

## THE TRUE HISTORY AND LEGAL MEANING OF COLONIALISM IN THE HOLY LAND: THE 2042 B.C.E. PROJECT

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**Abstract:** One of the most inexplicable uses of certain Marxist terms, such as colonialism, imperialism and settler-colonialism is with regard to the State of Israel, a frequent target of Marxists, and ethnic Jews, the descendants of the indigenous people of the modern State of Israel, who are often referred to as Zionists. Though there are no logical connections between the policies and acts of the State of Israel or Israeli citizens, on the one hand, and the complaints of Marxists regarding domestic American strife and discrimination, on the other hand, that has not stopped Israel from being a prominent target of Marxist groups like Black Lives Matter. In fact, anti-Israel activism, and castigating Israel as a settler-colonialist entity, have become central planks of the Black Lives Matter movement and even radical American politicians such as Ilhan Omar, Rashida Tlaib and Alexandria Ocasio-Cortez. Because Marxist terms are now being weaponized in ways that are utterly at odds with the history and meanings of these terms, and those weaponizing the terms allege that they have legal import in questions as to the legitimacy of the State of Israel, this article will explore the most frequently used terms and how such terms have been historically applied in various situations. After providing definitions for the terms, this article will apply these terms to the history of the Jewish claim to Israel to determine whether there is any basis for theories of colonialism, imperialism and settler-colonialism being applicable to Israel and Zionism. Finally, the history of those who make competing claims to the land, including Palestinian Arabs and Muslims generally, will be reviewed to determine whether these parties are more properly characterized as colonialists, imperialists, or settler-colonialists. The purpose of this article is not to present a Marxist point of view about the three terms, colonialism, imperialism, and settler-colonialism; rather, this article intends to take a legal view of these non-legal terms to determine whether the terms should have any legal effect vis a vis the rights of people to self-determination and also to examine the internal consistency of the use of these terms by Marxist activists and Marxist scholars across different peoples and states.

**Keywords:** Israel; Palestine; Colonialism; Settler; Islam

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## INTRODUCTION

“Israel is a colonialist/imperialist/settler-colonialist entity”

This phrase is one that is being repeated increasingly on university campuses and elsewhere, but what does it mean and is it accurate?

As counter-revolutionaries<sup>1</sup> make their latest push to eliminate the traditions and institutions of the United States, including the Constitution, law enforcement and the economic system, and replace them with new systems and institutions more to their liking, they have found new appeal for the language of Marxism. From Black Lives Matter to Antifa to the halls of Congress, the language of counter-revolutionary Marxism is now widely embraced. Indeed, concepts such as “colonialism”, “imperialism” and “settler-colonialism” form the platform for counter-revolutionary demands to fundamentally destroy our systems and replace them with a neo-Marxist system of governance and society.<sup>2</sup>

While Marxist concepts languished for decades in the United States as they were embraced in other parts of the world, they nonetheless have existed in certain fringe constituencies such as radical academia, the American Communist Party, anti-Semitic groups such as Palestinian Arab nationalists and other extremists who label themselves “Democratic Socialists” and “progressives”.<sup>3</sup>

Because many of those promoting the new radical anti-Westernism embodied by Black Lives Matter, Antifa and aligned groups are not necessarily formal organizations and they tend to deny that they are of any particular ideology, this article will use the term “Marxist-

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<sup>1</sup> The American revolution of 1776 resulted in the establishment of the United States of America and, ultimately, the Constitution and American systems of liberty, government and society. Today, those on the left seek to undo most of what has resulted from the 1776 revolution and thus, they are properly deemed counter-revolutionaries.

<sup>2</sup> <https://thefederalist.com/2020/09/16/study-up-to-95-percent-of-2020-u-s-riots-are-linked-to-black-lives-matter/>

<sup>3</sup> See, e.g., Felicity Barringer, “*The Mainstreaming of Marxism*” in *U.S. Colleges*, N.Y. TIMES, Oct. 25, 1989, at 7 (“As Karl Marx's ideological heirs in Communist nations struggle to transform his political legacy, his intellectual heirs on American campuses have virtually completed their own transformation from brash, beleaguered outsiders to assimilated academic insiders.”). For example, the Palestinian Arab terrorist groups Popular Front for the Liberation of Palestine, Popular Front for the Liberation of Palestine-General Command and Democratic Front for the Liberation of Palestine are each openly Marxist organizations. Aaron D. Pina, *Palestinian Factions*, CONGRESSIONAL RESEARCH SERVICE RS21235 (June 8, 2005), available at <https://sgp.fas.org/crs/mideast/RS21235.pdf>. Further, to the extent other Palestinian Arab groups such as Hamas and Fatah are not openly Marxist, their charters are based on Marxist principles. See Samir Franjieh, *How Revolutionary Is the Palestinian Resistance? A Marxist Interpretation*, 1 J. of Palestine Studies no. 2 at 52–60 (1972).

Adjacent” to describe the overall philosophy of these groups and their alter-egos in the American left generally.<sup>4</sup>

Today, these counter-revolutionary American movements posit that America’s ills stem from a variety of causes, from so-called “White supremacy” to the oft-repeated but rarely defined “settler-colonialism” theory of national development.

One of the most inexplicable uses of the term is with regard to the State of Israel, a frequent target of Marxist-Adjacents, and ethnic Jews,<sup>5</sup> the descendants of the indigenous people of the modern State of Israel, who are often referred to as Zionists.<sup>6</sup> Though there are no logical connections between the policies and acts of the State of Israel or Israeli citizens, on the one hand, and the complaints of Marxist-Adjacents regarding domestic American strife and discrimination, on the other hand, that has not stopped Israel from being a prominent target of Marxist-Adjacent groups like Black Lives Matter. In fact, anti-Israel activism, and castigating Israel as a settler-colonialist entity, have become central planks of the Black Lives Matter movement<sup>7</sup> and even radical American politicians such as Ilhan Omar, Rashida Tlaib and Alexandria Ocasio-Cortez.<sup>8</sup>

Because Marxist terms are now being weaponized in ways that are utterly at odds with the history and meanings of these terms, and those weaponizing the terms allege that they have legal import in questions as to the legitimacy of the State of Israel, this article will explore the most frequently used terms and how such terms have been historically applied in various situations. After providing definitions for the terms, this article will apply these terms to the

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<sup>4</sup> Some use the term “post-colonialism” to describe this philosophy, but that term is somewhat circular when discussing colonialism itself.

<sup>5</sup> A distinction must be made between Judaism and Jews. This topic is worthy of volumes on its own and has been handled by others in great detail. In short, Jews are a race and ethnic group while Judaism is a religion. Not all who adhere to Judaism are racial or ethnic Jews. *See, e.g.*, Kenneth L. Marcus, *JEWISH IDENTITY AND CIVIL RIGHTS IN AMERICA* (2010). *See, also*, *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987) (holding that while some consider Jews to be White under modern standards, they have always been a distinct race and under law, are still a distinct race).

<sup>6</sup> *See, generally*, Walter Laqueur, *A HISTORY OF ZIONISM: FROM THE FRENCH REVOLUTION TO THE ESTABLISHMENT OF THE STATE OF ISRAEL* (2003).

<sup>7</sup> <https://twitter.com/blklivesmatter/status/1394289672101064704?lang=en> (“Black Lives Matter stands in solidarity with Palestinians. We are a movement committed to ending settler colonialism in all forms and will continue to advocate for Palestinian liberation. (always have. And always will be). #freepalestine”). There are many other less prominent groups that are aligned with Black Lives Matter, many of them radical antizionist organizations, that for purposes of this article will be subsumed under the Black Lives Matter entity.

<sup>8</sup> *See, e.g.*, Editorial, *The Squad’s anti-Semites carry the day among House Democrats yet again*, N.Y. POST, Sept. 22, 2021 and James S. Robbins, *Will an increasingly progressive Democratic Party become steadily more anti-Semitic?*, USA TODAY, Feb. 14, 2019 (“Progressives see Israel as an occupying power, an apartheid state, and fundamentally illegitimate. Furthermore, the concept of “intersectionality” forces them to put the Jewish state in the “bad” category.”)

history of the Jewish claim to Israel to determine whether there is any basis for theories of colonialism, imperialism and settler-colonialism being applicable to Israel and Zionism. Finally, the history of those who make competing claims to the land, including Palestinian Arabs and Muslims generally, will be reviewed to determine whether it is these parties who are more properly characterized as colonialists, imperialists or settler-colonialists.

The purpose of this article is not to present a Marxist point of view with regard to the three terms, colonialism, imperialism and settler-colonialism; rather, this article intends to take a legal view of these non-legal terms to determine whether the terms should have any legal effect *vis a vis* the rights of people to self-determination and to also examine the internal consistency of the use of these terms by Marxist-Adjacents and Marxist scholars across different peoples and states.

## I. DEFINING TERMS

While terms such as “colonialism”, “imperialism” and, to a lesser extent, “settler-colonialism” have long been used, they do not have a single, universally-accepted definition. The only consistent pattern that these phrases have is that they are often used to denigrate. In part, this is due to the fact that groups that deal in these words avoid set-in-stone definitions and instead use evolving definitions to suit their agendas and support their arguments.<sup>9</sup> Just as gender has become a self-defined concept, rather than a scientific fact, so too have terms that are used by Marxist-Adjacents to delegitimize anything that relates to their grievances against the western first-world.

Much of the difficulty in defining terms stems from the evolution of Marxist theory and modern attempts to apply Marxist terms, most of which originated in nineteenth century economic theory, to modern non-economic topics, such as political power and social order.<sup>10</sup>

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<sup>9</sup> Satirist Bill Maher recently noted this phenomenon on his weekly show, *Real Time*: “And finally, new rule, instead of putting a Bible in hotel rooms, we should start putting a dictionary in there because apparently nobody knows what words mean anymore. George Carlin famously had the seven words you can’t say on TV. Well, here are my eight words people need to stop redefining: hate, victim, hero, shame, violence, survivor, phobic, and white supremacy.” “*Maher Torches People Who Change Words Because They Can’t Deal With Reality: ‘Repeat Kindergarten,’*” DAILY BEAST, Oct. 30, 2021, available at <https://www.dailywire.com/news/maher-torches-people-who-change-words-because-they-cant-deal-with-reality-repeat-kindergarten>

<sup>10</sup> There is a frequently used term, “cultural Marxism”, to describe the allegation that a small group of European Marxists imported a form of Marxism that focuses on cultural, rather than economic, matters and intended to undermine American society by spreading this form of Marxism. This theory, debunked as an antisemitic conspiracy theory, is similar to actual Marxist theory in name only. *See, generally*, Jerome Jamin, CULTURAL MARXISM: A SURVEY, RELIGION COMPASS (2018), available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/rec3.12258>.

By way of example, traditional Marxist theory takes the form of the following analytical sequence, focusing on modes of economic production first:

Until recently, most Marxists thought of modes of production as successive stages in the evolution of human society, following each other in a predestined order. In a transitional period, the old mode decays, while the new mode first emerges within the previous system, and then replaces it. The development of new forms of organization actively under-mines the old and accelerates their decay. At some stage, a revolution reconstructs the political and legal superstructures to fit the needs of the new mode of production. The relation between the two modes is therefore one of contradiction, and the new ruling class establishes itself through class struggles in which it is irreconcilably opposed to the old order. Each nation must go through the sequence of stages, though external influences may accelerate or slow the process, or even allow a stage to be skipped. This brief summary is, of course, a caricature, but I think it brings out the key ideas that underlie more sophisticated accounts. There is some warrant for it in Marx's own writings (especially the Preface to the Critique of Political Economy).<sup>11</sup>

As this passage indicates, under Marxist theory the first area of focus is economic, and then social and legal matters follow the revolutionary roadmap, inseparable from the underlying economic conditions.

What has happened of late, though, is that armchair counter-revolutionaries in the form of Marxist-Adjacents have disregarded the underlying economic analyses that Marxism is supposed to focus on to instead leapfrog into conclusory statements that deal in buzzwords with little substance on their own, such as colonialism, imperialism and settler-colonialism.<sup>12</sup> What they have done is the equivalent of using scientific terms, assigning them new meanings that have only a superficial relationship to their actual meanings and then weaponizing them to

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<sup>11</sup> Brewer, *infra* note 24, at 226.

<sup>12</sup> See, e.g., Maktoob Staff, *Rashida Tlaib hails Democrats who called on Biden adm to oppose Israeli "settler colonialism" in Palestine*, Apr. 5, 2021 ("Referring to a recent letter in which a dozen House Democrats called on the Biden administration to oppose Israeli "settler colonialism" in Palestine, Rep. Rashida Tlaib on Friday said that support is growing like never before in Congress for Palestinian human rights."), available at <https://maktoobmedia.com/2021/04/05/rashida-tlaib-hails-democrats-who-called-on-biden-adm-to-oppose-israeli-settler-colonialism-in-palestine>.

have negative meanings in relation to things that the groups oppose, and then sanitizing this bastardization of language by arguing it is all a matter of science.<sup>13</sup>

Professor Akbar Rasulov neatly summarized the common usage of Marxist-Adjacent terms in a recent book but acknowledged that there has never been an agreed upon international law definition of “colonialism” or “imperialism”<sup>14</sup>, while radical scholars including Edward Said and James Thuo Gathii have provided guidance on the contours of these terms. Settler-colonialism is a term that may have had a basis in Marxist theory at some point but is now simply a form of verbal graffiti. What follows is a review of the three terms, colonialism, imperialism and settler-colonialism, based on their original use in Marxist ideology and recent attempts to weaponize the terms.

### A. Colonialism

As Professor Rasulov pointed out recently, while “...terms and phrases like ‘colonial rule,’ ‘colonial territories’ and ‘colonial domination’ have long been referenced and invoked in numerous international law documents over the years, the concept of colonialism itself has never been given a formal legal definition for international law purposes.”<sup>15</sup>

While many references to colonialism tie into theories of Marxism, Marx himself had a rather narrow use of the term. As Professor Anthony Brewer explained, “Marx did not have a generic term to describe the rule of a more advanced nation state over a more backward area. I have used the term colonialism, which has been widely adopted since. When Marx himself

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<sup>13</sup> For example, an agreed-upon definition for osmosis is “the spontaneous passage or diffusion of water or other solvents through a semipermeable membrane” (<https://www.britannica.com/science/osmosis>). If this term were to be used in the same manner that Marxist-Adjacents use colonialism, for example, osmosis would take on a new definition, such as “a liquid that moves to facilitate racism” and then it would be used to describe how water flows through poorly designed drainage pipes to cause intentional flooding of black neighborhoods, with a conclusion that drainage pipes are racist as a matter of science. If this sounds utterly non-sensical, welcome to Marxist-Adjacent logic, where the indigenous people of a land can become settler-colonialists simply because they are the wrong religion. Using the term colonialism, which generally means one country spreading its influence to other areas to control the indigenous population for its own benefit, Marxist-Adjacents simply refuse to consider that non-European or non-white populations can be colonial, even though the agreed upon definition of the term is not limited in such a manner. Thus, the indigenous people of the land of Israel are deemed colonialists when they reclaim their homeland from the Arab populations that stole the land hundreds of years prior.

<sup>14</sup> Akbar Rasulov, *The Concept of Imperialism in the Contemporary International Law Discourse* (July 21, 2017) in Jean d'Aspremont and Sahib Singh (eds.), *CONCEPTS FOR INTERNATIONAL LAW* (Edward Elgar; 2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3006655](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006655).

<sup>15</sup> Rasulov, *supra* note 15, at 1.

used this term it was usually to refer to European settlement in areas from which the indigenous inhabitants had been expelled (such as Australia and America).”<sup>16</sup>

Professor Rasulov posits that a usable working definition of colonialism can be found in the works of Professor Edward Said, who defined colonialism in his seminal work, “Culture and Imperialism” as “the implanting of settlements on distant territory.”<sup>17</sup> Said concluded that direct colonialism, a term that he did not define but that likely means one nation explicitly settling another nation, has “largely ended.”<sup>18</sup>

Others have described colonialism as “direct political and military control over subject territories” and thus “is a specific stage of imperialism.”<sup>19</sup> A number of Marxist scholars even recognize the benefits that accrue from colonialism, from improvements in health and education, while still describing it as nothing more than a stage in the development of society.<sup>20</sup> The bottom line being that even Marxists acknowledge that colonialism has a place in the world, even if they also believe it ultimately must give way to post-colonial ways.

In many ways, Professor Said’s definition is vague enough that it raises more questions than it answers. Professor Said was not only one of the preeminent scholars in the field of Marxist-Adjacent study, he was a harsh critic of the west and Israel. Viewing colonialism in the Middle East through the lens of Professor Said’s writings should provide context and a sense of transparency to the history of colonialism in the region.

Widely accepted examples of colonialism:

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<sup>16</sup> Brewer, *infra* note 24, at 25-26; *see also* Brewer at 48 (“Marx did not discuss colonialism in general terms; his views must be deduced from scattered references in his major writings and from articles about special cases, notably about Ireland, about the British empire in India and (much more superficially) about western, particularly British, dealings with China”).

<sup>17</sup> *Id.* (quoting Edward Said, *CULTURE AND IMPERIALISM*, 9 (1994)).

<sup>18</sup> Said, *supra* note 18, at 9. While Professor Said was well-known for his studies on colonialism, he was not without scandal. As described in Yotav Eliach’s book, *infra* note 60 “. . .[Said] was a member of the Palestinian National Committee and a friend of Yasser Arafat. Many people believe he developed his agenda before writing *Orientalism* and that he bent and tortured the facts to fit his preconceived narrative.” Eliach, *infra* note 60 at xxiv.

<sup>19</sup> Brewer, *infra* note 24, at 277.

<sup>20</sup> *Id.* (describing the theories of Bill Warren).



The most well-known example of colonialism in modern times is likely a tie between the colonization of Africa and Asia by the British and the colonization of North America by European settlers in the 16<sup>th</sup> and 17<sup>th</sup> centuries.<sup>21</sup>

## B. Imperialism

As with so many other terms used by Marxists, there is no hard and fast definition of many fundamental terms such as imperialism. Marxism started as an economic theory (or theories), focusing on societal classes, the accumulation of wealth by a small segment of the population, treatment of labor and the interaction between workers and those who own the means of production. Modern Marxism, though, is less about the economic theories and more about social (particularly social classes) and political matters.

When it comes to imperialism, Professor Said has referenced the work of noted poet T.S. Eliot to declare that the word “imperialism” is resistant to definition.<sup>22</sup> Professor Brewer, an expert on Marxist theory and author of, *inter alia*, “Marxist Theories of Imperialism, A Critical Survey” agreed with Said, writing as a prelude to his discussion of others’ theories of imperialism, “I shall not attempt to define ‘imperialism’ at this stage; indeed, I shall not present a final definition at any stage. Different writers used the word differently, and I shall follow the usage of the writer under discussion.”<sup>23</sup> In other words, Professor Brewer apparently found imperialism to be so incapable of having an objective definition he chose to simply examine the internal consistency of each scholar’s use of the word.

Later in his book, though, Brewer did introduce a relatively cogent functional description of imperialism:

It is easy to misunderstand the classical Marxist theories of imperialism, since the very word has expanded and altered its meaning. Today, the word ‘imperialism’ generally refers to the dominance of more developed over less developed countries. For the classical Marxists it meant, primarily, rivalry between major capitalist countries, rivalry expressed in conflict over territory, taking political and military as well as economic forms, and tending, ultimately, to inter-imperialist war. The dominance of stronger countries over weaker is certainly implicit in this conception, but the focus is on the

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<sup>21</sup> See, e.g., Wolfgang Rheinhard, A SHORT HISTORY OF COLONIALISM (2011). See, also, Matthew Lange, James Mahoney, and Matthias vom Hau. *Colonialism and Development: A Comparative Analysis of Spanish and British Colonies*, 111 AM. J. OF SOCIOLOGY no. 5 (2006) at 1417-1418 for a table of European colonies organized by date of onset of colonization and date of the end of colonization for each colony.

<sup>22</sup> Said, *supra* note 18, at 5.

<sup>23</sup> Anthony Brewer, MARXIST THEORIES OF IMPERIALISM, A CRITICAL SURVEY, SECOND EDITION (1990) at 2.

struggle for dominance, a struggle between the strongest in which the less developed countries figure mainly as passive battlegrounds, not as active participants.<sup>24</sup>

In fact, Marx never defined “imperialism”, nor did he appear to use the term.<sup>25</sup> In the same vein, declining to provide a definition of imperialism due to its varied usage, Gathii wrote that the best way to understand imperialism is to see it as a means of an empire expanding capitalism through, *inter alia*, domination of another people, a definition that is dangerously close to commonly used definitions of colonialism.

Thus I hesitate to present an encompassing definition of imperialism. Instead, I will be addressing imperialisms. The central themes tying these imperialisms together in the colonial context are the different modes of “dominating, restructuring and having authority” over colonial peoples both by European and other invaders as well as by these outsiders in conjunction with local ruling elites. One important dimension of the imperialisms I discuss is that the relations between colonial peoples and their dominators or overlords cannot be understood outside the prism of power, domination, hegemony and control. Thus the culture, economy, politics and entire complex of ideas of the colonial relation are seen or regarded in light of the power of the force of these complex of ideas or “more precisely their configurations of power.”<sup>26</sup>

John Anthony Hobson, a scholar who influenced a significant amount of Vladimir Lenin’s views, described the symbiosis among imperialism, capitalism, and colonialism in the following manner (as summarized by Professor Brewer in reviewing Hobson’s book, “Imperialism”):

(1) monopoly increases the share of profit, and concentrates it into fewer hands; (2) a large fraction of monopoly profit is saved, so saving tends to increase; (3) domestic investment opportunities are limited (it is sometimes also argued that monopoly reduces investment), so saving tends to outrun investment; (4) excess saving produces a chronic lack of demand, unless some outlet is found; (5) capital export can provide an outlet for excess saving; (6) a pressure for annexation of territory emerges, to safeguard existing

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<sup>24</sup> *Id.* at 88-89. From this, one can legitimately question how some states can be described as imperialist when they are of a socialist nature with limited resources and no development to speak of. For example, at its founding as a modern state, Israel was a barren land with no real resources or development and a focus on an agrarian system with a very strong Socialist influence and structure, yet its founding has been deemed to be an imperialist endeavor by many Marxists and Marxist-Adjacents. To the extent such an argument is based on the fact that before Israel was founded as a modern state, it was a British territory and the resulting state of Israel was an alter ego of Britain, that argument fails as a matter of history. Israel was founded in spite of British preferences for the future of the land and the Jewish founders of the modern state went to war against the British as a prelude to the founding.

<sup>25</sup> Brewer, *supra* note 24, at 25.

<sup>26</sup> James Thuo Gathii, *Imperialism, Colonialism and International Law*, 54 *BUFF. L. REV.* 1013, 1016 (2007) (emphasis added).

investments or to open the way for new investment. A second, related, line of argument links demand deficiency to a search for external markets, and hence to annexation.<sup>27</sup>

In essence, Hobson’s description is one of pure (or nearly pure) economic theory, tracing how market power ultimately leads to a need for territorial annexation (i.e., imperialism or even colonialism) as a means to stave off economic stagnation under capitalism.

Professor Gathii’s carefully chosen words in discussing “imperialisms” should be noted for their applicability to less-discussed examples of imperialism, such as Islamic imperialism (discussed starting at page 28 herein). Furthermore, Gathii discusses imperialism as the control of a colonized people by “European and other invaders”, which shows that non-European entities can be just as much of an imperial force over an indigenous people. In other words, early Islamic proselytizers who spread Islam throughout Arabia, the Levant and into other parts of Asian and Europe can be just as much an imperialist force as the more often used example of the Christian British empire.

Professor Said went as far as allowing for an informal description of imperialism as “thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and owned by others”<sup>28</sup> and then provided a more formal definition for the term: “...the practice, the theory and the attitudes of a dominating metropolitan center ruling a distant territory....”<sup>29</sup> Summarizing his views on the relationship between empires and imperialism, Said explained that “[i]mperialism is simply the process of policy of establishing or maintaining an empire.”<sup>30</sup> Said further declared that “classical” imperialism entered a waning period after World War Two.<sup>31</sup> Said quantified the scope of imperialism prior to its apogee by positing that Europe controlled 85% of the land mass of the planet as colonies of some sort. It is this type of imperialism, where one economic power obtains control over vast swaths of the planet’s population, that is the typical use of the term imperialism in Marxist theory.

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<sup>27</sup> Brewer, *supra* note 24, at 73 (summarizing the arguments in John Anthony Hobson’s *Imperialism: A Study* (1902)). It is important to note that Hobson was openly anti-Semitic, blaming Jewish financiers for the negative impacts of imperialist economic activity, something very much in line with the current crop of those who deal in allegations of imperialism and colonialism. See, e.g., John Allett, *New Liberalism, Old Prejudices: J. A. Hobson and the ‘Jewish Question’* 49 *Jewish Social Studies*, no. 2 at 99–114 (1987).

<sup>28</sup> Said, *supra* note 18, at 7.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7. It is interesting to note that Said seems to have acknowledged the inevitability, and perhaps acceptability, of imperialism by noting “...people have planned to have more territory and therefore must do something about its indigenous residents.” What is to be done with the indigenous residents, however, is unstated. *Id.*

As a qualitative matter, Said described the mindset of imperial forces as one where western values were elevated over those of the indigenous culture, which was considered inferior or subordinate.<sup>32</sup>

Ultimately, as Professor Brewer noted, there is no definitive definition of imperialism, just a continuum of often conflicting descriptions: Marxist luminary Nikolai Bukharin deemed imperialism to be a policy of “finance capital” (the process of focusing on profit over production), while Vladimir Lenin went a step further and described imperialism as a stage in the development of capitalism. In each case, though, the concept of imperialism as an expression of conquest and domination (in addition to a purely economic theory) exists in most Marxist theories, with the theme of national domination and conquest taking precedence over the purely economic theories in recent times.<sup>33</sup>

While some Marxists have conflated imperialism with colonialism, Lenin considered the two concepts separate, with some elements of similarity.<sup>34</sup> And Bill Warren, an accomplished Communist politician in the United Kingdom and Marxist scholar, in his book “Imperialism: Pioneer of Capitalism”, curiously described capitalism as a progressive means of production that promotes equality, justice and generosity as it also transitions society into socialism.<sup>35</sup> Warren ultimately defined imperialism as “...the penetration and spread of the capitalist system into non-capitalist or primitive capitalist areas of the world.”<sup>36</sup> To deem Israel, especially at and for decades after its re-establishment as a nation, a purveyor of capitalism simply is at odds with the fact that it was founded as a socialist system and until recently, remained as such.<sup>37</sup>

Widely accepted example of imperialism:

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> Brewer, *supra* note 24, at 110-111. *See, also, id.* at 200 (“‘imperialism’, in this context, refers to exploitation and inequality, but not (as it usually does) to military or political domination of some countries by others”) (describing the theories of Arghiri Emmanuel).

<sup>34</sup> *Id.* at 123 (“For Lenin, in particular, imperialism did not specifically refer to the possession of colonies. He explicitly recognized that earlier stages of capitalism also involved colonial expansion, but for different reasons and with different results.”)

<sup>35</sup> Bill Warren, *IMPERIALISM: PIONEER OF CAPITALISM*, at 30-39 (as described by Brewer, *supra* note 24, at 276-277).

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *See* Lee Edwards, *Three Nations That Tried Socialism and Rejected It*, NATIONAL REVIEW (Oct. 14, 2019) (“Israel is unique, the only nation where socialism was successful — for a while. The original [inhabitants], according to Israeli professor Avi Kay, “sought to create an economy in which market forces were controlled for the benefit of the whole society.” Driven by a desire to leave behind their history as victims of penury and prejudice, they sought an egalitarian, labor-oriented socialist society. The initial, homogeneous population of less than 1 million drew up centralized plans to convert the desert into green pastures and build efficient state-run companies.”), available at <https://www.nationalreview.com/2019/10/failure-of-socialism-israel-india-united-kingdom-adopted-free-market-policies-and-prospered/>.

Professor Said, in *Culture and Imperialism*, focuses on western imperialism and lists Britain, France and the United States as imperial forces, with Canada, Australia, New Zealand, much of Africa, the Middle East, Far East, Indian subcontinent and various regions of North and South America as examples of their colonies.<sup>38</sup> In addition, Said lists Russia, Japan and Turkey as imperialist forces.<sup>39</sup>

### C. Settler-Colonialism

Putting together concepts of colonialism and imperialism, we arrive at settler-colonialism.

Or, perhaps, not.

While colonialism and imperialism have fairly well-developed meanings among Marxist scholars (even if those who use the terms tend to define and redefine them to suit their arguments), settler-colonialism is, in the world of Marxism, a shapeshifter, meant to disparage any system that doesn't quite fit into the categories of colonialist or imperialist systems. The theory of settler-colonialism is also one of the most recent Marxist inventions, coming into concerted focus only in the latter part of the 20<sup>th</sup> Century (much of the writing on settler-colonialism is from the 1990s and later).

If there is a scholar who can be seen as the preeminent expert on settler-colonialism, Lorenzo Veracini appears to fill that role.<sup>40</sup> On the jacket to his book “Settler Colonialism: A Theoretical Overview” Professor Veracini described settler-colonialism as distinct from colonialism while acknowledging that the two theories “co-define” one another.

In Veracini's own words, settler-colonialism, which describes situations where a foreign power migrates to a location and imposes its will on a native society to plunder its resources while replacing the existing indigenous systems with those of the settlers, is “inherently characterized by both [settler and colonialist] traits” but “not all migrations are settler migrations and not all colonialisms are settler colonial”.<sup>41</sup> As will be shown later in this article, a hallmark of the founding and expansion of Islam was the quest for “booty”, where conquering

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<sup>38</sup> Said, *supra* note 18, at 5.

<sup>39</sup> *Id.* at 6.

<sup>40</sup> Unlike matters that can be studied in a manner that tests static theories, such as chemistry or physics, Marxist theories are mutable and reflect the point of view of the scholar. There is no consistent framework with which to understand Marxist theories and even the most committed Marxist scholar would admit that terms tend to evolve and are subject to redefinition at random times. As such, it is difficult, if not impossible, to point to any individual as the preeminent voice of Marxist ideology. There are many scholars other than Professor Veracini who deal in settler-colonialist studies, but Professor Veracini's works are the most accessible for purposes of this analysis.

<sup>41</sup> Lorenzo Veracini, *SETTLER COLONIALISM: A THEORETICAL OVERVIEW* (2010) 3.

Muslims looted the indigenous peoples of their natural resources and, indeed, their own freedom.

Veracini defines migrants as those who have moved to a country or place other than the one of their origin (i.e., a diasporic person) while a settler is someone who has conquered a location and converted it into that person's sovereign locale, even though it is not necessarily the person's country of origin.<sup>42</sup> In particular, Veracini states that "settlers are made by conquest, not just by immigration...[and are] founders of political orders [who] carry their sovereignty with them."<sup>43</sup> Migrants, on the other hand, tend to not have inherent rights or sovereignty, according to Veracini and become, for lack of a better word, subjects of another peoples' country until they move on to their next destination. As Veracini described,

whereas migration operates in accordance with a register of difference, settler migration operates in accordance with a register of sameness, and one result of this dissimilarity is that policy in a settler colonial setting is crucially dedicated to enable settlers while neutralizing migrants...refugees, the most unwilling of migrants, can be seen as occupying the opposite end of a spectrum of possibilities ranging between a move that can be construed as entirely volitional-the settlers'-and a displacement that is premised on an absolute lack of choice.<sup>44</sup>

Further muddying the waters, while scholars such as Veracini often pair discussions of colonialism with settler-colonialism as though they are naturally coexisting theories, Veracini insists that his initial study of settler-colonialism was meant to "emphasize dialectical opposition: colonial and settler colonial forms should not only be seen as separate but also construed as antithetical..."<sup>45</sup>

To the extent there is an unambiguous and coherent definition of settler-colonialism, the underlying circumstances are not static. According to Veracini, settler-colonialism is "...premiered on the domination of a majority that has become<sup>46</sup> indigenous (settler are made

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 11-12.

<sup>46</sup> It is important to note the use of "has become" rather than "was" or "had been". Veracini is using the term indigenous in this context in a way that conflicts with the standard definition of the term. Merriam-Webster Dictionary, for example, defines indigenous as "of or relating to the earliest known inhabitants of a place and especially of a place that was colonized by a now-dominant group." <https://www.merriam-webster.com/dictionary/indigenous>. If Veracini is right in the use of terms, any later-arriving population in a territory can become indigenous, which is circular and makes the standard understanding of this term at odds with how Marxists use the term.

by conquest and by immigration) ...colonizers cease being colonizers if and when they become the majority of the population.”<sup>47</sup>

Since Veracini makes every effort to insist that colonialism and settler-colonialism are entirely separate concepts, it is telling that he (frequently) uses the two terms either interchangeably or uses them in ways that make it difficult to discern any substantive differences between the terms. In many ways, the difference between settler-colonialists and migrants boils down to whether the persons have been successful in their new land. In other words, Veracini’s arguments seem to be that those arriving in a new land who fail to achieve sovereignty or even representation are deemed mere migrants, while those thrive and assume power are settler-colonialists, notwithstanding the fact that both groups are newly arrived and had the same opportunity to rise to power.

Even Veracini noted that varied definitions apply to settler-colonialism, explaining that some scholars, such as Professor Emeritus David Prochaska, a historian who focuses on colonialism, deemed settler-colonialism as “a discrete form of colonialism in its own right” that should be seen as “an important subtype of imperialism and colonialism.”<sup>48</sup> This obviously contradicts Veracini’s own definition.

If the inherent contradiction in defining terms is causing your head to spin, it means you understand the slapdash and agenda-oriented nature of the vocabulary used by Marxist-Adjacent activists. While Veracini and other scholars are adept at telling the reader what settler-colonialism is not, they rarely make succinct, affirmative statements as to what it is.

By way of example, Veracini describes the purpose of settler-colonialism as “turning indigenous peoples into refugees”<sup>49</sup> as he also describes Zionism as one of the ultimate examples of settler-colonialism.<sup>50</sup> In making these conflicting statements, he either ignores or disputes the historical fact that Zionism is the movement of the indigenous people of the region to end their refugee status and return to their homeland of Israel and further implicitly denies or ignores the historical facts that Christian and Islamic conquests ended the original sovereignty of Zionists in their homeland. Veracini compounds his agenda-driven descriptions by declaring Palestinian Arabs, whose predecessors expelled the Jewish natives of the land the Palestinian Arabs now claim as their own, to be the indigenous people of the Jewish homeland.<sup>51</sup>

Ultimately, as with other theories embraced by Marxist-Adjacents, the key to the weaponization of words such as settler-colonialism for use against an identified target is to arbitrarily establish a dividing line that allows for one group to be described as a usurper and

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<sup>47</sup> Veracini, *supra* note 42, at 5.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.* at 35.

<sup>50</sup> *Id.* at 18.

<sup>51</sup> *Id.* at 26.

the other group to be labeled a benevolent indigenous people. In the case of Israel, as will be discussed later in this article, there is no question that as between Jews and Muslim Arabs, it was the Muslim Arabs, coming into existence thousands of years after the establishment of the Jewish people, who were the settler-colonizers of the land of Israel.

One only need look at the Temple Mount in Jerusalem to see a physical manifestation of this, where foreign conquerors destroyed the Jewish temple, the holiest site in Judaism and Muslims then built their own shrines atop the ruins to not only erase Jewish history but also to create “facts on the ground” on which they base their claims to the land.

Only by denying history and imposing an arbitrary timeline where thousands of years of Jewish civilization are erased to coincide with the establishment of a new group (Muslims, and then Palestinian Arabs), can Marxist-Adjacents claim that Jews are the foreigners in their own homeland.

Under classical Marxist theory, where theories of colonialism and imperialism flourish, much depends on an economic perspective, but settler-colonialism theory often evades this element. The closest any scholar comes to positioning the analysis of settler-colonialism in the traditional Marxist sense is Patrick Wolfe, a historian who was widely known for his expertise on settler-colonialism, who wrote

[t]he primary object of settler-colonialism is the land itself rather than the surplus value to be derived from mixing native labour with it. Though in practice, indigenous labor was indispensable to Europeans, settler-colonization is at base a winner-take-all project whose dominant feature is not exploitation but replacement. The logic of this project, a sustained institutional tendency to eliminate the indigenous population, informs a range of historical practice that might otherwise appear distinct-invasion is a structure, not an event.<sup>52</sup>

As will be demonstrated later herein, Wolfe’s description precisely fits the history of the Islamic conquest of the Jewish homeland.

Widely accepted examples of settler-colonialism:

Veracini uses the examples of France and Algeria, Italy and Libya as well as a number of western states such as the United States, Canada and Australia, on the one hand, and the native populations of those lands.<sup>53</sup>

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<sup>52</sup> Patrick Wolfe, *SETTLER COLONIALISM AND THE TRANSFORMATION OF ANTHROPOLOGY*, at 163.

<sup>53</sup> Veracini, *supra* note 42, at 24.



## D. Summary of Terms

Thus, we have the following summary definitions of the three operative terms discussed in this article:

Colonialism: direct political and military control over subject territories that is a specific stage of imperialism.

Imperialism: the practice, the theory and the attitudes of a dominating metropolitan center ruling a distant territory. The process of policy of establishing or maintaining an empire.

Settler-Colonialism: where a foreign power migrates to a location and imposes its will on a native society to plunder its resources while replacing the existing indigenous systems with those of the settlers.

## II. HOW DID OBSCURE MARXIST TERMS BECOME A WEAPON OF THE LEFT?

Even before the modern state of Israel was established in 1948 as the successor nation for the indigenous people of the land of Israel there was a long history of attempts to delegitimize Jews as a nation with a homeland and to rewrite the history of the Jewish ethnicity and nationality. After failing to defeat the Jewish nation in modern times through the use of military action and terrorism, Arab countries, most of them with the backing of Marxist states such as the former Soviet Union, pivoted to a two-prong approach. First, they continued to launch terror attacks against Israel and Jews worldwide, and then they paired the violent approach with a campaign to isolate and marginalize Israel, invoking terms like settler-colonialism to try to convince an ill-informed audience that Jews were Europeans who sought to perpetuate the colonial and imperial objectives of European countries. In large part, this propaganda campaign was led by, or at least inspired by the work of, Professor Said and his followers, such as Professor Hatem Bazian.<sup>54</sup>

The result of this was the creation of the so-called Boycott, Divest and Sanction (“BDS”) Movement.<sup>55</sup> While supporters of BDS claim that they are only interested in human rights for Palestinian Arabs, the overwhelming evidence shows that BDS has the same objectives as its terrorist partners: the destruction of the Jewish homeland.

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<sup>54</sup> See Cynthia Ozick, *Antisemitism and the Intellectuals*, WALL ST. J. (June 14, 2020), available at <https://www.wsj.com/articles/anti-semitism-and-the-intellectuals-11592171963>. See, also, Bazian’s own writing on the topic of Marxist terminology and Israel, Hatem Bazian, *ANNOTATIONS ON RACE, COLONIALISM, ISLAMOFOBIA, ISLAM AND PALESTINE* (2017).

<sup>55</sup> For a full history and description of the BDS movement, see Marc A. Greendorfer, *The BDS Movement: That Which We Call a Foreign Boycott, by Any Other Name, Is Still Illegal*, 22 ROGER WILLIAMS U. L. REV. 1 (2017) (“RWU Article”).

To sanitize a genocidal movement seeking to eliminate the right of self-determination in the historic home of the Jewish people and ethnically cleanse an entire geographical region, promoters of BDS resort to the discredited position that there is a distinction between antizionism and antisemitism.<sup>56</sup> There is, in fact, no substantive difference between the two.<sup>57</sup>

Zionism is the movement advancing the right of the Jewish people, a distinct nation with a history stretching over three millennia, to self-determination in their historic homeland of Israel. Zionism represents the intersection of the Jewish religion with the Jewish nation. BDS supporters claim there is only a Jewish religion and not a Jewish nation, a claim empirically at odds with history and the scientific fact of a distinct Jewish genetic identity.<sup>58</sup> Scholars explain the Jewish bible, an indisputably religious text, "...is the basis for a constitution for running a Jewish State."<sup>59</sup> A British Prime Minister expanded upon this in 1931, stating "This was [Jews] first, this has been their only home; they have no other home."<sup>60</sup>

The United States defines antisemitism as animus towards Jews and uses the specific example of "[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor."<sup>61</sup> Under this globally-accepted definition,<sup>62</sup> BDS is *prima facie* antisemitic. Indeed, the world's foremost authority on antisemitism has found antizionism to have effectively merged with antisemitism.<sup>63</sup> It would be impossible, as a matter of history and theology, to do as BDS proponents suggest and

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<sup>56</sup> The BDS Movement was established pursuant to "GRASSROOTS PALESTINIAN ANTI-APARTHEID CAMPAIGN, TOWARDS A GLOBAL MOVEMENT: A FRAMEWORK FOR TODAY'S ANTI-APARTHEID ACTIVISM" (June 2007), <https://bdsmovement.net/files/bds%20report%20small.pdf> (hereinafter, "BDS Charter"). The BDS Charter tracks the language of the organizing document of the Palestine Liberation Organization, THE PALESTINIAN NATIONAL CHARTER, RESOLUTIONS OF THE PALESTINE NATIONAL COUNCIL, Art. 22 (July 1968), which states "...Israel is the instrument of the Zionist movement...the liberation of Palestine will destroy the Zionist and imperialist presence...."

<sup>57</sup> French President Macron recently stated "Anti-Zionism is one of the modern forms of anti-Semitism." Richard Lough, *France's Macron says anti-Zionism is a form of anti-Semitism*, REUTERS, (Feb. 21, 2019), <https://uk.reuters.com/article/uk-france-antisemitism-idUKKCN1QA1GX>

<sup>58</sup> See Gil Atzmon, et al., *Abraham's Children in the Genome Era: Major Jewish Diaspora Populations Comprise Distinct Genetic Clusters with Shared Middle Eastern Ancestry*, AM. J. OF HUM. GENETICS (June 2010), [https://www.cell.com/ajhg/fulltext/S0002-9297\(10\)00246-6](https://www.cell.com/ajhg/fulltext/S0002-9297(10)00246-6) ("Jews originated as a national and religious group in the Middle East during the second millennium BCE and have maintained continuous genetic, cultural, and religious traditions since that time...") (emphasis added).

<sup>59</sup> YOTAV ELIACH, JUDAISM, ZIONISM AND THE LAND OF ISRAEL 5 (2018).

<sup>60</sup> *Id.* at 168 (emphasis added).

<sup>61</sup> U.S. DEPARTMENT OF STATE, OFFICE OF INTERNATIONAL RELIGIOUS FREEDOM, DEFINING ANTI-SEMITISM, <https://www.state.gov/defining-anti-semitism/>.

<sup>62</sup> This definition has been adopted by the European Union and a number of member states.

<sup>63</sup> Robert Wistrich, *Anti-Zionism and Anti-Semitism*, 16 JEWISH POL. STUD. REV. 3-4 (Fall 2004).

separate Judaism from Zionism and the re-establishment of a sovereign Jewish state in the land of Israel.

Before there was a modern state of Israel, there were organized campaigns to boycott, marginalize and intimidate Jews from participating in commercial, academic and cultural matters.<sup>64</sup> These campaigns trace back over 2,000 years to the Jewish exile from their historic homeland of Israel,<sup>65</sup> beginning with the Romans, then as part of the creation and spread of Islam, into 15th century Europe to the 17th century Russian Empire pogroms to Nazi Germany. A campaign by Arabs against Jews began in the 1920s.<sup>66</sup>

Complimenting the Nazi campaign against Jews, a pan-Arab organization known as the League of Arab States implemented its own boycott to prevent the modern state of Israel from being formed.<sup>67</sup> The Arab League focused its attacks on Zionists and stipulated that its campaign was intended to "...make the boycott of Zionist goods a creed of the Arab nations."<sup>68</sup>

As the Arab League boycott peaked in the 1970s, crippling the United States economy, American politicians realized the Arab League boycott was not only harming American commercial interests, it was also an unconscionable global campaign to spread anti-Semitic discrimination in the United States.

In response, the United States enacted a prohibition on participation in the Arab League's boycott of Israel (the "Federal Anti-Boycott Law").<sup>69</sup>

At Senate hearings leading to the adoption of the law, then-Senator Adlai Stevenson described the boycott of Israel as "[intruding on] American sovereignty. It interferes with basic human rights and religious freedom. It impedes free competition in the marketplace and systematically enlists American citizens against their will in a war with Israel. It excludes other Americans from economic opportunities. Such behavior cannot be tolerated."<sup>70</sup>

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<sup>64</sup> See, e.g., GIL FEILER, FROM BOYCOTT TO ECONOMIC COOPERATION: THE POLITICAL ECONOMY OF THE ARAB BOYCOTT OF ISRAEL 9, 21-27 (1998).

<sup>65</sup> See Eliach, *supra* note 60 at 50-84, and WALTER LAQUEUR, A HISTORY OF ZIONISM: FROM THE FRENCH REVOLUTION TO THE ESTABLISHMENT OF THE STATE OF ISRAEL 3-39 (2003).

<sup>66</sup> AARON J. SARNA, BOYCOTT AND BLACKLIST: A HISTORY OF ARAB ECONOMIC WARFARE AGAINST ISRAEL 5 (1986).

<sup>67</sup> Edy Cohen, *How the Mufti of Jerusalem Created the Permanent Problem of Palestinian Violence*, THE TOWER MAGAZINE (Nov. 2015), <http://www.thetower.org/article/how-the-mufti-of-jerusalem-created-the-permanent-problem-of-palestinian-violence/>.

<sup>68</sup> See Feiler, *supra* note 65, at 25.

<sup>69</sup> 50 U.S.C. § 4607.

<sup>70</sup> *Foreign Investment and Arab Boycott Legislation: Hearing on S. 69 and S. 92 Before the S. Subcomm. on Int'l Fin. of the S. Comm. on Banking, Hous. and Urban Affairs, 95th Cong. 446-47 (1977).*

Thanks to the effectiveness of this law, by the 1990s the Arab League boycott had been weakened such that it was no longer a prominent element of the Arab world's war against Israel.

This remained the case until the early 2000s when a new call for a global boycott of Israel was issued. This boycott campaign was led by those who believed the Arab League had abandoned its goal of destroying Israel and needed to be supplanted by a new generation of leaders who sought to implement radical opposition to Israel and reenergize the movement to replace the Jewish State of Israel with a Palestinian Arab state.

By 2007, the Arab League's boycott had been effectively replaced by the terror-backed BDS Movement.<sup>71</sup>

Concurrent with the spread of BDS in the United States, there has been a significant rise in anti-Semitism. Anti-Semitic incidents spiked from a low of 751 incidents in 2013 to nearly 2,000 in 2017.<sup>72</sup> Jews made up over half of the victims targeted in religion-based hate crimes in 2017.<sup>73</sup> It's no coincidence that the spread of a movement demonizing Jews has had the same effect similar campaigns have had over the prior 2,000 years. While not all the increase in anti-Semitism is directly attributable to BDS, loud, persistent voices on campuses and even in government spreading BDS bigotry make it no surprise to see a concomitant increase in anti-Semitic events.

Former Congressman Tom Lantos, the founder of the Congressional Human Rights Caucus, was present at the conference leading to the creation of BDS and described it as “an

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<sup>71</sup> See Marc A. Greendorfer, *Boycotting the Boycotters: Turnabout is Fair Play under the Commerce Clause and the Unconstitutional Conditions Doctrine*, 40 CAMPBELL L. REV. 29 (2018) (“Campbell Article”) at 48-54. See, also, Eliana Rudee, *Sixth BDS National Conference Sheds Light on Movement's Intentions and Terrorist Affiliates*, JEWISH NEWS SERVICE (April 25, 2019), <https://www.jns.org/sixth-bds-national-conference-sheds-light-on-movements-intentions-and-terrorist-affiliates/>, Peter Hasson, *Inside the Ties Between Anti-Israel BDS Groups and Palestinian Terror Orgs.*, THE DAILY CALLER NEWS FOUNDATION (May 18, 2019), <https://dailycaller.com/2019/05/08/anti-israel-bds-palestinian-terrorist-pfip-hamas/> and Sean Savage, *The Literal Case Against BDS*, THE JEWISH PRESS (May 6, 2019), <https://www.jewishpress.com/indepth/opinions/the-literal-case-against-bds/2019/05/06/>.

<sup>72</sup> ANTI-DEFAMATION LEAGUE, ANTI-SEMITIC INCIDENTS SURGED NEARLY 60% IN 2017, ACCORDING TO NEW ADL REPORT (Feb. 27, 2018) [https://www.adl.org/news/press-releases/anti-semitic-incidents-surged-nearly-60-in-2017-according-to-new-adl-report?fbclid=IwAR0UMk9g7BLYp8GjHrorGaImNByKD9qgOPcKhNDQ9B72rkza8H\\_U6rc\\_h38](https://www.adl.org/news/press-releases/anti-semitic-incidents-surged-nearly-60-in-2017-according-to-new-adl-report?fbclid=IwAR0UMk9g7BLYp8GjHrorGaImNByKD9qgOPcKhNDQ9B72rkza8H_U6rc_h38). Matthew Dalton, *Anti-Semitic Acts 'Spreading Like a Poison' in France*, WALL ST. J., Feb. 19, 2019 at A9 and Jake Wallis Simons, *British Jews in Fear After Pro-Palestine Group Supported by Corbyn Forces Jewish Shops to Close with 'Campaign of Intimidation'*, THE DAILY MAIL (May 31, 2019), <https://www.dailymail.co.uk/news/article-7087929/Pro-Palestine-group-supported-Corbyn-forces-Jewish-shops-close.html>.

<sup>73</sup> FEDERAL BUREAU OF INVESTIGATION, 2017 HATE CRIME STATISTICS (Nov. 13, 2018), available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims>

anti-American, anti-Israeli circus” at which there were “transparent attempt[s] to de-legitimize the moral argument for Israel’s existence as a haven for Jews.”<sup>74</sup>

The purpose of BDS is to be a companion to antisemitic violence. The founding document of BDS does not mince words when it comes to this goal: “The Palestine struggle cannot be so simply defined as violent or non-violent; it brings together a variety of strategies in its path of resistance to advance national goals.”<sup>75</sup>

Far from rejecting violence, BDS doubles down on it. The BDS Charter affirms BDS is a movement to disenfranchise Jews, stating “...opposition to Zionism as an ideology forms the major impetus for the struggle”<sup>76</sup> and admitting the boycott movement exists “...as a means to cripple the Zionist movement within Palestine and...**to bring about Israel’s demise.**”<sup>77</sup>

Omar Barghouti, co-founder of the BDS Movement, stated the goal of BDS is to realize a “one-state” solution that “end[s] Israel’s existence” and reiterated the position of BDS as “... most definitely we oppose a Jewish state in any part of Palestine.” BDS repeatedly rejects the right of Israel to exist as an independent state, and even prominent critics of Israel, such as Norman Finkelstein, concede the goal of BDS is the destruction of Israel “[BDS promoters] think they’re being very clever.... We want the end of the occupation, we want the right of return, and we want equal rights for Arabs in Israel...What’s the result? You know and I know what’s the result: there’s no Israel.”<sup>78</sup>

With this as background on the goals of BDS, and the Marxist-Adjacents who promote BDS by claiming that Israel is an illegitimate state that was founded on, and engages in, settler-colonialism, the history of the Jewish nation must be explored.

### **A. The History of Zionism is the History of the Jewish Nation**

The observant reader will note that this article, like the Palestinian National Charter, refers to “Palestinian Arabs” rather than Palestinians.

The reason for this is that the history of the term “Palestine” is also the history of the indigenous Jewish population of that region, and the dueling claims of Arabs and Jews to the land. For generations, Palestine referred to what is now called Israel and surrounding states,

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<sup>74</sup> Unless otherwise cited, the contents of this section have been derived from the Campbell Article at 45-54.

<sup>75</sup> BDS CHARTER at 11. *See, also*, the RWU Article at 19-33.

<sup>76</sup> BDS Charter at 13.

<sup>77</sup> *Id.* at 18 (emphasis added).

<sup>78</sup> RWU Paper, *supra* note 56, at 34-35.

and Palestinians were either Arabs or Jews.<sup>79</sup> Ultimately, Palestinian Jews were granted independence in the State of Israel while Palestinian Arabs were given what is currently the Kingdom of Jordan.<sup>80</sup>

In many ways, and according to many experts, Palestinian Arabs already have their own sovereign state, and it is Jordan.<sup>81</sup> The issue has been that Jordan was created as a monarchy, and the ruling family (who are Hashemites of Saudi Arabian origin) chose to retain the state as a monarchy for the benefit of the Hashemites and their allies rather than a sovereign state for Palestinian Arabs.

To understand the nuances and varied meanings of the term “Palestine”, one must first review the history of the word. Professor Emeritus of Near Eastern Studies at Princeton University and noted expert on Islam as well as the Arab world, Bernard Lewis engaged in a

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<sup>79</sup> Indeed, the Palestinian National Charter uses this terminology, stating in Article I “Palestine is the homeland of the Arab Palestinian people....” Obviously, this wording makes it clear that there are more than one Palestinian people, with Jews being the unmentioned constituency. Article VI of the charter further amplifies this distinction by declaring that “...Jews who had normally resided in Palestine until the beginning of the Zionist invasion will be considered Palestinians.” This not only ignores the fact that Palestine was never a recognized state or territory and all ethnic Jews originated in the land claimed by Palestinian Arabs. One can only imagine the outrage if Israel were to exclude religious minorities who didn’t have ties to the land in the past from the possibility of citizenship today or agreed to cede territory to Palestinian Arabs but only to the extent they lived in the territory after 1948, when many Palestinian Arabs fled to neighboring states. Palestinian National Charter, *supra* note 57.

<sup>80</sup> The history of the creation of formal states in the Middle East, and, in particular, the creation of the modern state of Israel, Jordan, Lebanon and Syria, among others, is outside the scope of this article and could fill several volumes of books, even if dealt with in a summary fashion. Matters such as the Balfour Declaration and the formal declaration of statehood are best dealt with by reference to articles such as Martin Kramer, *The Forgotten Truth about the Balfour Declaration*, MOSAIC MAGAZINE (June 5, 2017), available at <https://mosaicmagazine.com/essay/israel-zionism/2017/06/the-forgotten-truth-about-the-balfour-declaration/>.

<sup>81</sup> See, e.g., Steve Kramer, *Is Jordan Palestine?*, THE TIMES OF ISRAEL (Nov. 15, 2018), available at <https://blogs.timesofisrael.com/is-jordan-really-palestine/> (“When the Balfour Declaration was promulgated in 1917 during WWI, it included all of today’s Israel and Jordan, with the idea that the “National Home” for the Jews would be established ‘in’ Palestine. But, in the 1916 Hussein-McMahon correspondence, Britain had already promised an independent Arab state in Palestine to the Hashemite clan, for its assistance in opposing the Ottoman Empire. In the Churchill White Paper of 1922, it was stipulated that the whole of Palestine west of the Jordan was excluded from Sir Henry McMahon’s pledge to the Hashemite rulers. Thus, when the British Mandate for Palestine was instituted soon after, only about 22% of Palestine, just the land west of the Jordan River, was available for Jewish settlement. The case thus can be made that the Arab area for settlement was east of the Jordan River and that the area west of the Jordan River was for “close settlement” by the Jews. This is the genesis of the statement that Jordan is Palestine and the remaining 22% is Jewish”) and Mudar Zahran, *Jordan is Palestinian*, MIDDLE EAST QUARTERLY (Winter 2012) at 3-12.

detailed study of this issue and his work sets the stage for a proper understanding of the tangled history of “Palestine”.<sup>82</sup>

Lewis engaged in an easily understood discussion of how the term “Palestine” came into existence, what it was meant to convey and what it meant in history, explaining<sup>83</sup>

[t]he official adoption of the name Palestine in Roman usage to designate the territories of the former Jewish principality of Judea seems to date from after the suppression of the great Jewish revolt of Bar-Kokhba in the year 135 C.E. After this revolt, which caused great trouble to the Roman Empire, the Emperor Hadrian made a determined attempt to stamp out the embers not only of the revolt but of Jewish nationhood and statehood. The city of Jerusalem was destroyed and then rebuilt with a new name, as Aelia Capitolina; it would seem that the name Judea was abolished at the same time as Jerusalem and the country renamed Palestina or Syria Palestina, with the same intention—of obliterating its historic Jewish identity. The earlier name did not entirely disappear, and as late as the 4th century C.E. we still find a Christian author, Epiphanius, referring to “Palestina, that is, Judea.” It had, however, ceased to be the official designation of the country.

As is evident from the historical study of “Palestine”, it is a name that has long been used as an attempt to deny the Jewish history of the area that includes the modern state of Israel, a practice that continues to the current day with the BDS Movement and Palestinian Arab nationalists. This is a classic tactic of settler-colonialists, to erase the history of the indigenous people and replace it with their own.

The absence of a historic state of Palestine is in line with the history of nations, states, and borders. As Professor Lewis pointed out

Precisely demarcated frontiers, with lines on a map, are a modern idea, and with few exceptions were unknown to antiquity or the Middle Ages, when “frontiers” meant the range of armed power on the one hand and the reach of tax collection on the other. Closer definition was usually the expression of natural features and lines of fortifications. From the end of the Jewish state in antiquity to the beginning of British rule, the area now designated by the name Palestine was not a country and had no frontiers, only administrative boundaries; it was a group of provincial subdivisions, by no means always the same, within a larger entity.

Thus, to the extent there could have been a Palestinian Arab identity, it was subsumed within the borders of other states. Professor Lewis explained<sup>84</sup>

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<sup>82</sup> See, generally, Bernard Lewis, *Palestine: On the History and Geography of a Name*. THE INTERNATIONAL HISTORY REVIEW, vol. 2, no. 1, Taylor & Francis, Ltd., 1980, pp. 1–12, available at <http://www.jstor.org/stable/40105058>.

<sup>83</sup> The following discussion is derived from Bernard Lewis, *The Palestinians and the PLO*, COMMENTARY (Jan. 1975), available at <https://www.commentary.org/articles/bernard-lewis/the-palestinians-and-the-plo/>.

<sup>84</sup> Id.

Until World War I, the greater part of the Middle East was divided between two great traditional monarchies, those of Turkey and of Iran, with most of the Arab world coming under the former. After the breakup of the Ottoman Empire, a series of new states was established, mostly through the decisions and actions of Britain and France. These were designated by names of various kinds, some based on geographical features like Lebanon, some names revived from classical antiquity like Syria and Libya, some the names of medieval provinces like Jordan and Iraq. Almost all were new, and at first meant little to their inhabitants.

Prominent Palestinian Arab lawyer, politician and activist Musa Alami acknowledged this in a 1949 article, “The Lesson of Palestine”, where he attempted to explain the defeat of Arab armies, and, in particular, Palestinian Arab militias, by Jews returning to their homeland. Referring to the Arab people, and the Palestinian Arabs in particular, Alami explained “[t]he people are in great need of a ‘myth’ to fill their consciousness and imagination: a myth of which they dream in times of peace and in times of trouble, because it gives their life meaning and gives them self-respect and freedom.”<sup>85</sup> And in 1946, historian Philip Hitti reiterated that Palestine was never a separate entity in the Arab world:

There is no such thing as ‘Palestine’ in history, absolutely not...[It is but] a very small tiny spot there on the southern part of the eastern shore of the Mediterranean Sea, surrounded by a vast territory of Arab Muslim lands, beginning with Morocco, continuing through Tunis, Tripoli and Egypt, and going down to Arabia proper, then going up to Transjordan, Syria, Lebanon, and Iraq — one solid Arab-speaking bloc — 50,000,000 people.<sup>86</sup>

One of the apocryphal claims made by Marxist-Adjacents, and BDS supporters in general, is that Israel, as a Jewish state, was a creation of European Whites after the Holocaust (a slaughter of millions of Jews at the hands of actual European Whites) and as such, it is a colonial endeavor, with the Jews who returned to their homeland being settler-colonialists who have oppressed and appropriated the land of the native Palestinian Arabs. What Lewis’

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<sup>85</sup> Musa Alami, *The Lesson of Palestine*, 3 MIDDLE EAST J. NO. 4, 373, 396 (1949). This article is important in many ways, not the least of which is that it shows the thinking of Palestinian Arab leaders immediately after Israel was recognized as a state. Throughout the article, Alami refers to Jews, rather than Zionists, as the threat to Palestinian Arabs and Arab nationalism generally, though he also attacks Zionism. For example, on page 374, Alami states “...we found ourselves face to face with the Jews, and entered into battle with them to decide the future...” and then devotes an entire section to a matter he refers to as “The Jewish Danger” on pages 386-387, where he states “[t]he ambitions of the Jews are not limited to Palestine alone, but embrace other parts of the Arab world...Palestine will then become the base for exploiting all of the East and for extending the economic interests of the Jews...they dream of a ‘greater Jewish state between the Nile and the Euphrates.’” While modern antisemites try to claim that they only oppose Zionists and not Jews, the history of opposition to Israel’s existence clearly shows that there was no distinction made between Jews and Zionists.

<sup>86</sup> Alex Safia, *Judi Rodorer Won’t Be Schooled*, ALGEMINER (June 3, 2013), available at <https://www.algemeiner.com/2013/06/03/jodi-rudoren-wont-be-schooled/>



historical research shows, though, is that most of those who today claim to be Palestinian Arabs were likely Syrians, Lebanese or Jordanian Arabs prior to World War I, and even then, had very little interest in being considered citizens of those states. In other words, if Jews being displaced from their homeland into the diaspora obviates their claim to the land, then the same logic should apply to the Arabs who subsequently occupied the Jewish homeland and were later displaced (either through migration or refugee status). This is particularly relevant in light of the fact that the Jewish population of Israel is over 50% Mizrahi, representing a plurality of all ethnic groups comprising the population of Israel and definitely disproving the claim that Israel is a white European colony.<sup>87</sup>

## B. The Jewish Claim to the Land of Israel

Over a thousand years before the creation of Islam and many hundreds of years before there was a “Palestine”, there was Psalm 137<sup>88</sup>

By the rivers of Babylon, there we sat, we also wept when we remembered Zion.

On willows in its midst we hung our harps.

For there our captors asked us for words of song and our tormentors [asked of us] mirth, "Sing for us of the song of Zion."

"How shall we sing the song of the Lord on foreign soil?"

If I forget you, O Jerusalem, may my right hand forget [its skill].

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<sup>87</sup> See Noah Lewin-Epstein & Yinon Cohen, *Ethnic Origin and Identity in the Jewish Population of Israel*, J. OF ETHNIC AND MIGRATION STUDIES at 8 (2018), available at <https://people.socsci.tau.ac.il/mu/noah/files/2018/07/Ethnic-origin-and-identity-in-Israel-JEMS-2018.pdf> and Hen Mazzig, *Op-Ed: No, Israel is not a Country of Privileged and White Europeans*, L.A. TIMES (May 20, 2019), available at <https://www.latimes.com/opinion/op-ed/la-oe-mazzig-mizrahi-jews-israel-20190520-story.html> (“I am Mizrahi, as are the majority of Jews in Israel today. We are of Middle Eastern and North African descent. Only about 30% of Israeli Jews are Ashkenazi, or the descendants of European Jews. I am baffled as to why mainstream media and politicians around the world ignore or misrepresent these facts and the Mizrahi story. Perhaps it’s because our history shatters a stereotype about the identity of my country and my people.”)

<sup>88</sup> See TEHILLIM - PSALMS - CHAPTER 137, available at [https://www.chabad.org/library/bible\\_cdo/aid/16358/jewish/Chapter-137.htm#lt=primary](https://www.chabad.org/library/bible_cdo/aid/16358/jewish/Chapter-137.htm#lt=primary). Much of the material in this section is derived from religious sources due to the paucity of modern methods of documenting matters from before the common era (and in many cases, hundreds of years after the commencement of the common era). Furthermore, this article is not intended to be a comprehensive study of the history of religion, so much detail unrelated to the major premises of this article will not be covered. Dates are approximate.

May my tongue cling to my palate, if I do not remember you, if I do not bring up Jerusalem at the beginning of my joy.

Remember, O Lord, for the sons of Edom, the day of Jerusalem, those who say, "Raze it, raze it, down to its foundation!"

O Daughter of Babylon, who is destined to be plundered, praiseworthy is he who repays you your recompense that you have done to us.

Praiseworthy is he who will take and dash your infants against the rock.

Psalm 137, written around the 6<sup>th</sup> century B.C.E.<sup>89</sup>, is a lamentation by Jews who had just suffered defeat at the hands of the Babylonian empire and were forcibly removed from their homeland of Israel<sup>90</sup> and their capital, Jerusalem, into captivity in Babylon.<sup>91</sup> This, of course, was not the first time the Jewish people had been conquered and forced into captivity: Approximately 1,000 years before the Babylonian conquest, long after Abraham founded Judaism in approximately 2000 B.C.E., at which time G-d promised the land of Israel to the children of Abraham, Jews were held captive in Egypt until they were led back to the land

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<sup>89</sup> This article uses the abbreviations "B.C.E" and "C.E.," rather than B.C. and A.D., in line with accepted scholarly practice (see "Should We Use B.C.E. instead of B.C.," Dictionary.com (Jan. 13, 2021), available at <https://www.dictionary.com/e/should-we-use-bce-instead-of-bc/>). Historians and Bible scholars set 2042 B.C.E. as the date the Jewish patriarch, Abraham, arrived in what is now the State of Israel after receiving it as a covenant from G-d. As such, this article is a reflection of that as the beginning of Judaism. Any similarity to the 1619 Project is incidental. <https://bibletopicexpo.wordpress.com/2017/01/30/chronology-abraham-to-the-exodus/>

<sup>90</sup> Israel is the name of the modern state that exists on the land promised to the Jews in the Bible though it has been called any number of other names over the course of history, as detailed later herein.

<sup>91</sup> John Ahn, *Psalm 137: Complex Communal Laments*, 127 J. OF BIBLICAL LITERATURE no. 2 at 267–289 (2008).

promised to them in approximately 1300 B.C.E.,<sup>92</sup> thus fulfilling G-d's promise to Abraham.<sup>93</sup>

Once the Jewish people arrived in their promised land, the first temple was built in Jerusalem in approximately 950 B.C.E..<sup>94</sup> As historian Hillel Cohen describes,

Jewish sacred history of the Temple Mount has both universal and Jewish dimensions. According to accepted Jewish tradition, Jerusalem is the center of the world. It contains the Foundation Stone, from which, according to the Babylonian Talmud (Yoma 54:2), the creation of the world began. For that reason, all human beings have a link to the place. But on this same stone, Maimonides notes, adducing an ancient tradition, Isaac was bound by his father, Abraham, and was saved by an angel sent by God. This latter story is one of God choosing Isaac as the son to be sacrificed, rather than Abraham's other son, Ishmael. Isaac is the beloved son, and according to the most fundamental Jewish

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<sup>92</sup> M. H. Segal, *The Religion of Israel before Sinai*, 52 THE JEWISH QUARTERLY REVIEW 1 41–68 (1961). See, also, D.C. Rapoport, *Moses, Charisma, and Covenant*, 32 THE WESTERN POLITICAL QUARTERLY 2 at 123–143 (1979) and E. Leach, *The Legitimacy of Solomon: Some Structural Aspects of Old Testament History*, 42 EUROPEAN J. OF SOCIOLOGY / ARCHIVES EUROPÉENNES DE SOCIOLOGIE / EUROPÄISCHES ARCHIV FÜR SOZIOLOGIE, 1 at 131–174 (2001).

<sup>93</sup> “And Abram [Abraham’s name prior to the covenant] passed through the land [of Canaan], unto the place of Shechem [Nablus], unto the terebinth of Moreh. And the Lord appeared unto Abram, and said ‘Unto thy seed will I give this land’”. *Genesis* 12:6-7. Later in Genesis, as Abram is in Beth-el, a small town several miles north of Jerusalem, G-d again promises “look from the place where thou art, northward and southward, and eastward and westward; for all the land which thou seest, to thee I will give it, and to thy seed forever.” *Genesis* 13:14-15. When Abram then made the covenant with G-d, G-d informed Abram that his name henceforth would be Abraham (translated to mean “father of the multitudes”) and G-d then established the covenant between Himself and Abraham “and to [Abraham’s] seed after thee. And I will give unto thee, and to they seed after thee, the land of the sojournings, all the land of Canaan, for an everlasting possession.” *Genesis* 17:7-8. The land of Canaan, promised to Abraham, is larger than the land of Israel, as it reaches from modern Egypt across modern Israel, north to Lebanon, east to Syria and Jordan, to the Euphrates. See Zecharia Kallai, *The Patriarchal Boundaries, Canaan and the Land of Israel: Patterns and Application in Biblical Historiography*. 47 ISRAEL EXPLORATION JOURNAL no. 1/2 at 69–82 (1997) (“...from Egypt to the river Euphrates, and from the Mediterranean Sea to the desert east of the sedentary country, thus clearly including Transjordan. This region comprises, therefore, the land of Canaan, as defined in biblical historiography...”). *Id.* at 76.

<sup>94</sup> The first temple was built by Jewish King Solomon. The site of the temple in Jerusalem was and continues to be the holiest place in Judaism. For background on the first temple era, including mapping and detailed descriptions of the structures, see J. Patrich and M. Edelcopp, *Four Stages in the Evolution of the Temple Mount*, 120 REVUE BIBLIQUE 3 at 321–361 (2013). For background on the second temple era, see J.L. Rubenstein, *THE SECOND TEMPLE PERIOD IN A HISTORY OF SUKKOT IN THE SECOND TEMPLE AND RABBINIC PERIODS* (2020) at 31–102. For estimates of the population of Jerusalem during the second temple era, see R. Reich, *A Note on the Population Size of Jerusalem in the Second Temple Period*, 121 REVUE BIBLIQUE 2 at 298–305 (2014).

understanding of the story, Isaac's descendants are the followers of Abraham and the worthy heirs of the holy site.

The universalist outlook is preserved in the Utopian vision, "In the days to come, the Mount of the Lord's House shall stand firm above the mountains ... and all the nations will flow to it" (Isaiah 2:2). But the Jerusalem that was fixed in the hearts of Jews was and remains the Jewish Jerusalem: Jerusalem as the center of the Jewish people, a place holy both nationally and religiously. It is the Jerusalem that King David established as his capital and to which he brought the ark of God - the Jerusalem in which King Solomon built the Temple, where foreigners were prohibited from entering, and received God's blessings.

In the traditional Jewish view, the people of Israel and city of Jerusalem merged into a single whole; the chosen people were united in the chosen place under the shelter of the one God. The authors of the Bible interpreted the attacks on Jerusalem in the ancient Middle East as battles against God, the purpose of which was to defile the sacred site: "O God, foreigners have entered your domain, defiled your holy Temple" (Psalms 79:1). The process that forged such a potent interdependence between the Jewish people and Jerusalem began with the concentration of the sacrificial service in Jerusalem during the time of the First Temple and grew stronger during Second Temple times when, according to Moshe Weinfeld (1984), Jerusalem became a Temple City' on which the life of the nation depended.<sup>95</sup>

While many anti-Zionists base their views on the claim that there is no Jewish nationality,<sup>96</sup> scholars, both religious and political,<sup>96</sup> make the facts clear. As Rabbi Yotav Eliach wrote,

Zionism and Judaism are intertwined in the texts that make up the main sources of the religion: The Tanach/Jewish Bible (Old Testament); the Mishna, the Torah passed down from Sinai and the oral law written down from the first century B.C.E., until its codification in the 2<sup>nd</sup> century C.E., and the Talmud, completed in the 6<sup>th</sup> century C.E. containing Jewish Law/Halacha, which explains the Mishna in great detail. Scholars agree that the Jewish Bible is at the very least 2,100 years old—the age of the Dead Sea Scrolls. The same is true of Judaism. It is defined by looking at the ancient Jewish sources

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<sup>95</sup> Hillel Cohen, *The Temple Mount/al-Aqsa in Zionist and Palestinian National Consciousness: A Comparative View*. ISRAEL STUDIES REVIEW 32(1) at 1–19 (2017).

<sup>96</sup> See, e.g., the Palestinian National Charter, Article 20, *supra* note 57, which explicitly rejects historical facts to unilaterally deem that the Jewish people do not exist:

*"The Balfour Declaration, the mandate document and what has been based upon them are considered null and void. The claim of a historical or spiritual tie between Jews and Palestine does not tally with the historical realities nor with the constituencies of statehood in their true sense. Judaism in its character as a religion of revelation, is not a nationality with an independent existence. Likewise, the Jews are not one people with an independent personality. They are rather citizens of the states to which they belong."*

and studying Jewish history and Jewish archaeology, all still relevant to millions of Jews today.<sup>97</sup>

In fact, as Rabbi Eliach explained, Jews were not only unequivocally a nation, the nation's physical boundaries are documented in the Bible

The boundaries of Israel are readily found in the book of Genesis. The most specific geographic lesson in the Torah is in the 34<sup>th</sup> chapter of Bamidbar/Exodus in the chapter Mas'a'ey. The boundaries of Israel start at the bottom of the Dead Sea and move clockwise—spelled out over 12 verses in the chapter. There can be no mistake that the Torah does not see Judaism implemented in its entirety in any piece of real estate that the Jews happen to control other than in the holy boundaries of Israel.<sup>98</sup>

There can be no disputing the fact that over the centuries, Jews have been forcibly removed from their homeland and thus were not present in the land, as a nation-state or similar entity, for large stretches of time until the re-establishment of their homeland as the state of Israel in 1948. But being forcibly removed from land, and prevented from returning, does not invalidate history nor does it provide a basis for subsequent colonizers to claim indigenous status.

History also shows a long line of colonizers of Jewish lands and/or oppressors of the Jewish people who prevented them from returning to their land, from the Egyptian Pharaoh who enslaved the Jewish population of Egypt before allowing them to be free, leading to Moses bringing his people to the land of Canaan (which includes present-day Israel) in approximately 1300 B.C.E. to Babylonian Nebuchadnezzar II, who destroyed the most sacred Jewish spot in existence, the first temple, in the 6<sup>th</sup> century B.C.E., resulting in the first mass expulsion of Jews from their homeland in the approximately 700 years that lapsed after the exodus out of Egypt. Once Persian King Cyrus granted the Jews freedom to return to their homeland approximately 50 years after the Babylonian exile (in approximately 540 B.C.E.), Jews rebuilt the temple in Jerusalem and it stood, and the Jewish people remained in their homeland with a capital in Jerusalem,<sup>99</sup> for another 400 years until 70 C.E., when the Romans, under Titus, conquered the Jewish land, destroyed the temple in Jerusalem, plundered the wealth of the Jews and began an occupation of Jerusalem that included destroying Jewish holy sites and replacing them with Roman religious symbols, including a temple to the Roman god Jupiter that was

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<sup>97</sup> Eliach, *supra* note 60, at 3.

<sup>98</sup> *Id.* at 7. Rabbi Eliach also expounds on the idea of Jewish nationhood, where he first explains the traditional hallmarks of nationhood (a group with a common language, common culture and a common land of origin) and then reviews the status of Jews under this definition to conclude that with Hebrew as a common language, Judaism as a common culture and the Land of Israel as a common land of origin, Jews are a nation. *Id.* at 10-20.

<sup>99</sup> Persia occupied the Land of Israel during this period, collecting taxes and stationing soldiers in Israel, though it was by many measures a benevolent occupation. In approximately 330 B.C.E., Alexander the Great led the Greeks in replacing Persia as the occupier of Israel, with Jewish control resuming for approximately 100 years between 165 and 63 B.C.E. as a result of the Maccabee revolt. *Id.* at 27-28.

built by Roman emperor Hadrian on the remains of the Jewish temple as a way to eliminate the history of the Jewish people in Jerusalem, which would later be replicated by Muslims when they built the Dome of the Rock and then the al Aqsa mosque on the site of the Jewish temple. Not content with simply razing Jewish shrines and exiling Jews to the diaspora, the Romans renamed Jerusalem “Aelia Capitalina” and ultimately banned Jews from entering Jerusalem in the aftermath of a failed Jewish revolt against the Roman colonization of the land and renamed the land from Israel to Syria-Palestina, as a way to permanently end the Jewish tie to the land and replace it with the identity of a sworn enemy of the Jewish people, the Philistines.<sup>100</sup>

While Palestinian Arabs often point to the similarity of the name “Palestine” to “Philistine” in an attempt to prove that they, rather than Jews, have longstanding ties to the land, the Philistines were not Arabs nor were they indigenous to the Land of Israel, and have no connection to modern Arabs who claim Palestinian identity. Rather, the Philistines were people from the area of Greece or Cyprus who haven’t existed since the 6<sup>th</sup> century B.C.E.<sup>101</sup>

From the time of the Roman conquest through the creation of Islam in the 7<sup>th</sup> century C.E., Jerusalem (as a proxy for the Jewish nation) was Christianized, with long periods where Jews were banned outright from stepping foot in the land.<sup>102</sup>

Once Islam was founded in approximately 610 C.E. in what is now Saudi Arabia, it rapidly spread, sometimes by willing adoption among a population but often by sword, and Muslim invaders conquered modern day Israel and Jerusalem = by the late 600s. Taking a page from prior conquering entities, Muslims put their own imprimatur on the site of the Jewish temples by building the Dome of the Rock atop the Jewish ruins.<sup>103</sup> Islamic colonization of

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<sup>100</sup> See L.H. Feldman *Some Observations on the Name of Palestine*, HEBREW UNION COLLEGE ANNUAL, 61, 1–23; see, also, Hayim Hillel Ben-Sasson, A HISTORY OF THE JEWISH PEOPLE (Harvard University Press) 1976 and L.H. Schiffman, *Jerusalem: Twice Destroyed, Twice Rebuilt*, 97 THE CLASSICAL WORLD 1 at 31–40 (2003) and Eliach, *supra* note 60, at 38.

<sup>101</sup> Carlos J. Moreu *The Sea People and the Historical Background of the Trojan War*, 16 MEDITERRANEAN ARCHAEOLOGY at 116 (2003).

<sup>102</sup> Oded Irshai, *The Christian Appropriation of Jerusalem in the Fourth Century: The Case of the Bordeaux Pilgrim*, 99 THE JEWISH QUARTERLY REVIEW at 465–486 (2009) and Rendel Harris, *Hadrian’s Decree of Expulsion of the Jews from Jerusalem*, 19 THE HARVARD THEOLOGICAL REVIEW at 199–206 (1926). Even with this attempt at ethnic cleansing, Jews remained the majority of the population until Islamic invaders arrived in the Land of Israel. Eliach, *supra* note 60, at 39.

<sup>103</sup> According to Muslims, the Dome of the Rock was built upon the location where Mohammed ascended to heaven. Historians, however, assert that the Dome of the Rock was built to Islamize the Jewish history of Jerusalem and, in particular, the Temple Mount. See Nasser Rabbat, *The Meaning of the Umayyad Dome of the Rock*, 6 MUQARNAS 14 (1989) (“In the beginning, then, Jerusalem and the Rock held primarily Judaic associations which the Muslims had adopted at the time as part of the religious heritage to which Islam laid claim. However, these first transmitters [of Jewish religious tradition into Islam] played a decisive part not only in the recognition of the sanctity of Jerusalem and the eminence of the Rock’s site, but also in the Islamization of these beliefs.”). See, also, Cohen, *supra* note 68.

the region, including the Land of Israel, continued with an epochally brief interruption of 200 years starting around 1099 C.E., when European Christian crusaders defeated Islamic forces and ruled the land, only to be vanquished by Muslim armies.<sup>104</sup> To solidify their claims to the land, and, in particular, the holiest site in Judaism, Muslims have repeatedly expanded the al Aqsa mosque, originally built in the 8<sup>th</sup> century C.E. atop the ruins of the Jewish temples as a companion to the Dome of the Rock,<sup>105</sup> and now make exclusive claims to the entire Temple Mount. The strategy of destroying physical representations of the history of non-Muslims to create a narrative of Muslim indigeneity is certainly not limited to Jerusalem or even Medina; indeed, in recent years Muslim extremists in Afghanistan went so far as to demolish two Buddhist statues carved into a hillside prior to the founding of Islam to erase the Buddhist history of the region.<sup>106</sup>

The series of colonial attacks on the Jewish nation from the period of the Roman occupation through Islamic occupation had a devastating impact on Jewish population in the land. According to Josephus, an advisor to the Roman general Titus, there were four million Jews in the Land of Israel prior to the Jewish rebellion in the first century C.E., and by the time that the Jewish warriors at Masada were defeated only one million remained. By the end of the Crusades, after 1,000 years of foreign invasions and genocide of the Jewish people, fewer than 35,000 Jews were present in the land.<sup>107</sup>

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<sup>104</sup> See, generally, Paul E. Chevedden, *The Islamic View and the Christian View of the Crusades: A New Synthesis*, 93 HISTORY 2, at 181–200 (2008).

<sup>105</sup> See John Giebfried, *The Crusader Rebranding of Jerusalem's Temple Mount*, 44 COMITATUS: A JOURNAL OF MEDIEVAL AND RENAISSANCE STUDIES at 77-94 (2013).

<sup>106</sup> See Benita Fernando, *Explained: The Legacy and Return of the Bamiyan Buddhas, Virtually*, THE INDIAN EXPRESS (Mar. 12, 2021), available at <https://indianexpress.com/article/explained/bamiyan-buddhas-3d-projection-taliban-7223686/> (“The hardline Taliban movement, which emerged in the early 1990s, was in control of almost 90 per cent of Afghanistan by the end of the decade. While their governance supposedly curbed lawlessness, they also introduced so-called “Islamic punishments” and a regressive idea of Islamic practices, which included banning television, public executions, and lack of schooling for girls aged 10 and above. The destruction of the Bamiyan Buddhas was part of this extremist culture. On February 27, 2001, the Taliban declared its intention to destroy the statues, despite condemnation and protest from governments and cultural ambassadors world over.”) As another example, the Hagia Sophia in Constantinople (Istanbul) was originally built as a church but after Muslim forces conquered Constantinople, it was converted to a mosque, and continues as such today (after a short period as a museum). See William Emerson and Robert L. van Nice, *Hagia Sophia and the First Minaret Erected after the Conquest of Constantinople*, 54 AMERICAN J. OF ARCHAEOLOGY no. 1 at 28–40 (1950) and Gavin D. Brockett, *When Ottomans Become Turks: Commemorating the Conquest of Constantinople and Its Contribution to World History*, 119 THE AMERICAN HISTORICAL REVIEW no. 2 at 399–433 (2014).

<sup>107</sup> Anthony Byatt, *Josephus and Population Numbers in First Century Palestine*, 105 PALESTINE EXPLORATION QUARTERLY at 51-60 (1973). See, also, Eliach, *supra* note 60, at 37-43.

### C. Islamic Imperialism

Contrary to conventional wisdom, it is the Middle East where the institution of empire not only originated (for example, Egypt, Assyria, Babylon, Iran and so on) but where its spirit has also outlived its European counterpart.<sup>108</sup>

The founding of Islam is a microcosm of the longstanding dispute between Jews and Muslims over indigenous status in the Middle East. Approximately 600 years after Romans dispossessed Jews from their homeland, Mohammed founded Islam in the Jewish city of Yathrib. Now called Medina, in Saudi Arabia, Yathrib was well known as a city home to a large Jewish population (many of them refugees from the Jewish/Roman wars in the land of Israel) and was likely the region from which those who would become the Jewish people lived prior to their arrival in the land of Israel.<sup>109</sup> While some historians indicate that Mohammed and his followers were initially friendly to the local Jewish population that controlled Yathrib, the situation soon changed and Mohammed and his forces waged war on the Jews of Yathrib, defeated them, beheaded hundreds of his Jewish male captives (known as *Banu Qurayza*) and then forever changed the name of the city, which had its origins in the Hebrew bible, to erase its non-Islamic identity and history. On his deathbed, Mohammed admonished his followers to dispossess all Jews and Christians from the land, saying “Two faiths will not live together in

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<sup>108</sup> Efraim Karsh, *ISLAMIC IMPERIALISM: A HISTORY 2* (rev. ed. 2013). The discussion of the history of Islam herein, like the discussion of the history of the Jewish people, is necessarily a very general summary meant to provide the reader with a basic understanding of the history of each group.

<sup>109</sup> See Josef Horovitz, *Judæo-Arabic Relations in Pre-Islamic Times*, 52 *ISLAMIC STUDIES* no. 3/4 at 357-391 (2013) (originally published in 1929 in *Islamic Culture*, 3 *THE HYDERABAD QUARTERLY REVIEW* at 161-199 (1929)). See, also, Shari L. Lowen, ‘*A Prophet Like Moses?*’ *What Can We Know About the Early Jewish Responses to Muhammad’s Claims of Mosesness?* 90 *HEBREW UNION COLLEGE ANNUAL* at 227–55 (2019). For an analysis of Mohammed’s admonition to expel non-Muslims from the land that takes a contrary view, see Harry Munt, ‘*No Two Religions’: Non-Muslims in the Early Islamic Hijāz*, 78 *BULLETIN OF THE SCHOOL OF ORIENTAL AND AFRICAN STUDIES, UNIVERSITY OF LONDON* no. 2 at 249–69 (2015) (“[the article] concludes that the widely attested classical prohibition on non-Muslims residing in the Hijāz rather had much more to do with the gradually evolving need to draw up firmer communal boundaries, which could help distinguish Muslims from others, and the role played by sacred spaces in doing so.”). Even with Munt’s more forgiving analysis of Mohammed’s command, it is still an unequivocal directive to cleanse all non-Muslims from any lands claimed by Arabs (whether in the Arabian peninsula or other lands that were controlled by Arabs, though there is some uncertainty as to whether only the Hijaz was subject to the command), which has two important elements. First, it makes clear that Arab lands inhabited by Jewish Arabs (e.g., Palestinian Jews) are to be cleansed of non-Muslims, something that modern-day Palestinian Arabs advocate, even if they are willing, for the moment, to allow Christian Arabs amongst them. Second, it makes clear that among Arabs, only Muslim Arabs will be accepted, something that informs the historic and current conflict between Palestinian Arabs (who are mostly Muslim) and Jews.



the land of the Arabs”<sup>110</sup> This story would repeat itself once Muslim forces reached the land of Israel and, in particular, the Jewish holy city of Jerusalem.

In creating the Islamic belief system, Mohammed made a decision that literally changed the world: He created a series of myths that made Islam the most approachable monotheistic religion for his followers across Arab lands. Initially, Mohammed had adopted a number of Jewish rituals and beliefs into Islam as a way to encourage Jews to convert, including praying towards Jerusalem and not eating pork or blood. When this failed to achieve Mohammed’s goals, Islamic practice was changed to pray to Mecca and a number of other revisions to the religion were made:

The substitution of Mecca for Jerusalem as Islam’s holiest site was also a shrewd piece of political expediency that allowed Mohammed to tie his nascent religion to pagan reverence of [Mecca]. He further reinforced this link by endorsing the annual pilgrimage to the Kaaba, Mecca’s central shrine containing the images of the local gods [like Mohammed prior to founding religion, most of the population were polytheists who worshipped idols], and by sanctifying the fetish of kissing the shrine’s Black Stone, the source of Mecca’s holiness. By way of giving this pragmatic move an ideological grounding, he claimed that the Kaaba had been built by the biblical figure of Abraham, together with his son Ishmael, to whom many Arabians traced their descent. In doing so, Mohammed tapped into prevailing Arabian practices and beliefs by conferring a monotheistic status on ancestral practices. He moreover disassociated Abraham, whom he presented as the first monotheist (or hanif), from Judaism and Christianity, and linked him to Islam and more specifically to himself by creating a direct line of succession in the development of monotheism.<sup>111</sup>

The die had been cast: Islam would not only be a new monotheistic religion, it would be structured and promoted in such a way that it superseded existing monotheistic religions (Judaism, in particular, but also Christianity and Zoroastrianism) and deemed all other attempts

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<sup>110</sup> See Michael Lecker, *Judaism among Kinda and the Ridda of Kinda*, 115 J. OF THE AMERICAN ORIENTAL SOCIETY no. 4 at 635–650 (1995). See, also, M.J. Kister, CONCEPTS AND IDEAS AT THE DAWN OF ISLAM (1997), 92-95.

<sup>111</sup> Karsh, *supra* note 108 at 15.

to supersede Islam as heresy, as the Quran states that Mohammed was and always will be the last prophet after Moses and Jesus (i.e., “The Seal of the Prophets”).<sup>112</sup>

With this kind of power, one that can't be questioned or subjected to new claims of divinity by subsequent prophets, and that by its own terms renders all that came before it no longer operative, Mohammed set up an empire that could not be replaced by any other religious or nationalist movement (Islam being both).<sup>113</sup>

Mohammed's life ended in 632 C.E., while his religion was in its infancy, but Islam was nonetheless an incredibly powerful force and Mohammed's successors turned Islam into an empire. Prior to the widespread adoption of Islam, the Arabian Peninsula was populated by a number of polytheistic people as well as Jews and Christians. Though Mohammed's initial attempts to establish Islam were not widely embraced, and in fact were rejected by polytheistic tribes indigenous to the region (including the clans grouped under the Quraysh tribe, from which Mohammed came), within several years the indigenous peoples were converted (often

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<sup>112</sup> See QURAN, SURAH 33:40 (“Muhammad is not the father of [any] one of your men, but [he is] the Messenger of Allah and last of the prophets. And ever is Allah, of all things, Knowing.”) See, also, Albert Hourani, *A HISTORY OF THE ARAB PEOPLES* (2010) at Chapter 2 (“The Formation of an Empire” and “The succession to Muhammad: the conquest of an empire.”). See, also Uri Rubin. *The Seal of the Prophets and the Finality of Prophecy. On the Interpretation of the Qur'ānic Sūrat al-Aḥzāb* (33) ZEITSCHRIFT DER DEUTSCHEN MORGENLÄNDISCHEN GESELLSCHAFT 164, no. 1 at 65–96 (2014) (“The assertion that Muḥammad is “the seal of the prophets”, which appears in the second half of the same verse, is designed to demonstrate that Muḥammad brings the successive chain of prophetic revelations to its final manifestation. This notion implies that Muḥammad enjoys God's protection like any other prophet before him, especially Moses whose contemporaries criticized him for having married a black woman. They were punished for their criticism, and so will be those who doubted the lawfulness of Muḥammad's own marriage with Zayd's divorcee. As for the specific significance of the qur'ānic seal metaphor, this article goes on to show that it denotes confirmation as well as finality of prophecy. This means that the finality of prophecy is a qur'ānic idea, not a post-qur'ānic one, as maintained by some modern scholars.”)

<sup>113</sup> Zhongmin Liu *The Relations between Nationalism and Islam in the Middle East*, 2 J. OF MIDDLE EASTERN AND ISLAMIC STUDIES (IN ASIA) at 69-78 (2008) (“The nationalism in the Islamic countries in the Middle East sprouted after the invasion of Western colonists and the fall of the Ottoman Empire. John Esposito, the reputed American scholar of Islam, believed that the rise of Islamic nationalism in the Middle East was a result of the interaction of the following forces: the breaking up of the Ottoman Empire after World War I and the emergence of modern nation-states; the development of independence movements that aimed at casting off the political and religious control of Western imperialism; the ‘Salafiyya’ (ancestor in Arabic, means religious reform and resurgence.) movement started by Jamal al-Din al-Afghani and his followers Muhammad Abduh and Rashid Rida.”) *Id.* at 71. Granted, many Islamic scholars would dispute that Islam is a nationalist movement simply because the concept of “*umma*” in Islam, which is analogous to a global Islamic community *sans* borders, is not compatible with nation-state principles, but the Islamic *umma* can also be seen as a supra nation-state, with Islam as the political system. See, also, S. A. Morrison, *Arab Nationalism and Islam*. 2 MIDDLE EAST J. at 147-159 (1948).

by threat of force), including the Quraysh tribe.<sup>114</sup> Far from being an inclusive movement among the Arab people who founded Islam, early Islam spread among Arabs at the risk of death for those who did not embrace the new religion.<sup>115</sup> The imperialist/colonialist spread of Islam would be repeated across the Arab world and into Europe and Africa, targeting Christian territories in particular and forcing the conquered to either convert to Islam, become slaves or face death.<sup>116</sup>

In fact, within a decade or so of Mohammed's death, Muslim forces expanded their territory from portions of the Arabian Peninsula to Persia, Egypt, Syria<sup>117</sup> and then, within several more decades, Central Asia, parts of the Indian subcontinent (approaching China), Constantinople, North Africa and Spain.<sup>118</sup>

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<sup>114</sup> Raymond Ibrahim, *SWORD AND SCIMITAR: FOURTEEN CENTURIES OF WAR BETWEEN ISLAM AND THE WEST*, Hachette Books, Kindle Edition, at 3.

<sup>115</sup> *Id.* at 12 (“On [Mohammed’s] death, some [Arab] tribes sought to break away, including by remaining Muslim but not paying taxes (zakat) to Abu Bakr, Muhammad’s father-in-law and successor, or caliph. Branding them all apostates, which in Islam often earns the death penalty, the caliph initiated the Ridda (‘apostasy’) Wars, which saw tens of thousands of Arabs beheaded, crucified, and/or burned alive. In 633 these wars—and in 634 the life of Abu Bakr—were over; Arabia’s onetime factious tribes were once and for all united under the banner of Allah.”)

<sup>116</sup> *Id.* at 8-9 (“...what is now referred to as the West was for centuries known and demarcated by the territorial extent of its religion (hence the older and more cohesive term, ‘Christendom’). It included the lands of the old Roman Empire—parts of Europe, all of North Africa, Egypt, Syria, and Asia Minor—which had become Christian centuries before Islam arrived and were part of the same overarching civilization. In other words, the West is what remained of Christendom after Islam conquered some three-fourths of its original territory. As historian Franco Cardini puts it: ‘If we... ask ourselves how and when the modern notion of Europe and the European identity was born, we realize the extent to which Islam was a factor (albeit a negative one) in its creation. Repeated Muslim aggression against Europe... was a ‘violent midwife’ to Europe.’”).

<sup>117</sup> *Id.* at 13 (“When the Arabs invaded Roman Syria in 634, it was much larger than today and encompassed modern-day Israel, Jordan, and Palestinian territories. It was also profoundly Christian.”) (emphasis added).

<sup>118</sup> *See, generally*, Peter Sarris, *EMPIRES OF FAITH: THE FALL OF ROME TO THE RISE OF ISLAM, 500-700* (2013). The rise of the Islamic empire certainly coincided with the fall of the Roman empire in many respects. *See, also*, Karsh, *supra* note 108, at 23 (“Within 12 years of Muhammed’s death in June 632, Iran’s long-reigning Sasanid Empire had been reduced to a tributary, and Egypt and Syria has been wrested from Byzantine rule. By the early eighth century, the Muslims had extended their domination over Central Asia and much of the Indian subcontinent all the way to the Chinese frontier, had laid siege to Constantinople, the capital of the Byzantines, and had overrun North Africa and Spain.”); R. Suleimanov, *On Relicts of Ancient Culture and Ideology of Islam in Central Asia* 87 *ORIENTE MODERNO* no. 1 at 203–23 (2007); Thomas A. Carlson, *Contours of Conversion: The Geography of Islamization in Syria, 600–1500*, 135 *J. of the American Oriental SOCIETY*, no. 4, 791–816 (2015); Fred McGraw Donner, *THE EARLY ISLAMIC CONQUESTS* (1981); and J. W. Jandora, *Developments in Islamic Warfare: The Early Conquests*, 64 *STUDIA ISLAMICA* at 101–113 (1986).

Though it is impossible to know the guiding principles of early Muslims as they conquered territory, other than that they did what many others had done before them in building empires, the result can only be described in modern terms:

Whether the conquests were an opportunistic magnified offshoot of small raiding parties or a product of a preconceived expansionist plan is immaterial. Empires are born of chance as well as design. What counts is that the Arab conquerors acted in a typically imperialistic fashion from the start, subjugating indigenous populations, colonizing their lands and expropriating their wealth, resources and labor.<sup>119</sup>

Perhaps the best example of Islam spreading by means of imperialist methods can be found in the Battle of the Yarmuk, where Roman forces were defeated in 636 C.E. and “[t]he Arabs’ victory gave them permanent control of Syria-Palestine...” and “led to other victories by which the Muslim dominion was extended to the Pyrenees and Central Asia.”<sup>120</sup>

Immediately prior to the commencement of hostilities at the Yarmuk, an emissary of the Romans attempted to negotiate peace with the Muslim armies, proposing that the Muslims end their imperial adventure, leave the lands of modern-day Israel, Jordan and Syria and return to their own lands of the Arabian Peninsula:

[r]eturn to your lands for you have reached the maximum limit of what you can conquer of Caesar's Empire. Our Caesar is so generous that he is prepared to gift you the area you have taken in the past three years. You have also looted much gold, silver and weapons

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<sup>119</sup> Karsh, *supra* note 108, at 25 (emphasis added). Karsh has been accused of dealing in polemics with his work. For example, in reviewing Karsh’s book, Columbia University history professor Richard W. Bulliet took issue with the characterization of Islam as an imperial force by noting “Muhammed as Prophet never set foot in a ‘foreign land.’ Saladin chased crusaders from lands that Muslims had ruled for five centuries and never crossed a sea. Khomeini fought back when Saddam Hussein attacked, but Saddam was the subjugator of Iraqi Shi’a.... Neither the Qur’an nor Muhammed’s traditional biography mention conquering the homeland of imperial masters. As independent polities, Mecca and Medina had no imperial master....” Richard W. Bulliet, *Efraim Karsh, Islamic Imperialism: A History* (New Haven, Conn.: Yale University Press, 2006), 40 INT’L. J. OF MIDDLE EAST STUDIES no. 3 at 485–86 (2008). While there are always at least two sides to every issue, the fact that Bulliet mentions Iran’s Ayatollah Khomeini as simply responding to Iraq’s aggression, while ignoring the fact that Khomeini created proxy militaries, including Hezbollah, to spread his form of Islamic revolution to other lands and eliminate the Jewish state of Israel, seems to be something approaching historical amnesia when discussing imperialist tendencies in Islam. See, e.g., Marc R. DeVore, *Exploring the Iran-Hezbollah Relationship: A Case Study of How State Sponsorship Affects Terrorist Group Decision-Making*, 6 Perspectives on Terrorism, no. 4/5 at 85–107 (2012). Further, Islam countenances using war to obtain wealth, referred to as *ghanima*, which is a classic element of imperial conquest. See Ziauddin Ahmad and Ziauddin Ahmed, *Financial Policies of the Holy Prophet — A Case Study of the Distribution of Ghanima in Early Islam*, 14 ISLAMIC STUDIES no. 1 at 9–25 (1975). Finally, as is discussed herein, Muhammed intentionally established Islam in a city, Yathrib (now known as Medina), that was historically Jewish as a way to begin the Islamic empire by repudiating Judaism.

<sup>120</sup> See John W. Jandora, *The Battle of the Yarmuk: A Reconstruction*, 19 J. OF ASIAN HISTORY, no. 1 at 8 (1985).

although you came naked to Syria running away from your land. Accept what I offer or face utter destruction.<sup>121</sup>

The Muslim commander Abu Ubaydah responded by reminding the Romans' Arab representative of the record of Muslim imperial conquests:

You say that the Romans will never retreat? They will turn on their heels as soon as they see the blades of our swords. As for threatening us with your great numbers you have already seen how we kill double our number and you have seen how we meet your great armies with all their equipment and weapons and all the things we love on the day of battle until it becomes clear which of us is firm in war... We have tasted the blood of Rome and find nothing sweeter. O Jabalah, I invite you to the Din of Islam. Enter together with your people into our Din. That will bring you honour in this world and the next. Stop being a servant to that Christian of Rome for whose sake you are destroying yourself.<sup>122</sup>

After some period of negotiations between Muslim and Christian forces, the following exchange took place between Jabalah, an Arab Christian representative of Roman forces, and Jabir, a Muslim representative, when Jabir demanded that the Christian Arabs abandon their Roman comrades to convert to Islam:

Jabalah: I do not like that religion or any other. I am attached to my religion. You, O Aws and Khazraj, are pleased with a thing for yourself while we are pleased with something else. You keep to your religion while we keep to ours.

Jabir: If you will not leave your religion then at least refrain from fighting us. Wait and see who is victorious. If we are victorious and you want to accept Islam we will still welcome you and you will be a brother unto us. If however you wish to remain as a Christian then we will be satisfied with Jizyah [a tax on non-Muslims] from you and will leave you in control of your lands and the lands of your ancestors as well.<sup>123</sup>

In essence, early Muslims acquired territory by first invading and threatening death or confiscatory taxation if those from the invaded lands would not convert to Islam and become an Islamic colony and then delivering upon the threat.

When the Roman forces refused to surrender to Islamic forces at the Yarmuk, they were slaughtered and Islam's domination outside of the Arabian Peninsula, and in the Levant in particular, was firmly established. Shortly after their victory at the Yarmuk, Muslim forces

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<sup>121</sup> al-Imam al-Waqidi, *THE ISLAMIC CONQUEST OF SYRIA: A TRANSLATION OF FUTUHUSHAM, THE INSPIRING HISTORY OF SAHABAH'S CONQUEST OF SYRIA* at 267, translated by Mawlana Sulayman al-Kindi, available at <https://www.kalamullah.com/conquest-of-syria.html>.

<sup>122</sup> *Id.* at 267-269.

<sup>123</sup> *Id.* at 271-272.

conquered Jerusalem in 637 C.E. and then proceeded to capture Egypt (which, at the time, had a strong Christian presence)<sup>124</sup> and cleanse it of its non-Islamic nature.<sup>125</sup>

Over the course of the approximately 400 years following Mohammed's death, Islam spread throughout Asia, Africa and parts of Europe, establishing governmental entities (caliphates) that endured for centuries.<sup>126</sup> Some scholars have even described the power structure of early Islamic communities after Mohammed's death as one of "apartheid".<sup>127</sup> In fact, under Caliph Umar, the practice of setting up garrison settlements in foreign lands (*Amsar*), a classic example of colonialism, became common and was instrumental in the rapid spread of Islam.<sup>128</sup> As Islam matured in the years following the death of Mohammed, it became

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<sup>124</sup> Ibrahim, *supra* note 114, at 27-29.

<sup>125</sup> *Id.* at 31. Ibrahim also argues that after the Yarmuk victory, "...the Arabs further imposed their creed and language onto the conquered peoples so that, whereas the 'Arabs' once only thrived in the Arabian Peninsula, today the 'Arab world' consists of some twenty-two nations spread over the Middle East and North Africa." *Id.* at 43. In other words, from a relatively small territory in the Arabian Peninsula, Arabs, through the force of Islamic military action, colonized the rest of the Middle East and parts of Africa.

<sup>126</sup> Bawar Bammarny, *The Caliphate State in Theory and Practice* 31 ARAB LAW QUARTERLY no. 2 at 163-86 (2017). Starting in the 7th century C.E., Islam was propagated from Egypt through the land of Israel, Jordan, Syria, Iraq and Persia, in addition to the rest of the Arabian Peninsula. See, also, Fred M. Donner, *The Formation of the Islamic State*, 106 J. OF THE AMERICAN ORIENTAL SOCIETY no. 2, at 283-96 (1986). For details on the spread of Islam in North Africa, see Ibrahim, *supra* note 114, at 34-38 ("As for the last vestiges of Christian power, in 698, Carthage fell to Islam, bringing a close to centuries of Roman rule in North Africa. Musa 'cruelly laid it to waste and leveled it [by fire] to the ground,' writes Paul the Deacon. Once the jewel of North Africa, Carthage was left desolate for two centuries, as Tunis became the new center of orbit. By 709, the whole of North Africa was under Muslim rule."). *Id.* at 38. See also, *Id.* at 42-43 ("Just seventy-three years after Yarmuk, all ancient Christian lands between Greater Syria to the east and Mauretania (Morocco) to the west—approximately 3,700 miles—were forever conquered by Islam. Put differently, two-thirds (or 66 percent) of Christendom's original territory—including three of the five most important centers of Christianity—Jerusalem, Antioch, and Alexandria—were permanently swallowed up by Islam and thoroughly Arabized.")

<sup>127</sup> Karsh, *supra* note 108, at 28 ("Unlike Mohammed's umma, where *Dhimmis* [non-Muslims, primarily Jews and Christians, who were of lesser status and were required to pay special taxes and deprived of basic rights] constituted a negligible minority, in Umar's [Mohammed's father in law and a successor to Mohammed] empire the Arab colonizers were themselves a small island surrounded by a non-Muslim and non-Arab ocean, something that condemned their apartheid policy to assured failure.") (emphasis added) and *id.* at 40 ("It was in Khurasan [a Muslim area in Persia] that the apartheid wall built by the Arabs was becoming most comprehensively demolished and a mixing of colonizer and colonized was taking place.") (emphasis added). Unlike *Dhimmis*, the status of *Mawali* (non-Arab converts to Islam) in Islam was initially that of an inferior people, but over time *Mawali* become important and, indeed, essential, members of the *umma*. See, e.g., Elizabeth Urban, *The Foundations of Islamic Society as Expressed by the Qur'anic Term Mawlā*, 15 J. OF QUR'ANIC STUDIES no. 1 at 23-45 (2013).

<sup>128</sup> See, generally, Hugh Kennedy, *THE ARMIES OF THE CALIPHS: MILITARY AND SOCIETY IN THE EARLY ISLAMIC STATE* (2001); Fred M. Donner, *THE EARLY ISLAMIC CONQUESTS* (1981); and Jacob Lassner, *Provincial Administration under the Early 'Abbāsids: The Ruling Family and the Amsār of Iraq*, 50 STUDIA ISLAMICA, at 21-35 (1979).

a more distinctly colonial system, uprooting the traditional social and political structure of numerous small, sovereign tribes and replacing it with a centralized structure where the caliph, and his affiliates, were the primary source of governance and control.<sup>129</sup> Indeed, the practices of taxing non-Muslims as a condition to allowing them to live among Muslims (*Jizya*) as well as the Islamic institution of treating non-Muslims as having lesser rights in Islamic communities (*Dhimmi*) may well be the most blatant and obvious forms of apartheid as well as colonialism in the history of the world.<sup>130</sup>

Just as Christians engaged in a scorched earth policy to rid the land of Israel, and Jerusalem in particular, of its indigenous Jewish character, so did Muslims, but since the land had been Christianized, the target was Christians and Christian shrines. As one historian recounts,

Similar bouts of persecution regularly erupted under other Muslim peoples and dynasties from the very start. Thus, in the early eighth century under the Umayyads, some Arabs—described as “untamed and beastly, illogical in mind and maniacs in their desires”—captured, tortured, and executed seventy Christian pilgrims in Jerusalem for refusing to convert to Islam (minus seven who complied under torture). Shortly after that, another sixty pilgrims were crucified in Jerusalem. In the late eighth century, under the Abbasids, Muslims destroyed two churches and a monastery near Bethlehem and slaughtered its monks. In 796, Muslims burned another twenty monks to death. In 809, and again in 813, multiple monasteries, convents, and churches were attacked in and around Jerusalem; Christians of both sexes were gang raped and massacred. In 929, on Palm Sunday, another wave of atrocities broke out; churches were destroyed and Christians slaughtered. In 936, “the Muslims in Jerusalem made a rising and burnt down the Church of the Resurrection [the Holy Sepulchre] which they plundered, and destroyed all they could of it,” records one Muslim chronicler. As Rodney Stark puts it, “Almost generation after generation, Christian writers recorded acts of persecution and harassment, to the point of

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<sup>129</sup> See, generally, Patricia Crone, *FROM ARABIAN TRIBES TO ISLAMIC EMPIRE: ARMY, STATE AND SOCIETY IN THE NEAR EAST C. 600–850* (2008) and Khalil Athamina, *A'rāb and Muhājirūn in the Environment of Amsār*, 66 *STUDIA ISLAMICA*, at 5–25 (1987) (“The creation of a Muslim community during the life of Muhammad in al-Madina was considered the first attempt to bend the tribesmen to the control of some kind of central authority represented by Muhammad himself.”) *Id.* at 5. See, also, Ibrahim, *supra* note 114, at 39 (quoting Emmet Scott, *THE IMPACT OF ISLAM* (2014) (“The arrival of Islam upon the stage of history was marked by a torrent of violence and destruction throughout the Mediterranean world. The great Roman and Byzantine cities, whose ruins still dot the landscapes of North Africa and the Middle East, were brought to a rapid end in the seventh century. Everywhere archeologists have found evidence of massive destruction; and this corresponds precisely with what we know of Islam as an ideology.”))

<sup>130</sup> The institutions of *dhimmi* and *jizya* are no longer as prominent in Muslim states as they once were, but they are still practiced widely. See Ovamir Anjum, *Dhimmi Citizens: Non-Muslims in the New Islamist Discourse*, 2 *REORIENT*, no. 1 at 31–50 (2016). For a more traditional view of these practices, see A.D. Muztar, *Dhimmis in an Islamic State*, 18 *ISLAMIC STUDIES* no. 1 at 65–75 (1979).

slaughter and destruction, suffered at the hands of Muslim [Arab, Persian, and Turkish] rulers.<sup>131</sup>

European Christians ultimately pushed back against Muslim conquests starting in the 11<sup>th</sup> century C.E., launching crusades to recover holy lands lost to Muslims.<sup>132</sup> What followed was over 300 years of bloodletting throughout the holy lands with both Christian and Muslim forces engaging in horrific atrocities.<sup>133</sup>

Islam ultimately prevailed over the Crusaders by the end of the 13<sup>th</sup> century C.E. and Islamic imperialism dramatically expanded with the birth and growth of the Ottoman empire, which lasted for six centuries and included the capture of lands stretching from North Africa to Bulgaria and Romania, Greece and Turkey and parts of Arabia, and including all of what

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<sup>131</sup> Ibrahim, *supra* note 114, at 127.

<sup>132</sup> See Lisa Blaydes and Christopher Paik. *The Impact of Holy Land Crusades on State Formation: War Mobilization, Trade Integration, and Political Development in Medieval Europe*, 70 INTERNATIONAL ORGANIZATION, no. 3 at 551–86 (2016) (“The rise and spread of Islam took place so rapidly that in the century following the death of the Muslim prophet, Mohammed, large parts of the Mediterranean basin — much of which previously had been under Roman rule — came under the leadership of Muslim caliphs. Islam’s success as a political-religious movement brought the Muslim religion to the Iberian peninsula in Western Europe and, eventually, to the Byzantine capital of Constantinople in Southeastern Europe. In response to a plea from the Byzantine emperor under threat of being overrun by invading Muslim Turks, in 1095 CE Pope Urban II appealed to Christians in the west to assist their eastern brethren, with a further goal of recapturing Jerusalem and the Holy Land from Muslim control. The military mobilization that followed came to be known as the Crusades, which took place for the next two centuries.”) *Id.* at 551. See, also, Chevedden, *supra* note 104; Khurram Qadir, *Modern Historiography: The Relevance of the Crusades*, 46 ISLAMIC STUDIES no. 4 at 527–58 (2007) and Peter Charanis, *Aims of the Medieval Crusades and How They Were Viewed by Byzantium*, 21 CHURCH HISTORY, no. 2 at 123–34 (1952) (“The history of medieval crusading may be conveniently divided into two chapters. The first of these chapters would end with 1291 when Acre was lost by the Christians and would cover the period extending backward to 1095 when the first crusading expedition was launched. During this period the western Christians conquered and lost the Holy Lands. They also established themselves in Greece and the Greek archipelago. The second chapter would come down to 1395, the year of the battle of Nicopolis, or possibly 1444, the year of Varna. During this period, though there is considerable talk and some action for the recovery of the Holy Land, the struggle has really become one for the defense of Europe against the invading Turks.”)

<sup>133</sup> While the crusades were an important part of the history of Europe and the Middle East, as well as being a pivotal epoch in the history of Christianity and Islam, they were not particularly relevant in the context of this article’s focus on colonialism, imperialism and settler-colonialism as those terms relate to the question of Israel, Palestinian Arabs and indigenous peoples, though some have argued that the Vatican’s purpose in launching the crusades was to colonize, rather than liberate, the holy land. Charanis, *supra* note 132, at 124 (“Some believe that what the pope wanted was the establishment of a feudal state in Palestine under the suzerainty of Rome...”). As such, details of the crusades will not be discussed herein. For further information on the crusades, see the six volumes of A HISTORY OF THE CRUSADES, Madison: University of Wisconsin Press, 1989 (Setton, Kenneth, ed).



was known as Palestine.<sup>134</sup> Ultimately, the long-sought prize of Constantinople (now Istanbul) was conquered by Muslim forces. As with prior Muslim conquests, the vanquished lands were Islamized with great loss of life for anyone who refused to convert.<sup>135</sup>

After the fall of Constantinople, Muslim hegemony over the area from North Africa to Arabia and beyond solidified as the Ottoman Empire established its invincibility, reaching as far north as parts of Russia.<sup>136</sup> As part of this, Muslims held the land of Israel, and Jerusalem, for hundreds of years more until the fall of the Ottoman Empire in the early 20<sup>th</sup> century C.E.<sup>137</sup> and the subsequent re-establishment of Israel as a Jewish nation in 1948. The end of the Ottoman Empire ushered in a period of decolonization of portions of the Islamic empire that started with the founding of Islam, including the partition of colonized lands in the Levant into the modern states that exist today, including Israel, Jordan and Syria from what used to be referred to as Palestine. As part of this decolonization, the Jewish people finally had sovereignty and self-determination after over a thousand years of being denied its historical homeland. It is this reversal of conquest and empire that informs the modern claims of Muslims that they are the ones who have been subject to colonial expansion.

### III. HISTORY REPEATS ITSELF

The story of Israel emerging from a long history of colonialist usurpations is not one unique to history. At roughly the same time that Israel was established as a modern state, the modern states of India and Pakistan also emerged from British decolonization. Much like the history of Jews and Arabs in Israel, the history of Hindus and Muslims in India/Pakistan<sup>138</sup> is complex and subject to competing narratives.<sup>139</sup> At their core, though, the stories are similar: two peoples, with two dominant religions, seeking sovereignty in lands they each claim to be

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<sup>134</sup> See Alan Mikhail and Christine Philliou, *The Ottoman Empire and the Imperial Turn*. 54 COMPARATIVE STUDIES IN SOCIETY AND HISTORY no. 4 at 721–45 (2012) and Halil Inalcik, *Ottoman Methods of Conquest*, 2 STUDIA ISLAMICA at 103–29 (1954).

<sup>135</sup> See Ibrahim, *supra* note 114 at Chapter 7.

<sup>136</sup> See THE RUSSO-TURKISH WARS: THE HISTORY AND LEGACY OF THE CONFLICTS BETWEEN THE RUSSIAN EMPIRE AND OTTOMAN EMPIRE (2021) (Charles River, ed.).

<sup>137</sup> See Ibrahim, *supra* note 114, at 289 (“Although colonialism and ‘the whole complex process of European expansion and empire’ is often presented today in a historic vacuum, it too ‘has its roots in the clash of Islam and Christendom,’ explains Bernard Lewis: ‘It began with the long and bitter struggle of the conquered peoples of Europe, in east and west, to restore their homelands to Christendom and expel the Muslim peoples who had invaded and subjugated them.... The victorious liberators, having reconquered their own territories, pursued their former masters whence they had come.’” (quoting Bernard Lewis).

<sup>138</sup> To say that there are only Hindus and Muslims in pre-partition, colonial India is akin to saying that there are only Jews and Muslims in the land of Israel. Clearly, there are many other constituencies and religions in play in both locations, but for purposes of this article we will focus on the primary competing claimants.

<sup>139</sup> See, e.g., Jalal, Ayesha. *Conjuring Pakistan: History as Official Imagining*, 27 INTERNATIONAL J. OF MIDDLE EAST STUDIES no. 1 at 73–89 (1995).

historically their own, with Islamic colonialism as a predominant force in each.<sup>140</sup> It is this elemental similarity that makes the comparison of how India and Israel, on the one hand, and Pakistan and Arab Palestine, on the other hand, worthy of consideration.

Like the conflict between Palestinian Jews and Palestinian Arabs over Israel, the birth of modern India and Pakistan, as separate countries, involved the displacement of some people. The scale of the displacement, however, was much larger in India/Pakistan, where between 1947 and 1965, approximately 9,000,000 Hindus and Sikhs relocated to India and approximately 5,000,000 Muslims relocated to what was then Pakistan.<sup>141</sup> While the partition of India and Pakistan was met with extreme violence that continues to this day, the two countries ascended to their rightful places as independent nations and their respective legitimacies are not challenged by any other than fringe extremists.

Likewise, while violence still results from the displacement of approximately 1,500,000 Christians from Turkey in exchange for approximately 500,000 Muslims from Greece in the aftermath of the Treaty of Lausanne, which created the modern boundaries of Greece and

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<sup>140</sup> For a discussion of the history of how Islam arrived and spread through the Asian subcontinent, see M. Easwarkhanth, B. Dubey, P. Meganathan, *et al.*, *Diverse genetic origin of Indian Muslims: evidence from autosomal STR loci*, 54 J. HUM GENET. at 340–348 (2009) (“Islamic influence first came to be felt in the Indian subcontinent during early seventh century with the advent of Arab military forces into Sindh, the lower part of the Indus valley, and included it into the Arabian empire. Subsequently, an Indo-Islamic state was established in Sindh and thereafter the region served as an Islamic outpost where Arabs established their trade links with the Middle East. For the next two and half centuries Islamic presence was hardly felt throughout the subcontinent. By the end of tenth century spectacular changes took place when Turkic tribes embraced and took up the mission of propagating Islam. These assertively expansive invaders initially began to move into Afghanistan and Iran and later into India through the northwest. In the thirteenth century, a Turkic kingdom was established in Delhi, which facilitated Persian and Afghan Muslim invaders to further spread across India. In the following 100 years, the Muslim empire extended its influence east to Bengal and south to the Deccan regions. Muslim sultanates ruling from Delhi, beginning in the eleventh century, and the great Mughal Empire (1526–1707 CE) that followed created a substantive Islamic legacy before India fell under British colonial rule. Thus the emergence of Islam in the region is concurrent with the Turko-Muslim invasion of medieval India (which includes large parts of present day Pakistan and India), where these rulers took over the administration of large parts of Indian subcontinent.”)

<sup>141</sup> Haimanti Roy, *PARTITIONED LIVES: MIGRANTS, REFUGEES, CITIZENS IN INDIA AND PAKISTAN, 1947-65* (2012).

Turkey, the legitimacy of each state is not questioned.<sup>142</sup> In fact, the existence of Turkey as an Islamic country is directly the result of Islamic colonialization.<sup>143</sup>

Approximately 900,000 Jewish citizens of Arab countries were displaced starting in 1948 as a result of the Arab rejection of the establishment of the modern state of Israel while a slightly smaller number of Palestinian Arabs were displaced from Israel in the same period.<sup>144</sup>

In each of the scenarios set out above, Muslim populations that resulted from early Islamic colonialism were displaced in one manner or another and provided with a religious state of their own, yet only in the case of Israel and Palestinian Arabs has there been not only a refusal to accept the compromises involved in the establishment of independent states based on the religious affiliation of those involved, but a concerted and international effort to delegitimize the rights of one religious population and to deny them a sovereign state of their own.

All of this is not to provide a rationalization for population transfers in the abstract, nor is it to say that simply because Islam colonized the Middle East that Muslims should be dispossessed of the homes that they've had for hundreds of years, nor is it to argue that the history of Islam as a colonial and imperial force means that Muslims today are engaging in the same type of violence that, over the course of more than 1,000 years resulted in genocide of indigenous people (such as Jews) or ethnic cleansing of thousands of square miles of territory (including modern Israel). It is to say, however, that as a matter of fairness through the lens of *realpolitik*, if there is an aggrieved people in the region who were subjected to violent usurpations that deprived them of basic rights, including the right to peaceful existence, cultural integrity and legal right to self-determination, it is the Jewish people. Just as Jews have generally given up claims to the entirety of the historic land of Israel (e.g., Gaza and even some of the most important places in Jewish history, such as Hebron, where the patriarch Abraham first lived and where Jewish shrines still exist), it is incumbent on Palestinian Arabs to accept that history shows Jews as the indigenous people of the land and if there is to be a lawful

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<sup>142</sup> See, generally, Spyridon Sfetas, *The legacy of the Treaty of Lausanne in the light of Greek-Turkish relations in the twentieth century: Greek perceptions of the Treaty of Lausanne*, BALCANICA at 195-218 (2015).

<sup>143</sup> See W. G. Brice, *The Turkish colonization of Anatolia*, 38 BULLETIN OF JOHN RYLANDS LIBRARY 18-44 (1955) ("In the middle of the eleventh century A.D. the population of Anatolia [Turkey] was predominately Christian, Greek-speaking and sedentary. The tribes which moved into the country after the battle of Manzikert were, by contrast, Moslems of Turkish speech, who practiced an economy of pastoral nomadism. What follows is a study of the Turkish colonization, with the aim of understanding how the two populations, native and immigrant, were merged.") Even in modern times, the fact that Turkey was colonized by Muslims is celebrated. See Ibrahim, *supra* note 114, at 122 ("when the nine hundredth anniversary of Manzikert was held on August 26, 1971, it 'was heralded by widespread jubilation in Turkey' and correctly portrayed as 'the beginnings of Turkification and Islamification of Anatolia.' Prime Minister Recep Tayyip Erdoğan and other top-ranking officials continue participating in Manzikert celebrations, and the battlefield is treated as sacred.")

<sup>144</sup> See Samuel G. Freedman, *Are Jews Who Fled Arab Lands to Israel Refugees, Too?* N.Y. TIMES (Oct. 11, 2003).

resolution to the dispute, it will involve Palestinian Arabs coming to terms with the historical and legal facts that Jews have a right to self-determination in their historic homeland.

The issue, of course, is that one peoples' self-determination often comes at the price of another people's desire for self-determination. The right of self-determination is generally understood to mean that a people have a right to decide their own political fate and govern themselves. For centuries, the Jewish people were denied this basic right by those who colonized them, from Babylonians to Romans to Muslims. This right is enshrined in both the United Nations Charter, at Chapter 1, Article 1 ("To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace") as well as in numerous declarations and other instruments of international law, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960 ("All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."). If the argument against Jewish self-determination is that Jews are a religion rather than a people,<sup>145</sup> that argument fails *ab initio*, as it ignores the distinction between the religion of Judaism and the Jewish people.<sup>146</sup>

The traditional two-part test of peoplehood, as described by Professor Michael Scharf, is

For a group to be entitled to a right to collectively determine its political destiny, it must possess a focus of identity sufficient for it to attain distinctiveness as a people.

The traditional two-part test examines first "objective" elements of the group to ascertain the extent to which its members share a common racial background, ethnicity, language, religion, history and cultural heritage. Another important objective factor is the territorial integrity of the area the group is claiming.

The second "subjective prong" of the test requires an examination of the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct "people." It necessitates that a community needs to explicitly express a shared sense of values and a common goal for its future.<sup>147</sup>

Examining the Jewish people under this test, there clearly is a common racial background, ethnicity, language, religion, history and culture as well as a defined territory that

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<sup>145</sup> This is the position taken by Palestinian Arabs when they adopted their national charter in 1968, in Article 20: "Judaism, being a religion, is not an independent nationality. Nor do Jews constitute a single nation with an identity of its own; they are citizens of the states to which they belong." Palestinian National Charter, *supra* note 57.

<sup>146</sup> See, e.g., Marcus, *supra* note 6 and Michael P. Scharf, *Earned Sovereignty: Judicial Underpinnings*, 31 DENV. J. INT'L L. & POL'Y 373, (2003).

<sup>147</sup> Scharf, *supra* note 146, at 379.

they possess, and the second prong of the test is self-proving by the fact that ethnic Jews have always considered themselves to be, and have been treated by others as, a distinct people.

In the case of Israel and Palestinian Arabs, while Palestinian Arabs have rights to citizenship (and self-determination) in Israel, they generally seek not just self-determination, but a political monopoly that is independent of a Jewish nation. As a matter of history, the Palestinian Arabs were provided with their own homeland, one parallel to the Jewish state, in Jordan, when the British partitioned Palestine (which was split between Jews and Arabs, with Arabs receiving the majority of the land mass). The fact that Hashemites deprived those Arabs seeking their own state of Palestine from obtaining their own state cannot justify the current insistence that Jews give up their homeland. Whether Palestinian Arabs wrest control of their promised state from the Hashemite rulers of Jordan is a separate issue, and one with great political risk, but risky questions do not justify ethnic cleansing (as Marxist-Adjacents argue for through the BDS movement) nor do they give rise to the denial of self-determination of other people (Jews, in this case).

For those who claim that Zionism is illegitimate because it merges religion with nationalism, Article 16 of the charter of the designated terror organization Hamas, which controls Gaza and is considered by many Palestinian Arabs to be their government, makes it clear that religious nationalism is the centerpiece of the Palestinian Arab cause:

When an enemy occupies some of the Muslim lands, Jihad becomes obligatory forevery Muslim. In the struggle against the Jewish occupation of Palestine, the banner of

Jihad must be raised. We must instill in the minds of the Muslim generation that the Palestinian cause is a religious cause. It must be solved on this basis because it contains Islamic sanctuaries where Masjid al-Aqsa is tied firmly to Masjid al-Haram (in Mecca) never to be released, as long as the heavens and the earth last, by way of the night journey ('Isra) of Rasulallah (Saas) and ascension (Mi'raj) to the heavens from there (al-Aqsa).<sup>148</sup>

If religious nationalism renders Zionism illegitimate, then the same must be said of the movement to create a Palestinian Arab state.

In fact, if the borders of modern Israel represent nothing more than a colonial affront to the Middle East, how is one to describe the borders of modern Jordan, Lebanon, Syria, Turkey and Iraq, all of which were established at approximately the same time as those of modern

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<sup>148</sup> Muhammad Maqdsi, *Charter of the Islamic Resistance Movement (Hamas) of Palestine*, 22 J. OF PALESTINE STUDIES no. 4 at 122-134 (Summer 1993).

Israel?<sup>149</sup> In each case, the creation of modern states in the Middle East from the former Islamic colonies resulted in religious states, all of them Muslim (Lebanon being an exception, as the Constitution of Lebanon requires Christian representation along with Muslim, even though Hezbollah, an Islamic terror organization created by Iran to colonize Lebanon, has de facto control of the government) with one exception: Israel. In each other state, Islam is either designated as the state's religion (which governs the rights of each resident, whether or not they are Muslim) or it is built into the governmental structure, as is the case in Lebanon and Syria.

There are many states that can and do provide Muslim Arabs (including those who assert Palestinian identity) with self-determination (not limited to but including Jordan, Lebanon and Syria, all part of historic Palestine) but none other than Israel that provide self-determination for the indigenous Jewish people. Through the rubric of fairness and *realpolitik*, it would be manifestly unfair for the sole Jewish state to be denied the right to exist. Fairness is not dispositive under law, but if Israel were to be eliminated as a state, this, under international law, would mean that the Jewish people have been denied a fundamental right. And the goal of BDS is indeed to eliminate the entirety of Israel, notwithstanding claims that all they want is an end to Israel's existence as a Jewish state.<sup>150</sup>

When viewed through history, which shows that there has never been a state of Palestine, let alone an Arab Palestine, and the states in the region that made up what was known as the territory of Palestine (including Israel, Jordan and parts of Lebanon and Syria) only being formed as modern states in the 20<sup>th</sup> century, the fact that Israel's existence as a state dates to the late 1940s is certainly not a basis for eliminating it and turning it into a new and ahistorical Palestinian Arab state. In point of fact, all of the modern states in the region sprung from the decolonization of the Ottoman and British empires in the 20<sup>th</sup> century and Israel is simply one of those states, albeit one with the longest historical ties to its people. Put another way, since Palestine was historically known to be the region that includes parts of Lebanon, Syria, Jordan and Israel, there already are three Palestinian Arab states.

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<sup>149</sup> Turkey was founded in 1923, Saudi Arabia in 1932, Lebanon in 1943, Syria in 1944, Jordan in 1946, Iraq and Egypt in 1947, Israel in 1948, Kuwait in 1961, Oman in 1970, Qatar and the United Arab Emirates in 1971 and Yemen in 1990. For additional information on the creation of modern states in the Middle East, see Lisa Anderson, *The State in the Middle East and North Africa*, 20 *COMPARATIVE POLITICS* no. 1 at 1–18 (1987) and Jonathan Endelman, *In the Shadow of Empire: States in an Ottoman System*, 42 *SOCIAL SCIENCE HISTORY* no. 4 at 811–834 (2018).

<sup>150</sup> See, e.g., Dan Diker, *The World from Here: Hamas and BDS*, *JERUSALEM POST* (Mar. 4, 2014) (“Rather, [BDS] is largely a Muslim Brotherhood—and Hamas—fueled network that supports the same radical Islamic agenda of destroying Israel.”)

#### IV. COLONIALISM, IMPERIALISM AND SETTLER-COLONIALISM AS APPLIED TO MIDDLE EASTERN STATES AND PEOPLES

Returning to the start of this article, it is important to look at the modern states of the Middle East, including Israel as well as each Muslim country that surrounds Israel, to determine whether the terms Colonialism, Imperialism and Settler-Colonialism apply.

##### A. Who Are the Settler-Colonialists?

Since recent claims mostly involve allegations that Israel is a Settler-Colonialist endeavor that has usurped the rights of the indigenous Palestinian Arabs, this is the best starting point for discussion.

As described earlier, there are many definitions for Settler-Colonialism, often conflicting with one another, but historian Patrick Wolfe's description is the best synthesis of the various theories:

[t]he primary object of settler-colonialism is the land itself rather than the surplus value to be derived from mixing native labour with it. Though in practice, indigenous labor was indispensable to Europeans, settler-colonization is at base a winner-take-all project whose dominant feature is not exploitation but replacement. The logic of this project, a sustained institutional tendency to eliminate the indigenous population, informs a range of historical practice that might otherwise appear distinct-invasion is a structure, not an event.<sup>151</sup>

At its core, then, Settler-Colonialism, if viewed from the perspective of its effects, is to replace an indigenous population with a population from elsewhere. The threshold question, then, is what is an indigenous population? The answer, as with some many other terms relating to settler-colonialism, colonialism and imperialism, is that there is no formal definition. The United Nations Declaration on the Rights of Indigenous Peoples was adopted in 2007, yet it did not provide a definition for Indigenous Peoples.<sup>152</sup> A manual co-authored by the United Nations Office of the High Commissioner for Human Rights and the Asia Pacific Forum<sup>153</sup> in 2013 acknowledged that there is no international law definition for the term indigenous peoples and noted "... no formal definition has been adopted in international law. A strict definition is seen as unnecessary and undesirable.

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<sup>151</sup> Wolfe, *supra* note 53.

<sup>152</sup> G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Dec. 13, 2007).

<sup>153</sup> The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions, HR/Pub/13/2 (Aug. 2013), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf>.

The Martinez Cobo Study, referenced in the United Nations Declaration on the Rights of Indigenous People provided the most widely cited “working definition” of indigenous peoples:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.

They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

It also notes that an indigenous person is:

...one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.<sup>154</sup>

Alternatively, on its website for its Department of Economic and Social Affairs, Indigenous Peoples, the United Nations described indigenous peoples as

...inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite their cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples.<sup>155</sup>

Under either description (neither of which have the legal effect of a binding definition), the basic elements of an indigenous population are that they have unique social and cultural characteristics as well as distinct ethnicity as well as social and legal systems that are not reflected in the societies where they live. Importantly, indigenous peoples have “...a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.”

In the case of Jews and their homeland of Israel, all of the basic elements of the description of indigenous peoples apply.

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<sup>154</sup> *Id.* at 6.

<sup>155</sup> Available at <https://www.un.org/development/desa/indigenouspeoples/about-us.html>.



Unique social, ethnic and cultural characteristics of Jews: Part of Judaism, as a religion and basis for Jews as a unique race and ethnicity, is the social and cultural traditions and codes that have been preserved among Jews over the millennia. A Jewish Israeli today adheres to many of the important social and cultural traditions of Jews who lived in the land of Israel thousands of years ago, from religious holidays and observances to traditions such as circumcision, dietary laws to codes of conduct with respect to others, animals and the environment, all of which are unique (to the extent they were not copied by subsequent peoples) to Jews.

Unique legal system: Scholars have explained that the Jewish bible, an indisputably religious text, "...is the basis for a constitution for running a Jewish State [and contains] a) criminal law, b) property law, c) liability law, d) business law, e) family law, f) rules regarding social welfare, g) governance and h) military law...[t]hey are laws meant to be kept by a society that runs its own state, laws for a Jewish republic."<sup>156</sup> No state or people, other than Jews and Israel, have this legal system.

Historical continuity with pre-invasion and precolonial societies on the territory: There has always been a Jewish presence in the land of Israel, even after waves of invasions by colonial powers (Babylonian, Persian, Roman, Muslim and others) that decimated the Jewish population and eliminated many of the important monuments, shrines and other evidence of Jewish history.

Distinction from other societies that were prevailing on the territory: Jews preceded both Muslim and Christian populations that subsequently colonized the land and have a multi-thousand-year history of distinguishing themselves from those colonizing societies.

Under any commonly accepted and used description of indigenous peoples, Jews are clearly indigenous to the land of Israel. As this article has already documented, the colonization of the land of Israel was undertaken by a series of foreign powers over millennia, which powers include the predecessors of the current Palestinian Arab population that falsely claims to be the

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<sup>156</sup> Eliach, *supra* note 60, at 5.

original inhabitants of the land.<sup>157</sup> The fact that over half of Israel's population is Mizrahi (i.e., Jews who originated and remained in the region from biblical times) demonstrates this.

Thus, as the threshold question in determining whether a population can be described as settler-colonialist is whether that population has displaced an indigenous population, there can be no way for Israel to be deemed a settler-colonialist endeavor. Rather, Israel is a modern example of an indigenous people decolonizing its homeland from a series of colonizers. If there are any settler colonialists in the land of Israel, that title would have to go to the Palestinian Arab population (whether Christian or Muslim) who occupied the land after Christian and Muslim imperial forces dispossessed the indigenous Jewish population.

Certainly, Arabs who resided in the territory of Palestine might qualify as an indigenous population, but they would be part of the indigenous Arab people who already have self-determination in the many Arab states that composed the territory of Arab Palestine (Syria, Jordan and Lebanon). Since one hallmark of being an indigenous population is that the people represent something unique in comparison to other people in the region, it would be hard for Palestinian Arabs to fulfill that requirement since there is little, other than a claim to being Palestinian, that would distinguish a Palestinian Arab from a Jordanian or Syrian Arab. Further, since Jewish culture, society and presence in the land predate any reference to Palestine as a territory or Palestinian as a unique and separate Arab people by millennia, it would be contrary to the commonly accepted description of indigenous people to deem Palestinian Arabs, rather than ethnic Jews, the indigenous people of this particular land. The concept of an Islamic *umma*, of which the Palestinian Arabs claim to be a part, illustrates the fact that there is little to satisfy

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<sup>157</sup> The counterpoint to this statement is likely to be something along the lines of “today’s Israelis are European colonists who have no connection to historic Jews.” For example, an aide to Democratic Congresswoman Alexandria Ocasio-Cortez, a member of the so-called “Squad” of progressive anti-Zionists in the United States Congress, claimed “Israel is a racist European ethnostate built on stolen land from its indigenous population!” Houston Keene, *Ocasio-Cortez staffer calls Israel a 'racist European ethnostate' that was built on 'stolen land'*, FOX NEWS (Dec. 30, 2021). This argument originates among Palestinian Arab activists and has been repeated numerous times by American anti-Zionists, even though it is demonstrably false. See, e.g., Hen Mazzig, *Are Jews Indigenous People? Here's What a Native American Jew Thinks*, NEWSWEEK (Oct. 15, 2020) (“Thousands of years of archaeological and historical evidence shows that Judaism and the beginnings of Jewish people, began in Judea—known today as the state of Israel. Through conquests and imperialism, ethnic Jews have been exiled from their ancestral homeland and subsequently settled in every corner of the world, from Eastern Europe to the Peruvian Amazon. The people who came from that place, what is today called Israel, are referred to, even by people who think we do not belong there, as Jews. Even adversaries like Hamas and Hezbollah do not dispute our right to call ourselves Jews—or, in Arabic, “Yahud” (“Yehuda” meaning Judea)”) and Yoram Ettinger, *Palestine Claim Examined*, THE ETTINGER REPORT (Sept. 10, 2020), available at <https://theettingerreport.com/palestinian-claim-examined/>.

the requirement of a unique social, political and cultural characteristics for Palestinian Arabs to be deemed indigenous to Israel rather than to the umma as a whole.<sup>158</sup>

One other element of settler-colonialism is that the settler-colonialists exploit the natural resources of the land they settle. In the case of Israel, which was generally bereft of natural resources when it was re-established as the Jewish homeland in 1948, it would be difficult to point to any natural resource that was exploited. Unlike neighboring lands that had significant stores of oil, gas and minerals, the land of Israel was never known to have such resources and even to this day, other than some natural gas fields in the Mediterranean, Israel remains dependent on imports of most natural resources.<sup>159</sup>

## **B. Who Are the Colonialists?**

Using “direct political and military control over subject territories that is a specific stage of imperialism” as the definition of colonialism, it becomes clear that there is a very serious issue with deeming Israel to be a colonial entity: controlling your own territory is not colonialism.

If Israel were to invade and occupy, say, Turkey, then it could certainly be deemed a colonial power. But the only territory that Israel has direct political and military control over is Israel. There are certainly areas that Israel exerts political and military control over that are disputed territories, such as the areas known as the West Bank or Judea and Samaria, but those territories are also under the political and military control of the Palestinian Authority, based in Ramallah, and the status of those territories continues to be negotiated between the parties. The only areas that Israel exerts sole political and military control over are areas not under dispute with the Palestinian Arabs. Thus, one could argue that if Israel having a security apparatus in places such as Hebron (one of the holiest sites in the world for Jews and a part of historic Israel) makes it a colonial entity, then the same must be said of the Palestinian Arabs having political and military influence over the same territory.

Professor Edward Said’s definition of colonialism, “the implanting of settlements on distant territory”, makes for an even less compelling case in deeming Israel a colonial entity. The only territory Israel has “settled” is its own historic territory, that which is within its own borders than distant. It would be ludicrous to argue that a nation has colonized itself.

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<sup>158</sup> Article 1 of the Palestinian National Charter makes this clear: “Palestine is the homeland of the Arab Palestinian people; it is an indivisible part of the Arab homeland, and the Palestinian people are an integral part of the Arab nation.” Palestinian National Charter, *supra* note 57.

<sup>159</sup> See, e.g., Clifford Krauss, *Israel’s Energy Dilemma: More Natural Gas Than It Can Use or Export*, N.Y. TIMES (July 5, 2019) (“For decades, Israel was an energy-starved country surrounded by hostile, oil-rich neighbors.”). Only in recent years, decades after Israel’s re-establishment as a Jewish state, were natural resources like natural gas discovered. Certainly, in the 1940s, these resources were unknown and the primary impetus for Jewish sovereignty had nothing to do with exploiting resources.

The classic examples of colonialism in the land of Israel, though, would be the Ottoman Empire, the British Empire or even the Islamic empire, where the colonial power invaded and took control of a land they had no other connection to. In each case (Ottoman, British and Islamic empires), the foreign power implanted settlements in the historic homeland of the Jews, a distant territory from the seat of each empire. Using the Islamic empire as an example, the use of the *Amsar*, armed garrisons that Muslims implanted on territory they had invaded as a way to secure that territory for Islamic control, is pure colonialism, as was the British practice of establishing protectorates and dependencies for territories that they included in their empire.<sup>160</sup>

The only argument for Israel being a colonial entity would be that today's Jews are not history's Jews, that Israeli Jews are Europeans who had no historical connection to the land and they came in to dispossess the indigenous Arabs. This argument is fatally flawed due to the fact that most Israelis are of Middle Eastern descent, rather than European and they are the Jews of history, who were first in time (relative to Christian and Muslim Arabs) inhabitants of the land.

### C. Who Are the Imperialists?

Of the three Marxist terms discussed herein, imperialism is the one that is most difficult to apply to the situation in the Middle East due to it having a primarily economic, rather than social, definition.

As Israel was founded as a socialist country, the view of imperialism as being part of the economic development of a capitalist system simply doesn't apply to the claims made by Marxist-Adjacents. Professor Brewer's description of imperialism being "the dominance of more developed over less developed countries" and "rivalry between major capitalist countries" makes this clear.

As discussed earlier, Professor Gathii used a functional definition for imperialism as the control of a colonized people by "European and other invaders" while Professor Said described imperialism as "thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and owned by others" and further explained that imperialists elevate western values over those of the indigenous culture. Put another way, to be an imperialist power, one must have control over another people's land and have no inherent claim to the land other than as part of your own western, capitalist empire.

Again, here we have the question of who the indigenous people of Israel are.

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<sup>160</sup> See, e.g., E.O. Egboh, *British Colonial Administration and the Legal Control of the Forests of Lagos Colony and Protectorate 1897-1902: An Example of Economic Control under Colonial Regime*, 9 J. OF THE HISTORICAL SOCIETY OF NIGERIA no. 3 at 70-90 (1978).

Using the commonly accepted definition of indigenous people, discussed *supra*, there is a strong argument to be made that Jews are the indigenous people of Israel and the Palestinian Arabs are the non-indigenous colonialists who disenfranchised the indigenous Jews and acted as the agents of the Islamic *umma* (as successor to the long string of other usurpers, from the Babylonians to the Romans to the Ottoman empire) in conquering the land of Israel for the benefit of the expansive Islamic empire.

If there is an argument to be made that Israel is an imperial entity, it has to be based on the discredited and factually absurd claim that Israeli Jews are European Whites who went to Israel at its founding to establish it as an outpost for European colonization. On its face, this argument is without basis due to the fact that a majority of Israel's population has no connection to Europe and is, instead, native to the Middle East. Further, European Jews, far from being White, have been shown to have a direct genetic connection to the Jewish ethnicity, stretching back thousands of years from the time of the first conquest of the land of Israel.<sup>161</sup> During the centuries that Jews lived in Europe as a result of the various conquests of the land of Israel, there certainly was a physical change in the population due to differing climates, some intermarriage and the natural impact of assimilation. This, however, does not make Jews any less a distinct people with common roots in the Levant than the fact that many Africans who were enslaved and brought to America are of lighter skin than those who remained in Africa or have western surnames would make them less African.

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<sup>161</sup> See Kevin A. Brook, *The Origins of East European Jews*, 30 *RUSSIAN HISTORY*, no. 1/2 at 13 (2003) (“...Jews around the world, both Sephardic and Ashkenazic, are more closely related to one another than to non-Jews, and also found a close Y-chromosomal connection between Jews and Palestinian Arabs, Lebanese and Syrians.”) and Sala Levin, *The Biggest Jewish Genetic Myths of All Time*, *MOMENT MAGAZINE*, (July 28, 2012), available at <https://momentmag.com/the-biggest-jewish-genetic-myths-of-all-time/> (“For centuries, rumors have circulated that Ashkenazi Jews are the descendants of Khazars, a medieval confederation of semi-nomadic Turkic tribes—a view famously articulated in *The Thirteenth Tribe*, the 1976 book by Arthur Koestler, the well-respected author of *Darkness at Noon*. The Khazars were led by a semi-religious figure called the khagan, who, according to sources, converted to Judaism along with much of the ruling class around 740 CE, a decision possibly motivated by political expedience in a region flanked by Muslims and Christians. The conversion is documented in *Sefer HaEmunot*, a 15th-century text by Rabbi Shem Tov ibn Shem Tov, and the philosopher and poet Yehuda HaLevi’s 12th-century book, *The Kuzari*, which tells of a dialogue between the Khazar king and a Jew asked to guide him through the basic tenets of Judaism. When the Khazar empire collapsed, Koestler argues, the new Jews migrated west—to places like Lithuania, Ukraine, Germany and others, giving birth to Ashkenazi Jewry. Basing his theory on the work of earlier scholars, he hoped to counteract anti-Semitism, but his book was derided by critics. They argued that the theory—which called into question historic claims to the land of Israel—was unsound. Genetic mapping has since laid the controversy to rest. Though the history is murky, it’s clear that all Jews originated in the Eastern Mediterranean, and that over centuries some migrated. ‘It’s all very speculative,’ says [Dr. Neil] Risch [director of the University of California, San Francisco’s Institute for Human Genetics]. ‘There’s not a lot of actual history written down, but the belief is that the Ashkenazis derived from settlers who probably came into the Rhineland around the 9th or 10th century and formed this distinct endogamous group.’ The 14th-century founder effect was likely also the result of immigration, largely to Lithuania and the surrounding region.”)

The distinction between Ashkenazi and Sephardic (or Mizrahi) Jews is something of a red herring, because as much as there are some physical differences, those differences are superficial and do not obviate the fact that there is an unbroken genetic history linking ethnic Jews to one another and to the land of Israel. For people who adhere to Judaism without being ethnic Jews, of course there is no connection to the land of Israel other than Israel being the locus of much of the traditions and practices of Judaism. Those individuals, though, would claim neither Ashkenazi nor Sephardic or Mizrahi lineage, which further demonstrates the stark difference between being an ethnic Jew and being an adherent of the faith of Judaism *sans* ethnicity.

Consequently, Jews, and the modern state of Israel, can't be deemed to be imperialist under any definition or commonly-accepted usage of the term.

The same cannot be said of those entities that conquered and occupied the land of Israel over the millennia. Whether looking at the Babylonians, Persians, Romans, early Muslims, the Ottomans or the British, all were empires that fit the definition of imperialists, especially as the term relates to each entity's activities in historic Israel.

## CONCLUSION

Stereotypes often persist for reasons that range from being based on a kernel of a fact to being an attempt to misinform. In the case of ethnic Jews, the stereotype promoted by Marxist-Adjacents is that Jews, and Israeli Jews in particular, are White. While some ethnic Jews do indeed appear to be White, the majority of Israeli Jews are from lands now deemed to be Arab lands and are no more White than anyone claiming Palestinian-Arab ethnicity. To say that simply because most ethnic Jews were forced out of their homeland over 1,000 years ago and lived among other peoples they are now not entitled to their land is akin to saying that native Americans have no claim to land now controlled by the United States government because many native Americans went on to have lives in the United States after the settlement of those lands by Whites who arrived from Europe over 600 years ago.<sup>162</sup>

If an indigenous people who lost their land to colonists 600 years ago are still entitled to assert grievances for their land today, why should an indigenous people who lost their land to colonists 2000 years ago not have the same right? For those who say that if this were countenanced, we'd have to weigh claims of Jews to the land of Israel against the Philistines or Canaanites or even Babylonians, the answer is that there is an identifiable nation of Jews that still exist and trace their ancestry to the land while there are no longer any people who

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<sup>162</sup> See, e.g., Sam Levin, *This is all stolen land: Native Americans want more than California's apology*, THE GUARDIAN (June 21, 2019) and Harmeet Kaur, *Indigenous people across the US want their land back -- and the movement is gaining momentum*, CNN (Nov. 26, 2020) ("Their fight is one in a broader movement by indigenous people across North America to reclaim their lands -- a movement that is gaining steam as the nation grapples with injustices committed against marginalized communities.").

assert that they are Philistines, Canaanites, or Babylonians. Were there to be such a people, their claims would have to be examined to determine who the true indigenous people are.

The Palestinian National Charter from 1968 makes the agenda clear. Article 5 states “The Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born, after that date, of a Palestinian father - whether inside Palestine or outside it - is also a Palestinian.” Article 6 states “The Jews who had normally resided in Palestine until the beginning of the Zionist invasion will be considered Palestinians.” By setting a random cutoff of 1947 to determine who is a Palestinian, and then excluding any Jew who returned to the land upon the establishment of Israel while giving every Arab who claims Palestinian origin status as a Palestinian, even if they have never been in the land, the Palestinian Arabs effectively have disenfranchised the indigenous people of the land.

Some argue that resolving modern border disputes based on religious texts such as the Bible is unacceptable on many levels, from elevating stories that may be myth to the status of fact to questions as to the veracity of translations. Yet using Biblical history to judge the claims of competing peoples is an important tool, along with scientific methods that can discern the age of structures and remains. In fact, archeologists working in Jerusalem have discovered a wide range of artifacts that definitely show a continuous Jewish presence in the region dating back to the time of the first and second temples.<sup>163</sup> Without resorting to the Bible, we would have to use other sources of history that have been subject to far lower levels of scrutiny and study.

There is no basis in fact or history to deem the modern State of Israel, and its Jewish citizens, to be either colonialists, imperialists or settler-colonialists and those terms have no legal effect in any case. Pursuant to international law, Jews, the indigenous people of the land of Israel, have a fundamental right to self-determination and any act that would disenfranchise them from that right would and should be null and void as a legal matter.

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<sup>163</sup> David Billet, *Archeology Proves Jews are Indigenous to the Land of Israel*, ISRAEL NATIONAL NEWS (Feb. 13, 2022), available at <https://www.israelnationalnews.com/news/322187> (“Finally, countless other Jewish artifacts have been uncovered dating to both the First and Second Temple, and to the centuries that followed. In 2016, the New York Times reported that the Israel Antiquities Authority uncovered a rare piece of Papyrus that dated to 2,700 years ago, which stated the Hebrew word for ‘Jerusalem’ ... The historical connection of the Jewish people to the land of Israel is undeniable, as seen from the countless artifacts which have recently been discovered.”)