

# DECONSTRUCTING THE DE-LEGITIMIZATION OF ISRAEL: A SOCIOLOGICAL PERSPECTIVE

Luis Fleischman<sup>1</sup>

*Adjunct professor of Sociology and Political Science, Barry University*

The new anti-Semitism is no doubt subtler and more hegemonic than ever before. It is not founded on direct delirious anti-Semitic attacks, but on intellectual constructions. Its agents are neither violent para-military groups nor monstrous like skin-heads or white supremacists. The target is not Jews per se in the way classic anti-Semitism has done it. However, it is still a flagrant attack against the only the Jewish state, created specifically to provide protection and national emancipation to the Jewish people. The agents that carry this message include academics, media outlets, artists, much of the New Left, protest movements in the U.S such as Black Lives Matter, and a number of Jews and Israelis in addition to a substantial number of Arabs and Palestinians. The main thrust of the criticism is not solely Israeli policies, but the very legitimacy of Israel as nation of the Jewish people. Israel's creation is portrayed as an act of theft, murder and oppression.

The de-legitimization of Israel is the main expression and the most worrisome aspect of modern antisemitism as it singles out the Jewish state, alone among all the nations of the world, as a scoundrel state that has illicit origins. As former Harvard University President Larry Summers has pointed out, constant attacks on the Jewish state and attempts at delegitimizing Israel cause anti-Semitism in effect, even if we give the benefit of the doubt that such anti- Semitism is not intended.

In this essay, I will focus on the question of what makes Israel legitimate. I will try to explore this question within the framework of sociology of law and politics.

## **The Question of Legitimacy**

As modern societies become more complex, traditional forms of life and ethics diminish. They are characterized by countless number of conflicts that arise from modernization, secularization, the increased role of the economy and conflicts within civil society. Therefore, the law has developed into a formal mechanism that can be the result of compromise between a multiplicity of claims. Modern

---

<sup>1</sup> Special thanks to Kenneth Waltzer, Professor of History Emeritus at Michigan State University and to Oren Gross, Irving Younger Professor of Law and Director, Institute for International Legal & Security Studies at the University of Minnesota for their very constructive and useful comments.

positive law is the outcome of diverse inputs and contradictions in modern society. Furthermore, its legal product constitutes a regulatory formal mechanism to resolve future conflicting interests, which is a legal structure for future reference.

Thus, law is no longer bound by what ought to be or by criteria of what is immanently good or bad. It is not based on Christianity, Islam, Judaism or any dogmatic imperatives. Nor is it based on old concepts of natural law, in which rights are conceived as obvious and natural based on certain conceptions about human nature. As Max Weber explains, “the disappearance of old natural law conceptions has destroyed all possibility of providing the law with a metaphysical dignity... Law is the product of technical means aimed at compromising.”<sup>2</sup>

Furthermore, the philosopher George Wilhelm Friederich Hegel argues that rights acquire their universality and validity through positive law: “Right becomes determinate in the first place when it has the form of being posted as positive law.” More importantly, Hegel points out that the existence of positive law enables to terminate vacillation in the interest of getting something done. The matter needs to be “settled and decided somehow.”<sup>3</sup> In other words, the idea of having rights set in positive law is the outcome of the recognition that rights can be subjectively defined and stand in contradiction to each other. The written law enables standards through which rights can have validity. At the same time, the law could be made predictable and calculable so that the outcomes or decisions by judges could be legitimate and practical.

Yet, positive law does not have its own legal validity through procedure alone. Substantive elements that provide legitimacy to legal decisions must be present.<sup>4</sup> Thus, how is this modern principle of positive law translated into international law?

## **International Law**

What is international relations about if not a group of state actors (and also non-state actors) that have different views, values and interests and that somehow seek to resolve their problems or disputes? The answer is precisely due to the nature of the international system itself because it is composed of a variety of state and non-

---

<sup>2</sup> Weber, Max, *Economy and Society*, Roth, Gunther and Wittich, Claus (eds). Berkley: University of California Press, 1978, pp 874-875

<sup>3</sup> G.W Hegel, *Philosophy of Right*, Oxford University Press, London, 1967 p. 137

<sup>4</sup> Habermas, Jurgen, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, The MIT Press, Cambridge Massachusetts, 1996, p. 42-56

state actors. Some are modern and others remain highly traditional; therefore, it is safe to say that in the sphere of international conflicts, the logic of modern positive law should apply because by definition, conflicts are a result of plurality of values, interests and rights. The “clash of civilizations,” to paraphrase Samuel Huntington, must be resolved somehow.

According to legal philosopher H.L.A Hart, if we accept the premise that that international law is just an anarchical situation where states face each other only through a set of commands supported by threats, we would be dismissing the idea that international law is a normative order that generates binding rules and obligations.<sup>5</sup>

Thomas Franck—another legal scholar—explains that, “The Fairness of international law will be judged first by the degree to which the rules satisfy the participants’ expectations of justifiable distribution of costs and benefits, and secondly by the extent to which the rules are made and applied in accordance with what the participants perceive as right process.”<sup>6</sup> If we accept that international law has a normative dimension needed to regulate interaction between the states, the theory can therefore be applied to evaluate the Arab-Israeli conflict as it evolves in relation to international law.

### **The Idea of a Jewish National Home in Palestine**

The Jewish national liberation movement known as Zionism emerged as a result of the inability of Jews to eradicate anti-Semitism, exclusion, and to develop as a normal nation. Zionism first sought to achieve auto-emancipation and develop with all its cultural and spiritual characteristics culturally and spiritually as a normal nation in one specific piece of territory. Jewish immigration in higher quantities began at the end of the 19<sup>th</sup> century. However, there have always been Jews in Palestine, Likewise, there have always been Arabs in Palestine and like in the case of the Jews, massive Arab immigration also took place largely during the 19<sup>th</sup> century.

The idea of an independent Jewish state came a few years later with Theodor Herzl. Herzl and his followers believed there was no future for the Jews among the nations and that the enlightenment failed to properly emancipate Jews and eliminate anti-Semitism. Herzl’s movement began an international diplomatic

---

<sup>5</sup> Hart, H.L.A “Concept of Law”, Oona A. Hathaway and Harold Hongju Koh (ed), *Foundations of International Law and Politics*, Foundation Press, New York, New York, 2005 pp 136-143, p. 138

<sup>6</sup> Ibid- p. 153

effort aimed at securing a “charter” for a Jewish state from various world powers. That was consistent with the spirit of the resolution of the First Zionist Congress that claimed that “Zionism seeks to establish a home for the Jewish people in Palestine secured under public law”, which also included obtaining “the consent of governments, where necessary, in order to reach the goals of Zionism.”<sup>7</sup>

Thus, the first time that the concept of a Jewish national home in Palestine was placed in the international arena was with the Balfour Declaration of November 2, 1917. That declaration pointed out that the British government favorably viewed the establishment of a Jewish national home in Palestine. It is important to stress the fact that the British issued this declaration after a viable Jewish population of 85,000 already existed in Palestine in 1914.<sup>8</sup> Although this community was still a minority in comparison to the 604,000 Arabs living in Palestine, Jewish self-government was already in existence.

Likewise, the Jewish community was growing fast and creating an economy with occupational diversity that included new railroads, shipping and industries. Jewish immigration continued to flow. As historian Howard Sachar pointed out, the port of Jaffa became very active with access to Europe and served also as an important center of Jewish cultural life. Suburban Jaffa gave birth to the modern city of Tel Aviv. Villages, especially plantation settlements along the coastal lowland began to flourish. Citrus and grapes were cultivated and sold in profitable quantities. Jews began to reinstall the Hebrew language and also established Jewish schools.<sup>9</sup> These gave origins to the Balfour Declaration. Winston Churchill, Secretary of the Colonies, pointed out years later in a White Paper that [the Jewish] “community, then, with its town and country population, its political, religious, and social organizations, its own language, its own customs, its own life, has in fact “national” characteristics.”<sup>10</sup>

However, the White Paper also considers the rights of the Arabs who live in Palestine. It reads that the goal is neither “to create a wholly Jewish Palestine,” nor “the disappearance or the subordination of the Arabic population, language, or culture in Palestine.” The White Paper did not state that Palestine as a whole

---

<sup>7</sup> The Basle Program, Resolutions of the First Zionist Congress August 30, 1897, <http://www.mideastweb.org/basleprogram.htm>

<sup>8</sup> Tessler, Mark, *A History of the Israeli-Palestinian Conflict*, Indiana University Press, 1994, p. 145

<sup>9</sup> Sachar, Howard, *A History of Israel: From the Rise of Zionism to Our Time*, Alfred A. Knopf, New York, 2003, pp- 85-88

<sup>10</sup> British White Paper of 1922, The Avalon Project, Yale University, [http://avalon.law.yale.edu/20th\\_century/brwh1922.asp](http://avalon.law.yale.edu/20th_century/brwh1922.asp)

should be converted into a Jewish National Home, but that such a home should be founded “in Palestine.”<sup>11</sup>

The spirit and letter of the Balfour Declaration was supported and approved by the League of Nations that granted Great Britain the tutelage of Palestine, according to “Article 22” of the *Covenant of the League of Nations* that confers an advance nation the right to administer peoples that were part of the Turkish empire until they achieve self-sufficiency to stand alone. The Article concludes, “the wishes of these communities must be a principal consideration in the selection of the Mandatory.”<sup>12</sup> The “Palestine Mandate” was approved at the San Remo Conference in April 1920 and later ratified by the League Council in July 1922.<sup>13</sup> These events had to occur in order for the Balfour Declaration to receive a stamp of approval from an international body whose procedures are considered to be legitimate. But there is another question that requires an answer: Why is the League of Nations, and therefore its decisions, legitimate?

## **The League of Nations**

The legitimacy of the League of Nations is the result of the consensus created after World War I that sought to fulfill the need to organize the world order in a way that peace and stability could be guaranteed. Indeed, the League sought to secure peace among the nations by mediating in local conflicts and scoring some successes.

One of the ways the League sought to avoid conflict was by supporting the creation of nation-states through the principle of self-determination. In the late 19<sup>th</sup> century and the early 20<sup>th</sup> century self-determination was adopted by nationalist movements. Such conception legitimized the unification of Germany and Italy at the end of the 19<sup>th</sup> century. Thus, in the aftermath of World War I, with the fall of the Austro-Hungarian empire, the league of nations justified the creation of new nation-states in Europe based on the principle of self-determination. Austria, Hungary, Poland and other states were formed on that principle. Thus, the same principle was to be applied to the lands of the former Ottoman Empire, mainly in the Middle East.

This principle stated that each nation deserves self-determination by controlling a

---

<sup>11</sup> *ibid*

<sup>12</sup> The Covenant of the League of Nations, The Avalon Project, Article 22, [http://avalon.law.yale.edu/20th\\_century/leagcov.asp#art22](http://avalon.law.yale.edu/20th_century/leagcov.asp#art22)

<sup>13</sup> The Palestine Mandate, The Avalon Project, [http://avalon.law.yale.edu/20th\\_century/palmanda.asp](http://avalon.law.yale.edu/20th_century/palmanda.asp)

country. The rights of minorities would be ideally respected if each nation becomes independent in its own land.

It was expected that nationalistic tensions would be mitigated and world peace would be achieved. By creating solidarity and mutual trust between individuals who share the same national identity, these nations had the capability of building a democratic system—an idea borrowed from Jean Jacques Rousseau. However, following Immanuel Kant's ideas of perpetual peace, President Woodrow Wilson and others who helped form the League of Nations, believed that the likelihood of war among democratic countries is low. Thus, nationalism leads to democracy and democracy reduces the chance of war and maximizes peace.

The fact that nationalism came in contradiction with democracy or that war followed the post-war arrangement does not challenge the legitimacy of the League of Nations or the principle of self-determination. In fact, the principles established by the League were sustained in the aftermath of World War II and reinforced by its replacement—the United Nations. In fact, the principle of self-determination incorporated by the United Nations had wide implications as it brought about the process of mass decolonization and creation of new nation states in the 1960's.

Did that procedure produce a legitimate outcome based on substantial and fair distribution of justice? If we accept the premise that the Balfour Declaration and the mandate are legitimate, we ought to examine the legitimacy from the point of view of the outcome.

### **Substantive Legitimacy**

Arabs accepted the principle of self-determination for themselves, but rejected the same principle for Jews. The first expressions of the Arab rejectionist approach were voiced by Amin El Husseini, the Grand Mufti of Jerusalem. He believed that the British had no legal standing over Palestine and therefore, they had no right to give Palestine to a people who represent a minority of the population.”<sup>14</sup>

Husseini dominated Arab Palestinian politics after his appointment by the British in 1921. He carried a war of anti-Semitic propaganda against the Jews, He also organized brutal and deadly anti-Jewish riots in Tel Aviv, Jerusalem, Hebron and Safed.

---

<sup>14</sup> Dalin, David G and Rothman John F, *Icon of Evil: Hitler's Mufti and the Rise of Radical Islam*, Random House, New York, 2008, p. 12

Years later starting in 1936 until 1939, serious anti-Jewish riots erupted in Palestine. This time the Mufti demanded an immediate halt to Jewish immigration and called for the expulsion of 80 percent of the Jews already in the country to reduce the number of Jews existing before World War I.<sup>15</sup> El Husseini's approach is not only to claim the right of an Arab majority to rule over Palestine, but also the inadmissibility of any Jewish presence. This view continued to prevail even after the Mufti was thrown into exile. Indeed, the Arab Higher Committee—the central political organ of the Palestinian Arabs—invoked a natural right of the Arabs to exercise sovereignty over the entire land. It rejected the Balfour declaration because,

The Jews left Palestine and ceased to have connections there with the land for the last two thousand years... The Arabs have occupied this land for the last 1,300 years, during which period their civilization and culture have unfailingly stamped the country with the Arabic character. The Arabs are still the legitimate owners of the Country and form the greater part of its population.<sup>16</sup>

This argument was repeated again 10 years later by Jamal al Husayni, who was the Mufti's right hand. He pointed out before the United Nations Special Committee on Palestine (UNSCOP) in 1947 that "the Zionist movement... is nothing more than an invader trying to forcefully take control of a country over which has no ancestral rights"<sup>1</sup> Thirty thousand Jews already lived in Palestine before Jews began to immigrate to Palestine in waves starting in the 1880's. They became residents of Palestine, which was then the Southern part of the Syrian province of the Ottoman Empire. States did not exist at that time. Not only did they have no Arab sovereignty, it was not even a political entity. Nothing legal really prevented a Jewish presence in Palestine that began to grow as the 20<sup>th</sup> century was unfolding. Jews purchased land in Palestine and began to establish settlements.

At the time of the Balfour Declaration there were approximately 85,000 Jews living in Palestine, mostly concentrated in the coastal plain in the most Western parts of Palestine and, of course, in Jerusalem. If we look at different cases of states in the world, we can see that there are a number of micro-states that were admitted to the United Nations: Countries in the Caribbean, Lichtenstein with a population of over 30,000 people, and Nauru with a little more than 10,000

---

<sup>15</sup> Ibid- p. 33

<sup>16</sup> "A Memorandum Submitted by the Arab Higher Committee to the Royal Commission" in Gavison (ed.) pp. 65-70 -p. 69-70

people.<sup>17</sup> In other words, the Balfour Declaration and the League of Nations determined that there was enough of a population and a political organization to envision a future independent state once the mandate expires. The British and the League of Nations expected a future population growth as a result of Jewish immigration to fulfill the right of “self-determination” established by the League of Nations.

Hence, the Jewish communities that already existed in Palestine for quite some time fit the definition. Jewish immigrants established new settlements in the low lands of Palestine, including the coastal plain, the upper Jordan Valley, and the Jezreel Valley. These were areas with little Arab populations, swampy, vulnerable to Bedouin assault, and largely owned by effendis or absentee landlords.<sup>18</sup> More than four dozen Jewish settlements already existed by 1914 including the city of Tel Aviv. It is in these territories that Jews won statehood. Later, when the idea of partitioning Palestine emerged, such partition was based on territories where each national community held a majority.<sup>19</sup> At the time of the Ottoman empire, Jews migrated and settled in Palestine. The majority of the members of the Sephardic community were Ottoman subjects and enjoyed a clearly defined legal status in their society. Jerusalem even had a Jewish majority.<sup>20</sup> Although the Ottomans imposed occasional restrictions, they never effectively suppressed Jewish immigration, settlements or land purchases and did not interfere in the Zionist enterprise.

The Ottoman Empire’s relative passivity on the Zionist enterprise before World War I is particularly significant given the fact that most Arabs, including Palestinian Arabs, saw the Ottoman order as legitimate because the Arabs saw themselves as part of a multinational community of Islam.<sup>21</sup>

Furthermore, the Arab claim that they constitute the indigenous population and the Jews are nothing but latecomers is dubious. According to scholar Ilan Troen, in 1800 the population of Palestine was 250,000 people from the Jordan to the Mediterranean. The population was lower than in ancient times. During the 20<sup>th</sup> century the area received Jewish immigrants, but also witnessed a substantial Arab immigration that doubled the population by the end of the century. Immigration from Egypt was encouraged by the Egyptian leader who wanted to exercise control

---

<sup>17</sup> Epps, Valerie and Graham, Lorie, *International Law*, Aspen Publishers, 2011, p. 64

<sup>18</sup> Morris- p. 4

<sup>19</sup> *ibid*

<sup>20</sup> Abramson, Glenda, *Soldiers' Tales: Two Palestinian Jewish Soldiers in the Ottoman Army during the First World War*, Middlesex House, 2013 p. 3 and 4

<sup>21</sup> Morris, Benny, *1948: The First Arab-Israeli War*, Yale University Press, New Haven- p. 5



of the area. This area that was part of the Ottoman Empire littoral began to attract more immigrants precisely because the region was attached to the European economic system. Troen rightly questions why only Arabs are defined as indigenous.<sup>22</sup> How is that the Middle East created a number of countries in the area considered to be legitimate because they are Arab, but a Jewish country is not legitimate because it is not Arab?

The Arab claim to have a natural right to the entire land of Palestine is connected to the idea that the entire Middle East belongs to Arabs or Muslims. Jews do not fall under the same umbrella of Arabs. Thus, in Arab eyes, an international legal procedure and arrangement is valid as long as it is good for the Arabs. For this purpose, they rejected all criteria of legal justice.

The representative from Iraq pointed out that “Palestine is at the heart of the Middle East”, and therefore “a Jewish state breaks that unity and endangers the peace and security of the Arab states”. The Arab states cannot tolerate such break in Arab unity.” It is no wonder that the war against Israel and Zionism turned into a Pan-Arab war.

### **The Jewish and Arab Approaches in Perspective**

The Balfour Declaration and the Mandate it received later by the League of Nations does not mention partition or the right of the Palestinian Arabs to national sovereignty.<sup>23</sup> However, the Peel Commission rectifies this problem with its recommendations for partition in 1937. Nonetheless, the Arab leadership in Palestine under the Mufti immediately rejected this proposal.

The Zionist leadership response was far more complex. They believed that what was proposed to them in terms of territory was unacceptable. Yet, they accepted the principle of partition as a basis for future arrangements. Years later Emil Ghouri, a representative from the Arab Higher Committee, insisted on the illegitimacy of the partition on moral principles and demanded an immediate stop to Jewish immigration. When a member of the Anglo-American committee challenged Ghouri by stating that Jewish immigration existed under the Ottoman domination of Palestine, Ghouri replied as follows: “We were then [under Ottoman

---

<sup>22</sup> Troen, Ilan, “The Indigenous Palestinian”, in Nelson, Cary (ed.) *Dreams Deferred*, Indiana University Press, Bloomington, 2016, pp 162-165

<sup>23</sup> Kabha, Mustafa, “Palestinians and the Partition Plan”, in *The Two State Solution: The UN Partition Resolution of Mandatory Palestine*, Gavison, Ruth (ed.) Bloomsbury, New York, 2003, pp 29-37, p. 31

rule] sovereign in our country in common with the Turks” ... We will terminate Jewish immigration to Palestine.”<sup>24</sup>

Thus, the Arabs believed they were sovereign under ottoman domination because they accepted Muslim rule as legitimate government even though there was no independence and had no direct sovereignty. This confirms that the main thrust of the Palestinian Arab idea is not to achieve independence, but to be ruled by a Muslim or an Arab power.

Albert Hourani, an Arab representative later turned into an Oxford historian, pointed out that “the size and the extent of the Jewish state is irrelevant to the question of principle” and rightly predicted that the Jews “will be forced into conflict with the Arab world by various factors...by the need to deal with their own Arab minority, which would not consent willingly to become the subjects of a Jewish state and which would rise and protest and whose protest would be aided by surrounding Arab countries”<sup>25</sup> and because Palestine has an Arab indigenous population that is an “essential part of the Arab world.”<sup>26</sup>

## **Conclusion**

Following Hegel’s logic, a right has to be recognized in objective law because the conflictive and pluralistic character of our world requires a sort of positive legal arbitration. The institutionalization of right and law requires state action. In the case of international law, it requires the action of a supra-body that can establish a process of legislation, codification and implementation. Paraphrasing Hegel, without the various necessary acts of the state (in this case the supreme international legislative body) neither true definition nor systematic relation to other rights is possible.<sup>27</sup> That was first the role of the League of Nations and later the United Nations. Their decisions took into account the substantial claims of both sides, which was established into positive law and then regulated into two conflicting rights.

The law reflected in the decisions of the League of Nations and the UN yields obligatory force because it is the result of the combination of two moments

---

<sup>24</sup> Ibid- p. 101

<sup>25</sup> Address of Albert Hourani (representing Arab office) to the Final Session of the Anglo-American committee of Inquiry, March 25, 1946 in Gavison (ed.) p. 102-122, p. 103

<sup>26</sup> Ibid- p. 110

<sup>27</sup> Quoted in Arato, Andrew, Cohen, Jean *Civil Society and Political Theory*, The MIT Press, Cambridge, Massachusetts, 1992, p. 101

between “the content of the law and the rightness of principle”<sup>28</sup> (and rightness of procedure too). Though the Balfour Declaration and the League of Nations respected Arab rights, they did not establish self-determination for the Palestinian Arab population. However, this problem is later rectified with the Peel Commission recommendations of 1937 and with the partition of Palestine in 1948.<sup>29</sup> The idea of partition of Palestine into two states was a compromise, a sort of distributive justice and a substantial legitimacy where the right of self-determination was given to both communities and the rights of minorities in each political entity was respected.

It is the conclusion of this work that the only right that has not been “respected” is the “right” to negate the other. In other words, the “right” that has not been fulfilled here is the Arab right to exercise full sovereignty over the entire Middle East, the right to have monopoly of sovereignty. However, such right is not really a right from the point of view of the way international legitimate law is constructed. The Arab right is based on dogma and on a set of rational beliefs that are absolute and recognize no reasonable or fair compromises. There is no room for distributive justice.

On the other hand, I would also argue that the idea that the land of Israel or Palestine historically belonged to the Jewish people is indeed insufficient to justify the creation of a Jewish state. However, given the fact that the historical conditions in the aftermath of World War I brought the international community and international law to recognize the right of self-determination as supreme right of the nations, it is logical to assume that such right can only be fulfilled in certain territories. Therefore, as Israeli scholar Chaim Gans points out, invoking historical rights as a consideration for determining the site for the realization of national self-determination is justified. Such right should also be limited by the facts on the ground and consideration of existing populations.

Although Jews lost the majority in their historical land, Jews still maintained a connection to such land in their liturgy, prayers, slogans, and in other aspects that made the land of Israel part of the Jewish national identity. Therefore, the land of Israel is naturally the place where Jewish self-determination should take place. But most importantly, self-determination for the Jewish people is a right that was recognized and enacted in positive law by a legitimate international body: the League of Nations and later ratified by the UN. Thus, this is the main source of

---

<sup>28</sup> Arato/Cohen-ibid- p. 101-102

<sup>29</sup> Kabha, Mustafa “Palestinians and the Partition Plan”, in *The Two State Solution: The UN Partition Resolution of Mandatory Palestine*, Gavison, Ruth (ed.), Bloomsbury, New York, 2003, pp 29-37, p. 31

legitimacy of self-determination and ultimately the state of Israel. The biblical, historical argument is insufficient because the world order could be de-stabilized by repeated historical claims of this kind. However, the law enacted from the international community recognizes the fact that the Jews are entitled to a country or state at least in portions of that particular land called Palestine.

Therefore, I agree with Professor Gans when he explains that the right of the Jewish people is not all over the historical land, but required to be limited to the contemporary circumstances. A historical connection provides a right to exercise self-determination, but not to reclaim the entire historical land.<sup>30</sup> This was something clearly accepted by Israel's Founding Fathers after the British White Paper of 1922 reaffirmed the right of Arabs and rejected the principle initially stated by Dr. Haim Weitzman and later taken back that "Palestine should be as Jewish as England is English."

This is why Jews purchased lands in Palestine. They were well aware that these lands could not be automatically reclaimed just by virtue of this historical right. It needed to be regained through property rights (purchase) or through legitimate, legal means. In other words, the natural law or the natural rights by virtue of which the Arabs or Palestinians claim monopoly over the Middle East does not stand the test of legitimacy in the way it is defined and conducted in the modern era. The sequence is simple. The Ottoman order vanished after World War I and the Arab states were born within the same radius of time like the State of Israel. The British received a mandate from the League of Nations, in which they legalized the Balfour declaration, and the UN, which was created after World War II, ratified the idea of a Jewish state.

The Arab claim that the entire territory belongs to them led to two things: 1) the permanent hostility towards the Jewish State; and 2) despite the multiplicity of minorities in the Middle East, the only minority that gained self-determination and independence is the Jewish minority.

Intellectual de-legitimization of the only Jewish state rest within this illegal and illegitimate attitude on the part of the Arabs.

---

<sup>30</sup> Gans, Chaim Law School, Tel Aviv University, Paper for the University of California/Utrecht Symposium on Jewish Politics and Political Behavior, October 12, 2008, <http://perush.cjs.ucla.edu/index.php/volume-1-2009-working-papers-series-jewish-politics-and-political-behavior-editors-introduction/chaim-gans-the-justification-for-the-jews-return-to-palestine-and-the-burdens-of-contemporary-zionism>