He wrote: “Israel is a European nation with a European technological standard.” The Arabs are . . . primitive and undeveloped . . .” Rothbard, *supra* note 4, at 29.

241. Safian, *supra* note 163.

ers, the question now is this: Are the Jews of today the legal descendants of the original Jewish homesteaders of circa 2,000 years ago? We are not going back to the supposed Biblical times of the history of the Biblical Abraham, Isaac, and Jacob, also known as Israel, because to prove the existence of these people is impossible (or, at the very least, extremely difficult), let alone lineage stemming from them or any property they may have homesteaded that still exists for claim.

We are, however, taking for granted that a people who called themselves Jews, spoke Hebrew and Aramaic, and practiced a religion similar to what modern observant Jews now practice, did in fact exist during the Roman period. We contend that the Israelis of today could converse with the Jews of 2,000 years ago in Hebrew, and many learned Orthodox Rabbis who study the Aramaic Babylonian Talmud would even be able to communicate with the Jews of that generation in the Aramaic vernacular as well.

By “similar religion” we mean these two groups of people considered the same book, namely the Pentateuch and subsequent anthologies of the history and poetry of the ancient Israelites, as religiously authoritative. They also celebrated the same holidays with similar customs, for example sitting in an outdoor hut and waving palm fronds and citrons on the Festival of Tabernacles, eating unleavened bread on Passover, wearing phylacteries, and other clear religious similarities.

The fact that Jews lived in Palestine during the Roman period is completely ignored by Rothbard, who as far as we know considers this irrelevant, though we doubt he would challenge the veracity of that fact itself.

That Jews existed in Palestine around the turn of the common era needs no elucidation and is confirmed by many sources, notably the histories compiled by Flavius Josephus,²⁴² a Jewish-Roman historian who lived during the destruction of the Second Temple by Titus in the year 70. The entire Christian New Testament assumes that Jews did in fact live there and were being harassed at the time by the Roman State. The Arch of Titus, which still stands in Rome today, clearly depicts the many religious vessels looted from the Second Temple after its destruction by the Roman army in the year 70 CE, most famously the solid gold Menorah on which the popular holiday of Chanukah is

242. FLAVIUS JOSEPHUS, *THE COMPLETE WORKS OF JOSEPHUS 37-100* (Wm. Whiston trans., Kregel Publications, 1981).

based.

We are not making the case that the entire land mass of what is now the State of Israel belongs to all the Jews of today simply because of cultural continuity with a distinct group that happened to have homesteaded parts of the same land 2,000 years ago. What we are saying is that if it can be proven that 1) at least some Jews of today are both culturally and physically descended from people who homesteaded land in Palestine during the Roman period, and that 2) these modern Jews actually lay claim to these previously-homesteaded lands, and that 3) evidence of that previous homesteading still exists today, then according to libertarian law, that specific previously-homesteaded land belongs to the heirs of those Jews who originally worked that land. The status of legal heir would be determined by the nearest of kin that could be determined genetically as well as culturally. If a plot cannot be narrowed down to a single heir, it would theoretically go to a group that could apply for equal shares in said land.

This would mean, according to libertarian theory, that any and every piece of land located within the jurisdiction of the modern State of Israel for which there is no physical evidence that any homesteading ever took place, is proverbially up for grabs by anyone who works it regardless of ethnicity or religion, as should be the case in any minarchist society. However, any piece of land where sufficient evidence exists that Jews of the Roman period previously did homestead the land, should return to the heirs of those Jews, provided that those heirs actually lay claim to it. The same is true for anyone else who can offer similar proof.

We will illustrate via one plot of land that should transfer title based on these premises from Arab ownership to Jewish ownership. In other words, that the current Arab ownership of this plot of land is unjustified, and that it should return to Jewish hands. From there, the same principles may be used wherever the same type of evidence and verified claimants exist.

The plot of land we will use as an example is perhaps the core of the entire Jewish Arab conflict, what Jews refer to as the Temple Mount, and Muslims as Haram al-Sharif. The Temple Mount is a rectangular platform measuring 150,000 m² surrounded by a retaining wall on all four sides, built of Herodian stone dated to the reign of King Herod of Judea, who reigned from 37-4 BCE. The Wailing Wall, or Western Wall where Jews commonly worship today, is the most famous of these

retaining walls, though the platform is surrounded on all four sides by the same architecture.

Herod's construction of the foundations of these walls and their description is detailed in the works of Josephus.²⁴³ There, Josephus writes that the structure of the Temple itself was built by Jewish priests rather than by Herod or his staff, because only Jews of priestly lineage could enter the actual complex to do the building:

But the temple itself was built by the priests in a year and six months, upon which all the people were full of joy, and presently they returned thanks, in the first place, to God, and in the next place, for the alacrity the king [Herod] had shown. They feasted and celebrated this rebuilding of the temple: and for the king, he sacrificed three hundred oxen to God as did the rest . . .

Josephus also gives a topographical description of the Jerusalem of his day in Wars, Book 5, Chapters 4 and 5, ensuring that the area we know today as the Temple Mount is in fact that same area that Josephus is referring to in his works.

Further evidence that a Jewish Temple stood on that platform during the Roman period comes from the Mishnah,²⁴⁴ a compilation of Jewish sources redacted around 200 CE, 130 years after the Temple's destruction. Notably, most tractates of the Mishnah record arguments between different Rabbinic sources. However, the tractates Midot and Tamid, which detail the blueprints and architectural design of the Temple and what happened there on a daily basis, contain no arguments beyond sourced footnotes adding certain details. This indicates the probability that agreement was nearly universal as to the measurements and general daily goings on at the Temple at the time of redaction of the Mishnah. Otherwise, differing opinions would have been included as they are in other tractates.

To get a sense of the detail in these sources, here is Midot 1:6:

There were four chambers in the Hall of Fire, like alcoves opening into an auditorium. Two were in a consecrated part [of the Hall of Fire] and two in an unconsecrated part, and the ends of the beams separated between consecrated and unconsecrated. And what were they used for? The southwestern one was the Chamber of the Sacrificial Lambs. The southeastern one was the Chamber of the showbread. The northeastern one the Hasmonians hid the stones of the altar that were defiled by the kings of Greece. [Through] the northwestern one the priests descended to the Room of Immersion.

243. *Id.* book XV, ch. XI, para. 6.

244. THE MISHNAH, TRACTATES MIDOT AND TAMID.

The above Mishnah also shows evidence of the events commemorated in the holiday of Hanukkah, where the priestly Hasmonean family overthrew the Syrian Greek regime headed by Antiochus IV Epiphanes in 163 BCE. These events are also detailed throughout Josephus's Antiquities as well as in the Apocryphal Books of Maccabees written after the close of the Biblical canon.

In any case, given historical evidence that Jewish priests built the building and served in it, including Josephus himself who was also a priest and himself served in the Temple, the question now is, do these homesteaders have any modern day heirs? There are Jews alive today who claim to be paternal descendants of the Jewish priests that built and served in the Temple. Genetic studies have also been done on the Y-chromosomes of Jewish men claiming descent from these people. One recent study²⁴⁵ completed in 2009 tracking the male chromosome found (emphasis ours):

The most frequent Kohanim lineage (46.1%) is marked by the recently reported P58 T->C mutation, which is prevalent in the Near East. Based on genotypes at 12 Y-STRs, we identify an extended CMH on the J-P58* background that predominates in both Ashkenazi and non-Ashkenazi Kohanim and is *remarkably absent in non-Jews*. *The estimated divergence time of this lineage based on 17 STRs is 3,190 +/- 1,090 years*. Notably, the second most frequent Kohanim lineage (J-M410*, 14.4%) contains an extended modal haplotype that is also limited to Ashkenazi and non-Ashkenazi Kohanim and is *estimated to be 4.2 +/- 1.3 ky old*. These results support the hypothesis of a common origin of the CMH in the Near East well before the dispersion of the Jewish people into separate communities, and *indicate that the majority of contemporary Jewish priests descend from a limited number of paternal lineages* (emphasis added by present authors).

That modern Jews who claim descent from Jewish priests have a shared paternal lineage does not of itself prove that modern priests actually descend from the people who built and served in the Temple. However, the preponderance of evidence in this case is still strong.

First, the platform of the Temple Mount itself predates the structures currently on the Mount by centuries. The Dome of the Rock was only completed in 691, about 700 years after the platform was completed and 600 years after the Temple was destroyed. Second, there is cultural continuity between the people who originally built the

245. Michael F. Hammer et al., *Extended Y Chromosome Haplotypes Resolve Multiple and Unique Lineages of the Jewish Priesthood*, 126 HUM. GENETICS 707 (2009).

Block, Futerman, & Farber

structure—Jewish Priests as documented by Josephus—and modern day observant Jewish priests. They learned the same texts, celebrated the same holidays, and followed many of the same religious rituals. They all prayed, and still pray, in the direction of the very building in question. Third, there is evidence of genetic descent as well, and at least some of these people with evidence of cultural and genetic continuity with the original homesteaders do claim ownership of the place.

It would not be inconsistent with Libertarian/Lockean homesteading theory to say that the area of the Temple Mount should be transferred to all modern day Jewish priests who claim descent from the original homesteaders. This could be done by dividing the territory by shares, and giving shares to all who test positive for the same genetic markers that indicate shared paternal descent.

From the example of the Temple Mount we may extend to any area where evidence of previous Jewish homesteading is confirmed. The same is the case for Muslim claims as well. That means wherever there is evidence of previous Muslim homesteading of land in the State of Israel that is currently occupied by Jews, title should be transferred to Muslims provided that cultural and genetic descent can be proven by the other side. In cases where there is both evidence of Jewish and Muslim homesteading, archeological evidence would need to be presented to see which predates which in any particular case.

The *Islamic Wakf* has been frantically attempting to erase as much archaeological evidence of previous Jewish presence on the Temple Mount by digging underneath the complex and discarding the material.²⁴⁶ But consistent findings by Jews sifting through the trash left behind by the *Islamic Wakf's* renovations to the Mount continue to confirm past Jewish presence there. This is the reason why not only the PA,²⁴⁷ but other international organizations²⁴⁸ as well, try to deny

246. Etgar Lefkovits, *Temple Mount Relics Saved from Garbage*, THE JERUSALEM POST (Apr. 14, 2005), <http://www.echad.info/sifting/media/jpost14-4-05.html>.

247. See, e.g., *Rewriting History-Jewish History Rewritten*, PALESTINIAN MEDIA WATCH, <http://www.palwatch.org/main.aspx?fi=489> (last visited May 13, 2016); *Denial of Jewish Connection to Jerusalem*, PALESTINIAN MEDIA WATCH, <http://www.palwatch.org/main.aspx?fi=605> (last visited May 13, 2016); Herb Keinon, *Abbas denies the Jewish connection to Jerusalem*, THE JERUSALEM POST (Aug. 22, 2012), <http://www.jpost.com/Diplomacy-and-Politics/Abbas-denies-the-Jewish-connection-to-Jerusalem>.

248. Tovah Lazaroff, *UNESCO adopts Resolution Ignoring Jewish Ties to Temple* 536

Jewish connection to historical sites in the Land of Israel: in order to undermine the case for Jewish ownership of such lands. But as we have seen, to deny *Jewish* connection to *Judea* is absurd.

IX. CONCLUSION

The source of the conflict is Arab rejection of Jewish presence (*state or non-state alike*). Despite our problems with Rothbard's article his ideas have had a big impact in the libertarian movement. Israel is all too often seen as an imperialist war mongering country. But such a notion ends once one is willing to look at the facts.²⁴⁹ Following the premise that libertarians ought to take sides, the facts show that, if they chose to, they should side with Israel.

Rothbard supports homesteading as the legitimate means of ownership (the first homesteader gets the land, not any subsequent one). Indeed, perhaps second only to John Locke, Rothbard is the main defender, articulator, of this viewpoint. Libertarians deduce from this fact that stolen property must be returned to its original owners, or their heirs. This is the case for reparations. Well, the Romans stole the land from the Jews around two millenia ago; the Jews never gave this land to the Arabs or anyone else. Thus according to libertarian theory it should be returned to the Jews.

There is both cultural and genetic evidence that at least some Jews of today are the heirs of at least some land that was homesteaded by Jews 2,000 years ago, particularly the Temple Mount. The same analysis should be extended to any plot of land with evidence of Jewish homesteading and Jewish claimants. Even aside from 2,000 years ago, groups of Jews came to pre 1948 Palestine to specifically homestead it again, and did so successfully. We cannot accept Rothbard's claim that Israel should have simply done nothing in response to a blockade against it in 1967 with clear threats to destroy it. Anyone who joined in

Mount, THE JERUSALEM POST (Apr. 15, 2016), <http://www.jpost.com/Arab-Israeli-Conflict/UNESCO-adopts-resolution-ignoring-Jewish-ties-to-Temple-Mount-451346>.

249. For other critiques of the common myths against Israel see DERSHOWITZ, *supra* note 162; EFRAIM KARSH, FABRICATING ISRAEL HISTORY: THE "NEW HISTORIANS" (2000); LEIBLER, *supra* note 39.

that war against Israel (and especially the War of Independence in 1948), by either fleeing or actively participating, and lost territory as a result, does not deserve it back from a minarchist libertarian perspective.

The major weakness of the Rothbard essay is that it does not go far back enough into history in its analysis of property rights justifications in the case of Israel. Despite the fact that Jews homesteaded most of what is now Israel, purchased land (thus voluntarily populating its areas) and gained territories through defensive wars, the latter idea is also true.

Finally, we will close with this quote by Rothbard:

Libertarians are opposed to every State. But the State of Israel is uniquely pernicious, because its entire existence rests and continues to rest on a massive expropriation of property and expulsion from the land.²⁵⁰

Being libertarians, we do not love the State of Israel as a state. We believe many of the things that it does to its citizens and others under its control is indeed far away from the NAP. However, as a state, is it “uniquely pernicious, because its entire existence rests . . . on a massive expropriation of property and expulsion . . .”? No.

Ironically, Rothbard himself penned a history of the United States before and leading up to the American Revolution. In it, he correctly documents a litany of instances of genocide against various Indian tribes, land theft, fraud, expropriation and expulsion. And yet, he nevertheless chose to title his history “Conceived in Liberty”.

Israel, on the other hand, was founded primarily on mass voluntary immigration and homesteading. Were there instances of land theft, expropriation and expulsion? On a small scale in isolated incidents, yes, but nothing compared to the extent of systematic murder and theft that occurred against innocent natives in the years leading up to the founding of the United States of America. While the United States was also founded on legitimate immigration and homesteading to a large extent, theft and murder were still widespread, and to a much larger extent than with the founding of the State of Israel.

Finally, unlike the founding of the United States, today’s Jews do have a genetic and cultural claim to previously homesteaded land in Israel/Palestine. While certain sects of Jews, notably Jews of priestly lineage, can trace their roots back to definite Jewish homesteaders of

250. Rothbard, *supra* note 178.

Palestine/Judea during the Roman period, not a single American can say the same regarding any previously homesteaded land currently under the control of the United States.

While Israel as a State is, according to anarcho capitalist libertarian theory, certainly vicious to a degree, it is certainly not “uniquely” pernicious as states go. It is in fact one of the few governments in the world founded on a combination of homesteading and inheritance, however delayed. If Rothbard willingly titled his history of pre revolutionary America “Conceived in Liberty”, it would be consistent with his view of history to retitle his article on the 1967 Six Day War, “Liberty in the Middle East”. But being that he has entitled it “War Guilt in the Middle East” we (somewhat facetiously) suggest, in the name of logical consistency that is libertarianism, that he instead retitle his historical work on the founding of the United States “Conceived in War Guilt”.

However Rothbard may view Israel, the fact remains that the maximum amount of individual and economic liberty in the Middle East can *only* be enjoyed there, in the “most pernicious” of all states.

In the end, Rothbard offers us a stark choice: libertarianism, or support for Israel. Our answer is, Both. We think we can have our cake and eat it too, and maintain that we have offered above sufficient reason for this conclusion. Our claim is that Rothbard did not start his analysis as far back into the past as he should have, neither did he analyze the situation before and after the founding of Israel correctly. Had he started about more than two millennia ago as we did, we expect he would have written a very different essay on Israel’s right to exist, and the claim of the Jewish people over the land in contention.²⁵¹

251. We do not claim Rothbard was a self-hating Jew, a charge often leveled at any member of this community who criticizes Israel. Indeed, we specifically disavow it. That is an ad hominem unworthy of sober comment. But we will reply to it in any case, the better to undermine calumnies of this sort. The senior author of the present paper knew Murray for many years as a teacher, mentor and friend. He can attest from personal experience that any such slur has no merit whatsoever. And even if it did, it would only constitute an ad hominem, an informal fallacy in logic. For, it does not constitute a logical contradiction to say Rothbard is suffering from this malady, and, yet, he could be entirely correct in each and every point he makes in this essay.

APPENDIX A

In “The Massacre”, Rothbard²⁵² claims that the Sabra and Shatila Massacre²⁵³ was a “*holocaust on the Begin government*”. This author thus compares the murder of millions of Jews by the Nazi German State with a massacre of 800 people undertaken not by the IDF but by Christian Phalangists, which is rather problematic.²⁵⁴ Although Rothbard full well recognizes that the massacre was done by the Christian Phalange, he blames Israel for not doing anything to stop it. The fact of the matter is that the IDF allowed Phalangist troops to enter the camps in order to fight 200 heavily armed PLO fighters. The result was that between 460 and 800 people died, including 35 women and children. A commission (Kahan, 1983)²⁵⁵ was formed by the *Israeli* government in order to investigate the subject, and found that Israel was *indirectly* responsible.²⁵⁶ As a result, Ariel Sharon was forced to resign as Defense Minister, as well as Rafel Eitan, the Army Chief of Staff. As the investigation and the public outrage (that even Rothbard recognizes) occurred inside Israel shows, this was not only unprecedented, but also was far from being accepted as a normal policy by the Israeli government and society. In fact, Israel enforces a strict code of behavior on the IDF in every operation.²⁵⁷

However, there is something of a double standard in operation. “. . . few voices were raised in May 1985, when Muslim militiamen attacked

252. Rothbard, *supra* note 179.

253. This occurred during the Operation Peace for Galilee (1982), which had the objective of stopping PLO attacks on the civilian population in northern Israel.

254. On comparing Israel with the Nazis see DERSHOWITZ, *supra* note 162, at 53-62; BARD, *supra* note 29, at 166-67.

255. 104 REPORT OF THE COMMISSION OF INQUIRY INTO THE EVENTS AT THE REFUGEE CAMPS IN BEIRUT: FEBRUARY 8, 1983, 8 ISR. FOREIGN RELATIONS REP. 104 (1983), <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx>.

256. How many other states *initiate* such investigations and find themselves partially guilty? The present authors are still involved in this important research.

257. Richard Kemp, *Submission to the U.N. Indep. Com. of Inq. on the 2014 Gaza Conflict*, U.N. HRC (Feb. 20, 2015), <http://richard-kemp.com/submission-to-the-united-nations-independent-commission-of-inquiry-on-the-2014-gaza-conflict/>.

the Shatila and Burj-el Barajneh Palestinian refugee camps. According to UN officials, 635 were killed and 2,500 wounded. During a two-year battle between the Syrian-backed Shiite Amal militia and the PLO, more than 2,000 people, including many civilians, were reportedly killed. No outcry was directed at the PLO or the Syrians and their allies over this slaughter. International reaction was also muted in October 1990 when Syrian forces overran Christian-controlled areas of Lebanon. In the eight-hour clash, 700 Christians were killed—the worst single battle of Lebanon’s Civil War. These killings came on top of an estimated 95,000 deaths that had occurred during the civil war in Lebanon from 1975–1982.²⁵⁸ The West only discussed these subjects when Israel was thought to have been somehow involved. This shows again how biased against Israel are the western media, politicians, and pundits.²⁵⁹ In his article Rothbard misunderstands the historical record, when he says “*And yet it is conveniently forgotten that there was no PLO at all until after the shame of the 1967 war.*” when Au contraire, the PLO was founded in 1964.²⁶⁰ Israel did not occupy Judea and Samaria in 1964 (at the time of the PLO creation). This also shows that the “Palestinian struggle” was not only for those territories, but for Israel itself (that is, for its destruction).

258. BARD, *supra* note 29, at 84-85.

259. “But what is most interesting is the complete indifference displayed by international human rights organizations, the media and the Palestinian Authority toward the mistreatment of Palestinians in Arab countries . . . However, when it comes to ethnic cleansing and torture of Palestinians in Arab countries such as Iraq, Syria and Lebanon, the Palestinian Authority leadership chooses to look the other way. Similarly, the international media seems to have forgotten that there are tens of thousands of Palestinians living in various Arab countries. The only Palestinians that Western journalists know and care about are those living in the West Bank and Gaza Strip.” ABU TOAMEH, *supra* note 168.

260. The PLO (Palestine Liberation Organization) was created in 1964 during the Arab League Summit in Cairo. In its Original Palestine National Charter, it said: “Article 2. Palestine with its boundaries at the time of the British Mandate is a regional indivisible unit.” See VIRTUAL JEWISH LIBRARY, <http://www.jewishvirtuallibrary.org/jsourc/Peace/cove1.html> (last visited May 8, 2016).

APPENDIX B: MAPS

Map II. The Twelve Tribes of Israel (ca 1200 BCE)



Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map III. The Kingdom of David and Solomon



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Source: Jewish Virtual Library. Maps of the Middle East, BCE: The Kingdom of Israel under David and Solomon (Map courtesy of Imminalu.net). Re-published with the permission of the American-Israeli Cooperative Enterprise (AICE).

Map IV. The Herodian Period (37BCE-73CE)

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Source: Israel Ministry of Foreign Affairs. "Israel in Maps"

Map V. Jews in the Land of Israel (73-636 CE)



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map VI. Jews in the Land of Israel (636-1880 CE)



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map VII. Jews in the Land of Israel (1880-1914 CE)



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map VIII. The Balfour Declaration



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map IX. The Sykes-Picot Agreement (1916)



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

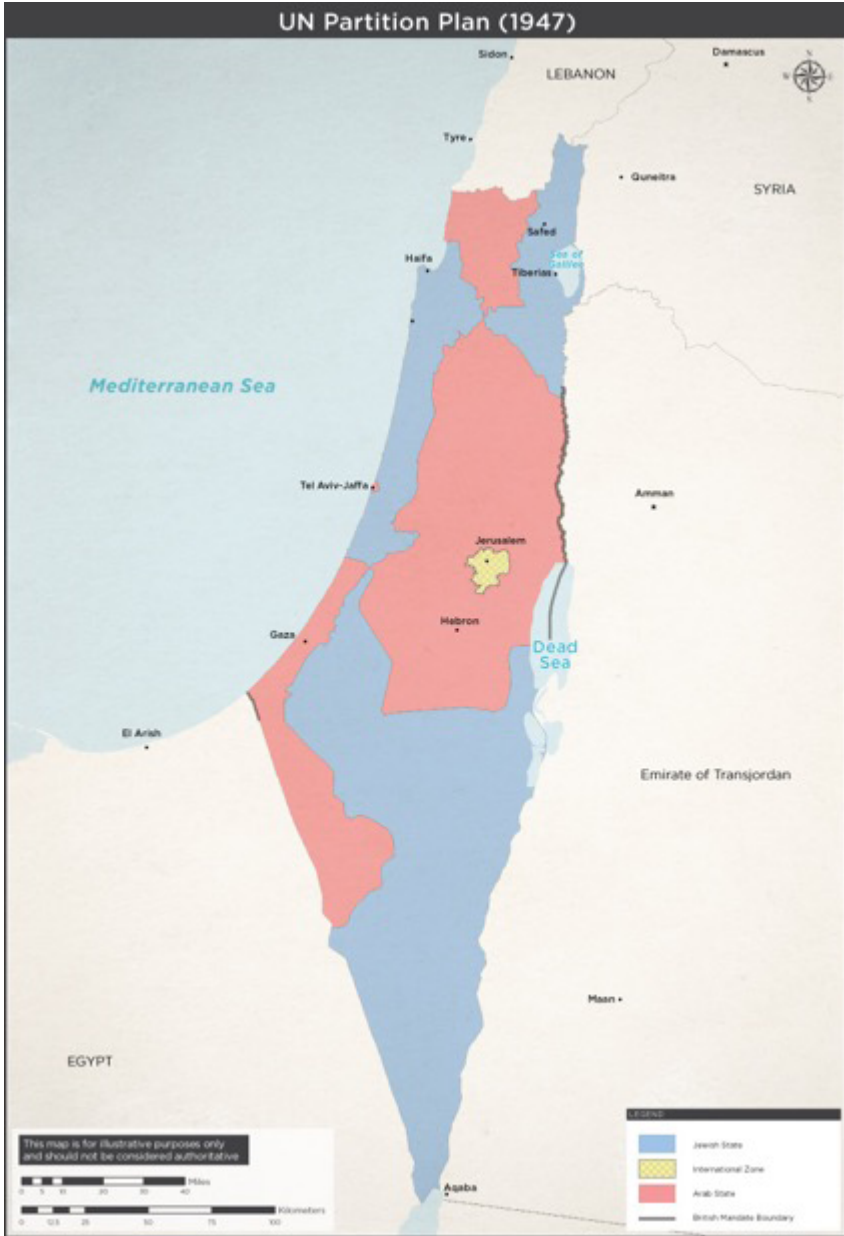
Map X. Division of the British Mandate of Palestine



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map XI. The UN Partition Plan



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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map XII. Israel after the Six Day War (10 June 1967)

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Source: Israel Ministry of Foreign Affairs. "Israel in Maps".

Map XIII. United Jerusalem after the Six Day War (1967)



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Source: Israel Ministry of Foreign Affairs