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# The Ethics of Occupation; A New Way To Consider Israeli Occupation

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*The Ethics of Occupation; A New Way To Consider Israeli Occupation*

# The Ethics of Occupation;

*A New Way To Consider Israeli Occupation*

By

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*The Ethics of Occupation; A New Way To Consider Israeli Occupation*

**ABSTRACT**

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The Israeli-Palestinian conflict is one of the most complex political issues of our time. It involves two groups of people with a strong claim to a tiny piece of land, both historically and religiously. In the aftermath of the 1967 Arab-Israeli War, Israel occupied the West Bank and the Gaza Strip. Many people claim that the occupation is unethical because the occupier holds restrictions on those who are occupied. This paper does not address the question of who is to blame for the conflict or whether Israel has maintained an ethical occupation; it addresses instead the ethics of occupation of territories acquired by Israel during that war.

I argue that an occupation, such as the current Israeli occupation of the territories on the West Bank of the Jordan River, is morally permissible insofar as it is done for the defense and safety of the occupier's citizens. The first purpose of any state is to defend the lives of its citizens; and no state should be forced to tolerate random rocket attacks on its cities and towns. Additionally, there are moral obligations of the occupier, for they must uphold the human rights of those they are occupying. In this paper I draw on the philosophical analyses of two political thinkers: John Rawls and Michael Walzer. Both argue that a war is just if a state is fighting in self-defense to protect its institutions and its people from an aggressive neighbor. I show that these same arguments can be applied to explain when an occupation is ethical.

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**Chapter 1. Introduction**

**1.1 Why Occupation?**

While I was always interested in philosophy of war, it wasn't until the year 2012 that I became interested in issues relating to the ethics of occupation. By occupation, I write primarily on the Israeli-occupied territories that have been designated as an occupied territory by the United Nations and other international organizations. On November 14, 2012, I sat in my then apartment in Tel Aviv, Israel, the second most populous city in Israel, and I heard my first siren. A civil defense siren, also colloquially referred to as an air raid or tornado siren, is a loud sound that can be heard throughout Israel to warn of air raids or missile attacks on the civilian population. Tel Aviv was having rockets shot at it from the territory of Gaza, a strip of land currently governed by the terrorist organization, Hamas. This strip of land had previously been occupied by Israel until they disengaged in 2005.

During the 2012 conflict known as “Operation Pillar of Defense” Israel was scrutinized by the media and by the UN High Commissioner for human rights violations. The report stated that the IDF, the Israeli Defense Force, had "failed in many instances to respect international law", and that it did not "consistently uphold the basic principles of conduct of hostilities, namely, the principles of distinction, proportionality and precautions”(Times of Israel). As I sat in the bomb shelter of my Tel Aviv apartment I wondered why Israel was forced to disengage from their occupation of Gaza. What sorts of human rights violations did they commit? Should their occupation of Gaza be considered moral if it could have saved lives?

Michael Walzer, author of *Just and Unjust Wars*, sees Israel as like the “wild west” of American fiction. “...the analogy can be restated; a state under threat is like an individual hunted by an enemy who has announced his intention of killing or injuring him. Surely such a person may surprise his hunter, if he is able to do so” (Walzer, 85). There are good reasons to think that the Israeli occupation is

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permissible where as the Nazi Occupation is not, and this paper will serve to show when occupation is ethical and when it is not.

**1.2 Moral Questions Concerning Occupation:**

The Israeli-Palestinian conflict is perhaps the most complex political issue of our time. The decisions Israel has to make regarding the safety of their citizens, depends on a larger question involving the impact, the control, and restraint of the occupied territories. Many commentators have resorted to simply blaming one side or the other. In this paper I am not interested in determining who is to blame for the conflict. Rather I am interested in whether or not occupation is ever the morally correct action in war. This project seeks to explore various aspects of the morality of occupation and the circumstances that make some occupations just and some unjust. This paper also attempts to determine what is justified during and post occupation.

The emphasis that I will stress throughout this thesis is the permissibility of a country to take action in occupation, only when it is for the defense and safety of the occupier's citizens.<sup>1</sup> The first purpose of any state is to defend the lives of its citizens; and no state can tolerate random rocket attacks on its cities and towns.

I will begin this thesis with a background on the Israeli-Palestinian conflict, which in recent years has exploded on our television screens, newspapers, and social media. I will provide an account of the most recent events, beginning with the 1967 Six-Day War, when the Israel Defense Force (IDF) first occupied the territories of Gaza and the West Bank, and up until present day<sup>2</sup>. In order to illustrate when an occupation is immoral, I will discuss the history of Nazi occupation of Germany. I agree that occupation is moral for the same reasons war is moral, namely for self-defense. In the following chapter,

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<sup>1</sup> It may be politically correct for a number of reasons, but I am interested only in whether or not occupation is ever the *moral* thing to do.

<sup>2</sup> This paper will bring the reader as close to the present day as I can.

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I explain the moral obligations of the occupier onto the people it occupies. Finally, it must be stressed, however, that even though my paper is about occupation, there is also a serious examination of the morality of war and peace.

## **Chapter 2. Israel Occupation: Historical Background**

### **2.1 The Root of Occupation**

Israel has a rich background, for the Jewish people have one of the longest histories of any contemporary population. But unfortunately, many only vaguely understand the history of this nation. Israel was apportioned to the Jewish people by the United Nations in 1948. Shortly after the founding of the State of Israel, the first Arab-Israeli war began also in 1948. This war lasted until March of 1949 and left the Gaza Strip in control of by Jordan and the West Bank (including East Jerusalem) occupied by Egypt.

After the 1949 Armistice Agreements were signed, Egyptians still believed that the founding of Israel in 1948 had been unjust, that a Jewish state had no rightful existence. The Egyptians believed they could forestall the creation of a Jewish state in Palestine even though the land was already given to the Jewish people. In 1967, President Gamel Abde Nasser, Egyptian Prime Minister at the time, called for the destruction of the state of Israel (Walzer, 82). To achieve this objective on May 22, 1967 President Nasser announced that the Straits of Tiran would henceforth be closed to Israeli shipping. This would therefore cut off any Israeli sea access to the east, making them unable to be provided with weaponry or any materials through this international water way.

Israeli retaliation did not begin right away. The actual initiation of war takes much conversation and debate, and Israeli attacks did not begin until June 5. This was the start of the Six Day War, and the root of modern occupation. Six days into the war, Israel had defeated the allied armies of Egypt, Syria,

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and Jordan. In addition to this victory, Israel was able to seize the Old City of Jerusalem, the capital city of Israel and the holy city of Judaism, Islam, and Christianity. “Since 1948 the Old City had been in Jordanian hands, but Hussein's attack on Israel provided an opportunity for Israel to seize Jerusalem”(Cohn-Sherbok, 63). Before 1967, the area surrounding Israel was divided along the 1949 armistice lines. But after the '67 war, Israel controlled the whole of Palestine, including the West Bank of the Jordan and Jerusalem, along with one million Palestinians in the West Bank and Gaza Strip, and they occupied the Sinai Peninsula, and a thousand square miles of Syrian territory on the Golan Heights. After the war the Jewish state emerged as the most powerful force in the Middle East.

## **2.2 After the Six Day War**

The Six-Day War was fought between June 5<sup>th</sup> and June 10<sup>th</sup> of 1967, and actually began and ended within those six days. The Israelis defended the war as a preventative military effort to counter what the Israelis saw as an impending attack by Arab nations that surrounded Israel. “As a result of the Six-Day War, approximately 1.1 million Palestinians came under Israel’s control”(The David Project). Three categories of Palestinian Arabs existed; Arab residents of Israel, Arab inhabitants of territories occupied by Israel in 1967, and Palestinian refugees living in Arab states. Many of these Palestinian Arabs became citizens of Israel. “The majority of Palestinians formerly under Egyptian control in Gaza lived in refugee camps that continued to be administered by the United Nations. Palestinians living in eastern Jerusalem were eventually placed under Israeli civilian control and given a special status under Israeli law”(David'sProject, 3). The political situation in the region, tense at best in the years following Israel’s establishment, deteriorated drastically in and after 1967.

During the first few years, after the Israeli victory of the Six Day War, the Israelis were faced with a series of security threats. “The Palestine Liberation Organization[PLO], which was supported by all Arab nations, initiated a war of liberation...” (Cohn-Sherbok, 62). Yasser Arafat, who had emerged as

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a significant figure in the Palestinian struggle for liberation, recruited young people to the resistance movement. It was this group of young people who were responsible for the assassination of the Jordanian Prime Minister Wasfi al-Tal and the murder of Israeli athletes at the Munich Olympics. After 1973, the PLO was known as the representative body of the Palestinian people, and Yasser Arafat was their leader.

### **2.3 The Yom Kippur War**

The Arab defeat during the Six Day War led to widespread resentment against the state of Israel, and the continued presence of Israeli troops in territories that were previously Arab nations, outraged Arab leaders. On October 6, 1973, hoping to win back territory lost to Israel during the 1967 war, Egyptian and Syrian forces launched a coordinated attack against Israel on Yom Kippur, the holiest day in the Jewish calendar. Taking the Israeli Defense Forces by surprise, Egyptian troops swept deep into the Sinai Peninsula, while Syria struggled to throw occupying Israeli troops out of the Golan Heights. Israel counterattacked and recaptured the Golan Heights. “In the first month[of the Yom Kippur War], 2,500 Israelis were killed”(Cohn-Sherbok, 65). In the end, a cease-fire with Egypt went into effect on October 25, 1973, but within Israel there was widespread conflict with the Palestinian population in the territories occupied by Israel.

### **2.4 The First Intifada**

In Arabic, “intifada” literally means “shaking off”, it was the Arabs in the West Bank and Gaza that were trying to “shake off” the Israeli occupation<sup>3</sup>. The intifada involved hundreds of thousands of Arabs, and many of these people had no previous resistance experience, including children, teenagers and women. “For the first few years, it involved many forms of civil disobedience, including massive demonstrations, general strikes, refusal to pay taxes, boycotts of Israeli products, political graffiti and

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<sup>3</sup> Some argue they were trying to “shake off” the foundation of a Jewish State.

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the establishment of underground schools...It also included stone throwing, Molotov cocktails and the erection of barricades to impede the movement of Israeli military forces” (MERIP). As the intifada continued, Jews were afraid to walk in the Old City. A Jewish Professor was stabbed to death, by a Palestinian radical. They were also afraid to ride on public buses, for some Palestinians threw petrol bombs at Jewish buses (Cohn-Sherbok, 74). “Political divisions and violence within the Palestinian community escalated, especially the growing rivalry between the various PLO factions and Islamist organizations, Hamas and Islamic Jihad. Palestinian militants killed over 250 Palestinians suspected of collaborating with the occupation authorities and about 100 Israelis during this period” (MERIP).

This first Intifada ended with a flawed agreement written in Washington D.C. called the Oslo Accords. The agreement was flawed because it set up a negotiating process without specifying an outcome, both sides of this conflict distrusted and fundamentally opposed the agreement, yet it was still signed. This negotiation was an accord between Israel and the PLO, which negotiated for an Israeli withdrawal from the West Bank and Gaza Strip. “The Oslo-Accords served as the framework for the peace process and a basis for Israeli-Arab co-operation...However, just as in 1947, the Palestinian Arabs were being encouraged by more radical groups to oppose a two-state solution”(Cohn-Sherbok, 80). Several weeks after Oslo was signed, Arafat broke off negotiations with Israel.

## **2.5 The Second Intifada**

The deeply flawed “peace process” initiated at Oslo, combined with resentment against Israel’s government for building new settlements in the occupied territories, during the protracted interim period of the Oslo, converged to ignite a second intifada beginning in late September 2000. The second Intifada was worse and bloodier than the first, and did not end until the death of Yasser Arafat in November 2004. “As in the previous intifada, Palestinians threw stones and Molotov cocktails at Israeli soldiers, who responded with rubber-coated steel bullets and live ammunition. But both sides have employed

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greater force than in 1987-1991” (MERIP). In January 2005, Israel announced a unilateral ceasefire, conditional on elimination of further rocket and mortar attacks from Gaza, and began withdrawing Jewish settlements in Gaza. “Gaza and Israel are still at gunpoint, and the Israeli withdrawal doesn't seem to have brought peace with the Palestinians any closer” (Orend, 7). The first intifada proved that Israeli occupation of Arab territories would come at a heavy cost, and the second intifada proved that occupation is a joint struggle with no clear end.

## **2.6 Disengagement from Gaza**

The disengagement from the Gaza Strip in 2005 is a pivotal historical agreement in the history of Israel's occupation. “This was a total redrawing of the political map of the country”(Walzer, 78). Ariel Sharon, who was Israel's Prime Minister at this time, decided on the disengagement, and thus all Jewish settlers living in Gaza were forced to evacuate. “Eventually, between August 15 and 23, 2005, the disengagement took place, peacefully. More than 30,000 soldiers and police officers- all of them unarmed- were involved; the settlers, who until the last moment believed that the evacuation would not take place (perhaps due to divine intervention), did not oppose the army violently, though many had to be dragged from their homes, which were then destroyed by Israeli bulldozers” (Walzer 79). There was a Kibbutz, a small community, of Jewish people in the Gaza Strip called Gush Katif, they had a huge greenhouse and many crops, all of which were burnt to the ground by Palestinians after the disengagement when those in the Kibbutz were forced out. The purpose of the disengagement was a hope for peace, yet peace never came.

The disengagement not only failed to bring peace, but it brought about even more of a struggle for Israelis. “Moreover, and more significantly, the political situation in Gaza remained fluid; after a period characterized by a contested election ( Hamas won with only 44 percent of the vote) and a failed coalition governments, Fatah and Hamas descended into a bloody civil war, culminating in June 2007 in

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a violent putsch in which Hamas took control of the Gaza Strip from the Palestinian Authority” (Walzer 81). This meaning that Gaza is now under control by a recognized terrorist organization, and the withdrawal did not achieve its aims. “It appears that withdrawal did not bring de-escalation: it seemed to empower the more radical groups among the Palestinians and brought the war even nearer to Israel's towns and cities” (Walzer 82). Currently, the Gaza strip is a self-governing body run by a terrorist organization committed to an ideology that believes the Jews are to blame for every historical catastrophe, and Gaza radicals constantly throw rockets at Israel whenever they desire. <sup>4</sup> It appears that not even granting a complete dismantling of occupation would bring the Israeli people the only thing they wanted at the Israeli border; peace and quiet.

When speaking about the Gaza Strip, Michael Walzer discusses the biblical story of Samson. He states “...Samson, provoked by the Philistines, symbolically carried away the gates of Gaza on his shoulders.” Israel today is that Samson, for while Israel is strong and been through a lot, Gaza is that weight on its shoulders, no matter whether they occupy it or not.

### **Chapter 3. Understanding Occupation**

#### **3.1 What is Occupation?**

A country or regime may occupy a territory for many reasons—usurpation of mineral or other natural resources, ethnic cleansing, humiliation of an enemy, cultural imperialism, colonization—or defense. Occupation requires both military force to combat resistance fighters and a police force to quell the local population, maintain public order, and see to humanitarian provisions.

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<sup>4</sup> “In language obviously lifted from The Protocols of the Elders of Zion, but also adding some twists of its own, Hamas maintains that the Jews (together with the Masons) instigated both the French and Russian Revolutions, were responsible for World War I (so as to dismantle the Ottoman Caliphate) as well as for World War II (so as to make money out of the fighting)” (Walzer, 82).

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In Israel the occupation is for the purpose of defense. The Israeli Defense Force (IDF) states “The most important part of defending a state is defending its citizens; both those living in Israel and those living beyond the country’s borders”(IDF). The Israelis claim they are not interested in fighting a war, but care most about defending their people.

Nearly all of the commentators who have written about the occupation have chosen one of three focal points; (1) The peace initiatives between Israelis and Palestinians (2) Israel's settlements and its impact or (3) Palestinian resistance and uprisings (Gordon, 2). While each of these studies is crucial in the understanding of occupation, this paper is on ethics. An analysis of the history plus the works of both philosophers, Walzer and Rawls, reveals an answer on the morality of Israeli occupation: Israeli occupation is moral if it aims at and succeeds in changing the Israeli-Palestinian conflict to a quest for peace.

### **3.2 Occupation Linked to War:**

The law of occupation is similar to the law of war. Previously, occupation had been viewed as a possible by-product of military actions during war, and occupation had been referred to mainly as “belligerent occupation.” Belligerent occupation implies prior war and continued hostilities. But the history of the twentieth century has shown that occupation is not necessarily the outcome of actual fighting. It could be a result of a threat to use force that prompted the threatened government to concede effective control over a territory. This movement toward a more encompassing definition of occupation is also reflected in the most important international instruments that prescribed the law of warfare, the 1949 Fourth Geneva Convention. In contrast to war, occupations impose a unilaterally mandated administrative system and proactively intrudes upon an occupied population. It is itself in some respects a form of aggression, and a violation of the inhabitants’ rights to bring about a return to peace and fulfill legal and ethical duties.

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Before the 1949 Fourth Geneva Convention, the only international treaties on occupation was in Article 42 of the Hague Regulations, written in 1899 and edited in 1907. Both the Hague Regulations and the Fourth Geneva Convention linked occupation to war, but the definition of occupation differed. The Hague Regulations state, "Territory is considered occupied when it is actually placed under the authority of the *hostile army*." (Benvenisti, 4). This definition is altered in the Fourth Geneva Convention. "Article 2 provides that the convention shall apply even to an occupation that meets with no armed resistance. The rationale for the inclusive definition of occupation is that at the heart of all occupations exist a potential-if not an inherent- conflict of issue between occupant and occupied"(Benvenisti, 4). This special situation is the result of the administration on affairs of a country, by an entity that is not its sovereign government. The acknowledgement that occupation is linked to war is the first and the most important indication that the occupant is under the law of occupation. The international law of occupation, primarily the Hague Regulations of 1907 and the Fourth Geneva Convention, builds upon the traditions to establish duties and protect both the occupier and the occupied. Together, the laws form the ethical framework governing occupation.

## **Chapter 4. War, Occupation, and Self-Defense**

### **4.1 When Is Occupation Just?**

In this section I shall offer some arguments to explain when occupation is justified. Occupation is just when it is for the sake of self-defense. Self-defense is one of the basic principles of war. There are two requirements for a "self-defending occupation." First, occupation must never be a malicious or hasty attack. Second, the action must be aimed at shielding citizens who are the target (or potential target) of violent attacks from the occupied territory. In order to argue for this position, I will use two case studies of occupation.

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I will give an overall analysis of when it is justified to occupy. *The Law of Peoples*, a piece of work on international relations by John Rawls, a leading figure in moral and political philosophy, will provide a basis to my argument. Rawls claims that we cannot ignore that our world is filled with highly non-ideal conditions, great injustices, and widespread social evils (Rawls, 89). Once I have explained when occupation is moral I will analyze the Nazi occupation of Poland during World War II in order to show why their occupation is immoral and cannot be considered a case of self-defense. Nazis used the occupied territory and its citizens as a means to obtain power or wealth. Next, I will give some reasons for thinking the Israeli occupation is for the sole purpose of self-defense. The Israeli occupation of the West Bank appears to be morally justified insofar as Israel has the moral right to protection.

#### **4.2 The Right to Self-Defend**

Rawls begins by explaining the features and ethical rights that all peoples possess. I will assume that people wish to live in a moral world, and then go on to argue that self-defense should be understood as a moral right. Rawls writes that when a liberal society engages in war in self-defense, it does so to protect and preserve the basic freedoms of its citizens and its constitutionally democratic political institutions (Rawls, 91). What he means is that if the natural human rights, rights to which all human beings are inherently entitled to, of one's people is being threatened, a people has the right to defend themselves. He goes on to add that the society must be non-aggressive and must honor human rights in order to deserve the right of self-defense (Rawls, 91-93). A state is morally permissible to go to war with another state only if it is clear they will or are already being attacked. Non-aggressive societies are defined as societies that are decent and value human rights and morality. While the principle of non-aggression seems to convey the idea that Rawls is against war, he does believe that there can be just wars.

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In order to defend why I believe occupation is moral in self-defense, it is necessary to begin with a proper understanding of the right of self-defense. David Rodin, author of *War and Self-Defense*, explains why defenders are morally entitled to take action against aggressors in situations of self-defense. In order support of his theory he analyzes the moral structure of self-defense using Hohfeld's analysis of legal rights. When writing about Hohfeld, Rodin writes,

Self-defense is constituted by a set of normative relations between four elements:

- the *subject* of the right (the defender)
- the *object* against whom the right is held (the aggressor)
- the act that is the *content* of the right (in typical cases of self-defense this will be homicide)
- the *end* of self-defense (the good that the defensive act is intended to protect or preserve—this may be the defender’s own life, the life of a third party, or some other valuable, such as property or liberty (Rodin, 64).

By understanding Rodin's attention to the relationships between these four elements, we can explain each feature of an operation of defense in the most general way. Rights of defense arise out of a normative relationship between the *subject* of the right and the *end* that he or she is seeking to protect (Rodin, 64). These four steps that Rodin lays out proves that self-defense is mainly concerned with the relationship between the defender, the aggressor, and what good will come from it. Throughout this paper I shall argue that self-defense is moral in occupation when its aim is to bring about a positive end for both the occupied and the occupier. When the aim is for only the occupier and the occupied is left to suffer, the occupation is immoral. The defender must be occupying to protect or preserve their own life, the life of a third party, or another valuable such as property or liberty.

Rodin would call this view the “reductive strategy.” This meaning that national defense, or in my case national occupation, is reducible to the defense of individuals. He reduces my theory to mean “...national defense is just many individuals exercising the right of self-defense at the same time and in

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an organized fashion”(Rodin, 140). This is a reduction of my aim in this essay, and Rodin objects to this view and the reductive strategy, of which I will discuss later in this paper(See section 6.2). Self-defense differs from mass destruction or extermination of a whole community. States may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence (Walzer, 85). If a country has been forced to fight they are victims of aggression, and have the right to self-defend.

While I have provided both Walzer and Rodin's theories of the right to self-defend, the best way to justify self-defense is through John Rawls' *Law of Peoples*, which is the American philosopher's work on international relations, written in 1999. Rawls' analyzes what makes a state a decent society, and what actions can be taken by decent societies opposed to indecent societies.

#### **4.3 Who Has The Right To Self-Defend?**

Rawls uses three terms to describe three types of societies which he calls “non ideal” meaning, non-decent. One of his terms deals with conditions of non-compliance, that is, with conditions where certain regimes think a sufficient reason to engage in war is that war advances, or might advance, the regime's rational, not reasonable, interests. In *Political Liberalism* Rawls draws the important distinction between the rational and the reasonable. The rational “...applies to a single, unified agent (either an individual or corporate person) with the powers of judgment and deliberation in seeking ends and interests peculiarly its own. The rational applies to how these ends and interests are adopted and affirmed, as well as how they are given priority”(Rawls, 50). The reasonable includes cooperation with the general world and the betterment of the social climate. These regimes who are more concerned with the rational than the reasonable, Rawls calls *outlaw states*.

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The other type Rawls mentions is a *burdened society*, which is a society that, due to historical, social, or economic circumstances, cannot achieve a well-ordered regime (Rawls, 90). A burdened society may lack material or resources to support social cooperation, perhaps having allowed population growth beyond their territory's current means. Rawls holds that it is the basic structure of a society, and its political culture, that are most essential for its self-sufficiency; yet there are situations in which the international community must help a burdened society to rise above that threshold. The *Law of Peoples* requires burdened peoples be assisted until they can handle their own affairs, or until they can become well-ordered peoples.

The third is *benevolent absolutism* societies, which are non-aggressive states that honor human rights, but fail to give their citizens any political role. The ruler of a benevolent absolutist society honors rights on the basis of their own good will, not by the notion of a common good for the members of the state. A benevolent dictator would have the same fundamentals of government as a dictatorship, yet typically, the dictator would promote human rights and be less oppressive. The most common example of a benevolent absolutist society is the ruling under the Yugoslavian leader during World War II. He was considered a benevolent dictator due to his successful economy and policies, yet was criticized as an authoritarian.

Both burdened and outlaw states can endanger well-ordered peoples and give their people the right to self-defense. Benevolent absolutist societies also may have the right to self defend because even though they do not give its members a meaningful role in political decisions, they still honor human rights. Any society that is non-aggressive and honors human rights has the right of self-defense.

Rawls' ideal and non-ideal theories are within his *Law of Peoples* to help citizens orient themselves within their own social world. Rawls' philosophy can describe what it is to be a member of a society with a certain political status, and give suggestions on how the nature and history of that society

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can be understood from a broader perspective. The ideal theory assumes that all citizens are generally willing to comply with whatever principles are chosen, the non-ideal theory is the rejection of that.

Rawls is concerned primarily with non-ideal societies rather than ideal societies. Non-ideal theory is concerned with relations between well-ordered peoples and these three kinds of societies. An example of a non-ideal principle would be providing health care to citizens with serious illnesses or disabilities. Once the ideal principles of international relations are understood, it is evident to the international community how they should act toward a failed state, as well as toward aggressive states. "Thus, Rawls is concerned with the practical questions that arise in the real world—a world where 'reasonably just constitutional democracies' and decent hierarchical societies face the challenges of noncompliance with international law" (Voice, 178). Voice is stating that Rawls is a philosopher concerned with the modern world, for his philosophies of ideal and non-ideal theory can justify the actions to stop menacing states.

Rawls's conception of each type of society is defined by fairness; social institutions are to be fair to all cooperating members of society, regardless of their race, gender, religion, class of origin, reasonable conception of the good life, and so on. Rawls states, "Well-ordered peoples, both liberal and decent, do not initiate war against one another; they go to war only when they sincerely and reasonably believe their safety and security are seriously endangered by the expansionist policies of outlaw states" (Rawls, 90-91). The purpose of bringing up the distinction between ideal and non-ideal societies is to prove that ideal societies are well-ordered, and non-ideal societies are not. Well-ordered societies are based off of principles that can be endorsed by all the citizens, and that all people can agree on. Two well-ordered societies would not wage war against each other, for they would never endanger each other's security. It is not sufficient to occupy or wage war because the war will advance a country's

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personal interest, for they must wage war in self-defense. Well-ordered societies will only wage war if they are being put endanger by an outlaw state, and then they will take action.

Rawls understands the right to war to mean; the just ability to self-defense, and he includes in the footnotes, “The right to war normally includes the right to help to defend one's allies”(Rawls, 91). In what follows I show that Rawls does not constitute all actions taken in war to be in self-defense. He takes careful consideration of the way a people interpret their actions and what their ends and purposes are.

Not every war is justified on moral grounds. It cannot be justifiable to fight an aggressive war to gain wealth, resources, or more land. The aim of war is not for those things mentioned, but to bring all societies to honor the law of peoples, and eventually to become fully participating members of international society. “Indeed, a liberal society cannot justly require its citizens to fight in order to gain economic wealth or to acquire natural resources, much less to win power and empire”(Rawls, 91). In other words, it would be unjust to go to war simply for the taking over a particular area or using the targeted people for wealth or natural resources.

Furthermore, Rawls would call any state that would take such actions, as targeting a people for wealth, an outlaw state. “To trespass on citizens' liberty by conscription, or other such practices in raising armed forces, may only be done on a liberal political conception for the sake of liberty itself, that is, as necessary to defend liberal democratic institutions and civil society's many religious and nonreligious traditions and forms of life” (Rawls, 91). Outlaw states are non-compliant, meaning they do not agree with a set of laws, standards, or requirements for a given society. They threaten the peace by attempting to expand their power and influence. Additionally, states that violate the human rights of those within their territory could also be considered outlaw states and it is justified to fight against these outlaw states in self-defense.

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Rawls concludes that a liberal society should engage in war only to defend themselves from the aggression of others. "When a liberal society engages in a war in self-defense, it must do so to protect and preserve the freedom of its citizens and its democratic political institutions. Only then is it acting in accordance with a liberalism of freedom and engaging in war for the right reasons"(Rawls, 360). Indeed, what Rawls is saying is that a society cannot justly require its citizens to fight to gain anything but the sake of liberty itself. "In this way, liberal political institutions perform the work of bringing civil society back to the universal" (Rawls, 360). When the ultimate gain is for the security, for the life, and for the personal property of individuals, only then Rawls would argue the state is acting moral and only then would war and occupation be permissible (Rawls, 359). While the end result of an occupation or war is of particular importance, it is the actions within the occupation or war that is the judge of its morality.

Laying out the requirements for a hierarchal society to be a well-ordered state, he writes about the obligation of *seized territory* and for maintaining its environmental integrity and its capacity to sustain them. "In this case the asset is the people's territory and its capacity to sustain them in perpetuity; the agent is the people themselves as politically organized" (Rawls, 48). He writes about a politically organized people being organized by the occupied government. While Rawls does not directly allude to occupation in his *Law of Peoples*, occupation is an action of war. One can infer that just as other actions of war, occupation can be equated to seized territory and must also only justifiably be done in self-defense.

#### **4.4 Unjust Occupation**

The Nazi occupation of Poland cannot be justified on Rawls's view because they did not occupy Poland in order to secure their own liberty. World War II began when the Nazi German regime invaded Poland on September 1, 1939. "To Hitler, the conquest of Poland would bring *Lebensraum*, or "living space," for the German people. According to his plan, the "racially superior" Germans would colonize

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the territory and the native Slavs would be enslaved” (History.com). Hitler invaded Poland because he wanted more land for the German people, and because he believed that the German people were the superior race. <sup>5</sup>Germany had previously occupied Austria and Czechoslovakia without opposition. Thus, Hitler proceeded to occupy Poland in hopes for what he calls *Grossdeutschland* or “all Germans living in one country.”

In the occupied territories, the Nazis implemented their “racial” policies, murdering anyone who did not fit the category of an “Aryan German”. From 1941 to 1944 the Nazis engaged in mass killings of Jews. “During the German occupation, nearly three million Polish Jews were killed in the Nazi death camps. The Nazis also severely persecuted the Slavic majority, deporting and executing Poles in an attempt to destroy the intelligentsia and Polish culture”(History.com). These acts of conquest and mass killing of a civilian population were universally condemned. Prior to the Nazi invasion, Poles were living peacefully in their home country, yet they were brutally attacked and occupied by Hitler and his SS soldiers<sup>6</sup>.

There is no plausible way to argue that Germany occupied Poland in self-defense, let alone a morally justifiable act of self-defense argued by Rawls. Based on Rawls account of the right to self-defense, the occupation of Poland by German forces is immoral and unjust for a variety of reasons.

Three of the reasons I will discuss;

1. The aim of the Nazi occupation was not for lasting peace.
2. The Nazi's expansionist aims threatened the citizens of Poland

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<sup>5</sup> Initially, this very idea of a 'superior race' goes against Rawls, for a people should be cooperative with all the citizens in a given territory.

<sup>6</sup> The SS, the Schutzstaffel, was a major paramilitary organization under Adolf Hitler and the Nazi Party. The SS, along with the Nazi Party, was declared a criminal organization by the International Military Tribunal, and banned in Germany after 1945.

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3. Nazis' not only disregarded the ends of Jews, Slavs, and Poles, but they murdered many them.

The aim of the Nazi occupation was not to establish a lasting peace with the Poles. The Nazis would occupy any territory they possibly could even if the territory posed no threat to them at all. For example, when the Nazis invaded the Ukraine, they were greeted as liberators. "In Galicia especially, there had long been a widespread belief that Germany, as the avowed enemy of Poland and the U.S.S.R., was the Ukrainians' natural ally for the attainment of their independence. The illusion was quickly shattered" (Encyclopedia Britannica). In the Ukraine, "...an estimated 1.5 million Ukrainian Jews perished, and over 800,000 were displaced to the east... nearly 34,000 were killed in just the first two days of massacre in the city (Encyclopedia Britannica). The aim of taking over this land was not peace, but power.

Although driven by anti-Semitism, the Nazi's main aim was to acquire land. Hitler wanted to seize control of the whole world. The Nazis are not considered a well-ordered people, for they wage war against well-ordered states and have an obvious expansionist aim.

The Nazis also threaten the security of free institutions and brought about a war (Rawls, 94). While responsibility of war rarely falls only on one side, within this case, the Jews of Poland could not have given the Nazi's moral permissibility to murder and put them into concentration camps. As stated earlier, Rawls argues that liberal societies cannot justly require its citizens to fight in order to gain economic wealth or to acquire natural resources, much less to win power and empire (Rawls, 91). It seems as though Rawls is speaking directly to this case, for the Nazi's acted grossly immoral, for their motives were to gain power and an empire.

The disrespect the Nazi's exhibited to the populations they occupied could be an entire thesis within itself. The Nazis engaged in mass terror. They deported and executed non-Jewish Polish citizens in an attempt to destroy the intellectuals or highly educated people and extinguish Polish-Jewish culture.

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They killed both priests and politicians; children of prominent citizens were kidnapped; and many Poles were forced into hard labour. The Holocaust, together with the expulsion of several million Germans and population transfers with the U.S.S.R., left Poland virtually homogeneous in its ethnic composition. The Nazi's killed enormous numbers of Jews and people from the country, the Nazi occupation destroyed the country of Poland.

In the following quotation, Rawls writes on the obligations a moral society has to the members of their opposition;

Well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers, for two reasons. One is simply that the enemy, like all the others, has these rights by the *Law of Peoples*. The other reason is to teach enemy soldiers and civilians the content of those rights by the example set in the treatment they receive (Rawls, 96).

Well-ordered people would never treat others the way the Nazis treated the Jews during the occupation of Germany. The Nazi's thought that the Jews were the enemy, for amongst other reasons they thought that the Jews wanted to take over the world, and that there was evil within the Jewish blood. The Nazi's were engaged in an unjust occupation because they had bad reasons for occupying and attacking the Jewish people, it was not about self-defense it was about simple anti-semitism, their prejudice and hatred against people of Jewish blood. The enemy in this case was the Jewish people, while there was no validity to why the Jews were the enemy, their rights should have been protected.

#### **4.5 Just Occupation:**

The Nazi occupation of Poland is a clear example of an unjustified occupation. By contrast, I argue that the Israeli occupation of Gaza and the West Bank is a morally permissible occupation of a well-ordered people occupying an outlaw state in the hopes for peace.

As stated earlier, outlaw states threaten the peace by violating the human rights of those within their territory. Hamas, the ruling terrorist group of Gaza (See section 2.6), violates human rights in

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countless ways. For example, in October of 2012, Human Rights Watch accused Hamas of running a criminal justice system rife with arbitrary arrests, torture and unfair trials (New York Times). Also after Israel's 2012 operation, Operation Pillar of Defense, Human Rights Watch stated that Hamas had endangered civilians by "repeatedly firing rockets from densely populated areas, near homes, businesses, and a hotel"(Jerusalem Post). It was also noted that under international law, parties to a conflict may not place military targets in or near densely populated areas, and Hamas was placing targets in schools. The Hamas terrorist organization, is just that, terrorists, and with them in control they make the Gaza strip a complete outlaw state.

The current status of the West Bank is under the control of the Palestinian Authority, while also being occupied by Israel. The Palestinian Authority is the interim self-government body established to govern the West Bank. The Palestinian Authority is led by Chairman Mahmoud Abbas. The Palestinian Authority has received financial assistance from the European Union and the United States, approximately 1 billion U.S. dollars combined in 2005. Yet, the citizens of the West Bank never saw that money, for it was channeled directly to the offices of Mahmoud Abbas in the West Bank (Haaretz).

The Palestinian Authority has also been known to use their own civilians as human shields. They use civilian property such as houses as sites for smuggling arms, launching sites for rockets, and factories to produce munitions. This exposes their citizens to harm from IDF military operations. Civilian deaths caused by these strikes are widely publicized in the media and create favorable public opinion for the PA and negative public opinion against Israel. The use of women, children, and citizens at large for human shields is a complete violation of human rights, and secures the West Bank an outlaw state.

Earlier in the paper, I discuss the initial aim of military action in 1967 (See section 2.1), which was the removal of the threat to the State of Israel that had been posed by Egypt and the blockade on

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Israeli shipping in the Straits of Tiran. To avoid being one-sided, I must make it clear that it was the Israelis who struck first<sup>7</sup>. While the issue of pre-emptive strikes will be discussed later in this paper, it is not yet important for my argument.

David Kretzmer, a Professor of International Law and author of *The Occupation of Justice*, wrote what he calls the laws of justice within the occupation of the West Bank and Gaza. The taking of the territory was a lever with which they could wage peace with the neighboring Arab countries, and a way to resolve many of Israel's pressing security needs. "The initial attitude [from Israelis] was first and foremost a function of the tremendous feeling of relief that swept the public and the political leadership after the war" (Kretzmer, 6). Israeli forces took the Old City of Jerusalem and occupied the whole of the West Bank. At the same time, Israeli forces in the south took the Gaza Strip and the whole of the Sinai Peninsula. Thus began the occupation (Kretzmer, 5). Egyptian forces had hopes of mass destruction for Israel, and Nasser, Egyptian Prime Minister, had Syria, Jordan, and Lebanon fighting with Egypt against Israel.

Prior to the Six Day War, Jordan had control over the West Bank (See section 2.2). During the war, Jordanian brigades were stationed in the West Bank in order to link with the Egyptians and fight against the Israelis. Israelis had the right to self-defend and occupy the West Bank because the Jordanians were at the time in control of the West Bank and they were fighting with the Egyptians against the Israelis.

The Palestinians living in the West Bank, were displaced from their homes during the Israeli-Arab wars in 1948 and 1967. It is understood that the displaced Palestinians have long asserted that they have a legal right to return to what was once Palestine, including land that is now Israel. This may seem

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<sup>7</sup> Discussing the morality of pre-emptive strikes would be for another paper, but the Egyptians were threatening and the Israelis attacked.

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to be a problem for the theory that a state must not occupy for an acquisition of land. The point that settling in occupied land breaks Rawls' laws of just occupation is a strong objection and will be analyzed later in the thesis (See section 6.1). For now I will just say that for Israel, granting the right of return would be tantamount to surrendering the country's identity and security.

During this time period, after the Six Day War, Israel also occupied the Gaza Strip. Previously, just as the West Bank was controlled by Jordan, the Gaza Strip was controlled by Egypt. "While in the West Bank, Jordan offered citizenship to many of the refugees, Egypt did not extend the offer to Gazans; they remained under Egyptian military rule until Israel reoccupied the strip following the Six-Day war against the Arab States in 1967"(TIME, 2009). Egypt held weapons in the Gaza Strip during the Six Day War, and when they lost the Gaza Strip to Israel, those living in the territory harshly fought against the Israelis.

The first organized Palestinian uprising or "intifada" against Israeli rule came from a refugee camp in northern Gaza in 1987, and quickly spread across the region. Hamas gained momentum in the occupied region, especially in Gaza, by establishing educational and social programs for disenfranchised Palestinians. The international condemnation was rapid when Hamas violently rebelled against Israel, including terror attacks and suicide bombings.

Rawls writes that, "In the conduct of war, well-ordered peoples must carefully distinguish three groups: the outlaw state's leaders and officials, its soldiers, and its civilian population"(Rawls, 94). War should be directed only against an outlaw state's leaders, officials, and soldiers, not against the civilian population. Unfortunately, there can be no war without civilian casualties, and there is no war without the loss of innocent lives. There is a difference between targeting civilians and targeting military operations. Furthermore it is illegal for the Israeli to target civilians, but often civilian casualties occurred during military targeting of terrorists.

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During Operation Pillar of Defense (See section 1.1) the IDF released a statement on how they attempt to minimize harm to Palestinian civilians. “As a result of Hamas’ strategy of using civilian areas for military purposes, it is inevitable that there will be civilian casualties in Gaza. Nonetheless, the IDF goes to great lengths to avoid civilian casualties and to minimize collateral damage”(IDFblog).

Three ways of which the IDF minimizes targets are through phone calls, leaflets, and diverting missiles in mid-flight. Phone calls were made to residents of the Gaza Strip, warning them of IDF strikes in the area. Leaflets written in Arabic were dropped over Gaza that warned civilians to “avoid being present in the vicinity of Hamas operatives.” Finally, “During Operation Cast Lead in 2008-09, the IDF aborted many missions seconds before they were to be carried out, due to civilians being present at the site of the target”(IDFblog). Despite all precautions, IDF forces may have targeted sites and hurt Palestinian civilians. Because the IDF believes that it must take do whatever possible to avoid harming innocent bystanders, the Israelis are giving up the element of guerrilla warfare.

Continuing with the importance of human rights, the right to self-defense is only moral to societies that honor the human rights of their members and are non-aggressive (Rawls, 92). Additionally, only those who honor human rights can consider themselves safe from the threat of external political sanctions and international intervention (Rawls, 92). The Israeli Defense Force writes on their website, “Israel will do everything that is necessary to assist the civilian populations in Gaza and in Judea and Samaria, with an emphasis on providing electricity to the power plant in Gaza”(IDF). While it is common that Israel is the target of distorted media, especially in having committed human rights violations, I will argue that Israel upholds the human rights of those occupied, which permits Israel to its right of self-defense (See section 6).

Israeli occupation seems a likely candidate for a just occupation based on Rawls’ account of just war. “In its decisions relating to the Occupied Territories, the Court has rationalized virtually all

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controversial actions of the Israeli authorities especially those most problematic under principles of international humanitarian law”(Kretzmer, 187). Given that war is horrible, and there may be inconsistencies and controversial issues that may be disregarded or ignored, the greater picture must be remembered. Israel 290 miles long, 85 miles wide at its widest point, and 35 miles wide at its narrowest point, it is basically the size of New Jersey, US. Israel was being attacked by every Arab country at its borders, Jordan, Egypt, and Lebanon. Israel has been devastated by Palestinian terror and continues to face an existential threat from a hostile population, which, on the whole, instills in its youth anti-Semitism and hate of the state of Israel. I finish this section with a question, could there ever be a more permissible time for self-defense than when you are being attack by three giants?

**Chapter 5. Moral Obligations In Occupation**

**5.1 What We Owe To Humanity vs. What We Owe To Our Community**

Michael Walzer is a professor, author, editor, and lecturer, who is known to have played a part in the revival of a practical, issue-focused ethics and in the development of a pluralist approach to political and moral life (Institute for Advanced Study). Walzer's concept of a just war is parallel to Rawls' argument for self-defense. He believes people have rights to their own home, even if they do not own it, because neither their life nor their liberty is secure unless there exists some physical space within which he is safe from intrusion (Walzer, 55). “People must be able to defend its country in the same way men and women can defend their homes, for the country is collectively as the homes are privately owned” (Walzer, 55). Walzer's just war theory, as presented in *Just and Unjust Wars*, is based on the proposal that the single justification for going to war is the defense of two basic human rights; that is the right to life and the right to liberty(Walzer, 72). He demonstrates that in just war theory there is the problem of *jus ad bellum*, the justification for going to war, and the problem of *jus in bello*, the justification for

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specific actions in war. Walzer relates the two in an interesting way, and plays a vital role in determining moral responsibilities. This war theory wrestles with the core relationship between the self and the state, with what is worth protecting (at times with force), and what we owe to humanity versus what we owe to our community.

Occupation does not include any direct use of force, thus I could make the assumption that Walzer would characterize occupation as a nonviolent action. Nonviolence de-escalates the conflict and diminishes its criminality (Walzer, 330). Walzer sees a “war without weapons” or a world without war, as (for now) a “messianic dream”(Walzer, 330). While that may be true it is possible to restrain from violence. Restraint is what Walzer calls the beginning of peace”(Walzer, 330). This chapter will begin with a discussion on how occupation, similar to a war that restrains from violence, may be the beginning of peace.

I will explain how every social good be distributed in accordance with its societal meaning, for it must favour all nations who have respect for an individual's human rights to life and liberty (Orend, 181). Finally, the defensibility of what Walzer calls “peacetime reprisals” will help serve as a basis to my argument of occupation as retaliation. “Reprisal is a practice carried over from the war convention to the world of “peacetime”, because it provides an appropriately limited form of military action”(Walzer, 221). Occupying a territory, just like a “peacetime reprisal” can be a minimal form of self-defense. The moral permissibility of peacetime reprisals will help to argue my case of the post-'67 occupation of Gaza, and understand the obligation to a country after a war has ended.

## **5.2 Minimally Violent Aggression:**

A war without weapons may seem to be impossible and could never be a reality. The image of war is a vision of man against man with guns shooting against each other. Walzer explains there are some examples of moral nonviolent wars, “..we can uphold the values of communal life and liberty

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without fighting and killing”(Walzer, 329). While Walzer uses the term “nonviolent aggression,” I will use minimally violent aggression as a criteria for moral occupation, which would be equally justified by Walzer.

In a sense, we can regard an occupation as a minimally violent war. Occupation may be a minimally violent aftermath of war, as it is during the Six Day War, or an extremely violent catalyst for war as was the Nazi occupation of Poland. It is clear that only a minimally violent occupation could be just. To say that an occupation is a minimally violent war means that it can be distinguished from a territorial acquisition by invasion or annexation. A minimally violent occupation can be considered an aspect of war because often the land is gained as a result of warfare. Until the 19th century, a military occupation of territory made that territory the property of the occupying sovereign. No rules obliged the occupant to treat the occupied territory with special care. In those days occupation was seen as a legitimate way of gaining territory and was not really distinct from annexation. Currently occupation is limited, occupiers must uphold the human rights of those they occupy and must not use force or weapons on their occupiers.

This idea of minimally violent war brings up a variety of queries, for it is understood that a nonviolent defense differs greatly from a war, but can the Israeli occupation be considered a minimally violent defense of the Israeli people?

They treat the aggressor in effect as a domestic tyrant or usurper, and they turn his soldiers into policemen. If the invader accepts this role, and if he responds to the resistance he encounters with curfews, fines, jail sentences, and nothing more, the prospect is opened up of a long-term struggle, not without its difficulties and painfulness for civilians, but far less destructive than even a short war, and winnable (we are assuming) by those same civilians (Walzer, 331).

Minimally violent war does not come without struggle, but the criminality of the war is taken out. In order for a war to be moral it must be non-aggressive, for the victimized country has the obligation to

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deal with the aggressor, yet they are handling the issue in a just way. A country or people have the fundamental right of self-defense, both preventive and reactive, including where necessary the use of force, in respect to the threats.

### **5.3 Moral Obligations To Occupied Citizens:**

A minimally violent occupation comes with a set of obligations, there are moral obligations on the occupier towards those who are occupied. The occupier cannot justly use the civilians in the occupied territories as a means to an end, namely as a means to merely protect the interests of the occupiers. For example, if the occupier's, just as the Nazi's, put the occupied people in labor camps to work and serve their interests, that is unjust and is using the people as a mere means. In contrast, the occupier's must uphold the human rights of the occupied people, make sure food and shelter is available to them, and most importantly there must be minimal to no violence taken onto occupied persons.

The first obligation an occupier has to the occupied territory is to not cause unnecessary harm to the citizens. Sometimes this entails actually giving aid to those living in the occupied territory. For example, Save a Child's Heart (SACH) is an Israeli-based international humanitarian project, whose mission is to improve the quality of pediatric cardiac care for children from developing countries who suffer from heart disease, and to create centers of competence in these countries. They even taken in children from the occupied territories. For the children coming from the Palestinian Authority, they have treatment available to them at the Wolfson Medical Center. They are then invited to a weekly clinic at the Wolfson Medical Center for regular check ups(SACH). While Israel greatly helps out the people of the occupied territory, there is a philosophical question pondering how much aid to give to occupied citizens.

But their logistical problems would be severe, for unless they brought along their own personnel, they could not depend upon the local transportation or communication systems. And since they could hardly bring along an entire workforce, they would have great

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difficulty exploiting the natural resources and the industrial productivity of the invaded country. Hence the economic costs of the occupation would be high”(Walzer, 331).

The economic cost of occupation is very high, and especially to keep the occupation justified the occupying party has a responsibility to uphold the logistics of the society. Human rights are applicable during peacetime and humanitarian law is applicable during wartime, so there must be an obligation on the occupying party to uphold the human rights of the occupied citizens and make sure their needs are met. Walzer notes, “the attribution of responsibility in siege warfare is a complex business”(Walzer, 162). It can be called complex business because civilians under occupation or siege, while they may have human rights, often have unequal rights to the occupier's citizens. Unjust occupation is a military acts which “though permissible by custom, is a glaring violation of the principle by which custom profess to be governed”(Walzer, 168). For example, if civilians under siege or occupation are dying from starvation, this is a sign of an unjust occupation, for the right to food is a human right that is obviously not given to the occupied people.

Second, for an occupation to be moral the besieging army would have a responsibility to leave the paths open for their flight. Walzer writes, “The restraint of war is the beginning of peace”(Walzer, 335). The inhabitants of an occupied territory, while they chose to live in the territory, did not choose to live under occupation, thus the occupying army must take responsibility for those within the territory and offer the right to leave.

In practice, many men and women will refuse to leave (Walzer, 168). They will not want to leave their communities, their families, and their life in the occupied territory. Though occupation should not be seen as a prison camp, it is both much worse and much better than a prison camp (Walzer, 168). The people of the occupied territories had this right to leave, but many chose not to take it, most likely for

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the obvious reason that they had no other place to go. The right to leave is extremely important because it is giving these people their civilian rights.

Walzer states, “The offer of free exit clears him of responsibility for civilian deaths”(Walzer, 169). One of the consequences of Walzer's argument is that when civilians are given the right to leave and they have chosen to live within the walls of occupation, they can be justifiably killed. Here, Walzer goes too far. The people of the occupied territories that choose to stay are subject to the circumstances under the occupation, these circumstances may be unequal humanitarian treatment than those who are not occupied, but never should be considered justifiably killed. No civilian can be justifiably killed because there is a moral obligation to those living under occupation, and one of those obligations is to uphold the civilian's human rights.

#### **5.4 Morality of Reprisals:**

Walzer ponders what the rules are that govern peacetime reprisals, and when they are just and unjust. A peacetime reprisal is a limited and deliberate violation of international law to punish another sovereign state that has already broken them. Reprisals refer to acts which are illegal if taken alone, but become legal when adopted by one state in retaliation for the commission of an earlier illegal act by another state. Reprisals are “military measures short of war,” so the action must be against the opposition’s military. The first rule Walzer discusses is that, “...the 'reprisals' must take care that civilians are not the incidental victims of their attack”(Walzer, 217). Civilians cannot be the direct target of the reprisal attack. The attack may cause for civilians to be hurt, yet it is the intention that is most important. “But what if no civilians died, or, as in most on-the-ground Israeli reprisals, only a small number, killed in the course of a firefight with Jordanian regulars?” (Walzer, 217). This reprisal is defensible, its purpose is coercive and forces officials to keep the peace between nations. While there may be other ways to keep the peace, a reprisal is seen as a punishment and is an aspect of war.

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Reprisals should be seen as a warning, for if our villages are attacked, your village will also be attacked. “Though life cannot be balanced against life, the second raid must be similar in character and scope to the first” (Walzer, 218). I will use the same example Walzer uses to exemplify when the rules of immunity and proportionality were respected in Israeli history.

In 1968, the focus of Palestinian terrorism shifted from Israel itself to the Israeli national airline and its passengers. On December, 26 of that year, two terrorists attacked an Israeli plane preparing for takeoff at Athens Airport. Some 50 people were aboard at the time and, although only one was killed, it was clearly the purpose of the terrorists to kill as many as possible. They aimed their guns at the windows of the plane at seat level. The two men were captured by Athenian police, and it was discovered that they were members of the Popular Front for the Liberation of Palestine, an organization with headquarters in Beirut. They were traveling on Lebanese documents. Repeatedly over the previous months, Israel had warned the Lebanese government that it could not “escape responsibility” for its support of groups like the PFLP. Now the Israelis undertook a dramatic reprisal.

Two days after the Athens attack, Israeli commandos landed by helicopter at Beirut Airport and destroyed 13 planes belonging to civilian airlines licensed in Lebanon...The planes were emptied of passengers and ground crews, and people in the vicinity were led away to safety. Whatever the extend of the risks involved, no one was killed...From a military point of view, the raid was a spectacular success—and, I think, from a moral point of view too (Walzer, 218-219).

The Israeli attack on the Lebanese planes fulfills Walzer's two rules for reprisals. This was accomplished because the Israeli reprisal was not aimed at civilians, and the Lebanese civilians were escorted away so no one was hurt. “The killing of civilians is an affront to humanity, but attacks on military installations and the destruction of civilian property pose a more narrow and direct challenge to the state” (Walzer, 219). It seems to be written in a negative sense, but that is the purpose of the reprisal—to challenge the state and punish the state for the initial charge.

The PFLP had no permissible reason for killing Israeli civilians, it was only one Israeli that was killed, yet it was clear that they intended to kill the 50 Israeli passengers aboard the plane. It was also later claimed that two Israeli soldiers were wounded during the Israeli attack on Lebanese planes. “Soldiers are vulnerable, if the state is, because they are visible symbols and the active agents of its

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authority”(Walzer, 219). A soldier's life must be treated differently than a civilian's, for a soldier is a representation of the state and must be protected. “The value we attach to human life is such that rights to life are forfeit only when particular men and women are actually engaged in war-making or national defense”(Walzer, 219). A soldier's job is to fight and often part of their job is to get wounded, this is a brave and admirable position of which they choose.<sup>8</sup> Protection of civilians may be the most important rule of justified reprisals, but the 'repriser' must not attack in a greater or more violent way.

Israel's reprisal against Lebanon was of equal severity as the initial attack. “It was clearly responsive to the incident at Athens; it was parallel and proportionate in its means (for one can destroy a great deal of property in answer to the destruction of human life); and it was carried out so as to avoid civilian deaths” (Walzer, 219). Walzer puts in parenthesis that the most important aspect of this, or the way that it looks to the public, is that Israel attacked all these planes, and the PFLP only attacked one. The public is not taking into account the cost of life, for the fact that they were civilian planes makes a difference to the morality of the reprisal.

Israel often gets a bad reputation because the media does not give the full background and reasons for their victimization. The reprisal of Israelis onto the Lebanese was permissible especially in the sense that Israel had warned the Lebanese government that it was obligated to take responsibility for the PFLP. The government of Lebanon is fully capable of controlling the inhabitants of the territory, so they should have been capable of ridding itself of the terrorist organization. But whenever there is a clear lack of concern for a territory being used as a base for terrorist raids, the territory is the one to pay the price of reprisal.

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<sup>8</sup> In Israel there is conscription for all Israeli citizens over the age of 18, although there may be exceptions. The normal length of compulsory service is currently three years for men and two years for women. They have the choice of their position in the army, and take many tests both mental and physical to find the best area for them to serve in.

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Overall, reprisals are a justified practice because they act as retributive punishment in a domestic society. Retributive meaning that they deserve to be punished for something they did wrong, but reprisals are justified because of their utility; reprisals keep the attacker from attacking again. Reprisals assume political responsibility, yet must be bound by limits. “Soldiers engaged in a reprisal raid will cross over an international boundary, but they will quickly cross back; they will violate sovereignty, but they will also respect it. And finally, they will attend to the rights of innocent people”(Walzer, 221). This means that there can be no perfect morality in a reprisal attack during peacetime, but because it is during peacetime, and not during a fight, there is an aspect of respect that must be added into the fight.

#### **5.5 Occupation As Reprisal**

Walzer's rules for peacetime reprisals, argue that a country has the right to fight back and to be seen as a strong country. The civilian population of a territory that has fought, and lost, a war may be subjected to political and economic penalties. It may be made to pay reparations, and in some cases even occupied and forced to undergo a process of political reconstruction (Primoratz, 231). When an occupied territory becomes hostile, the occupier has a right to try and stop the attacks through moral reprisals. There are three different rules of moral reprisal. First, they must attempt to protect the security of their own country, while also protecting the humanitarian rights of those who are civil in the occupied territories. Second, reprisals are permissible as long as the reprising country never targets civilians, and only punishes with minimal violence. And third, reprisals are moral when, like Israel, a country is protecting their own citizens from numerous rocket attacks and suicide bombings that were sent from the attacking territory.

#### **5.6 Reprisal in Relation to Israeli Occupation:**

While Walzer does not mention Israeli occupation in his work on reprisals, I would take his argument a step further to argue the occupation itself after the Six Day War of the West Bank and Gaza

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can be seen as a reprisal. While it is not an attack, occupation takes place during a peaceful time, in this case after a war, and was a response to attacks from the Gaza Strip and the West Bank during the Six Day War. Twenty Israeli civilians were killed in the Six Day War, while it is unclear from whom those shots were fired, the occupation comes as a reprisal from the attacks and casualties.

During the second intifada, which was a wave of Palestinian terrorism instigated and pre-planned by then Palestinian leader Yasser Arafat, Israel tried to combat the terrorism by sanctioning goods to keep the terrorists from building rockets and subsequently shooting them at Israel. Over 1,000 Israelis were killed during the second intifada, for the terrorists of Gaza waged a high-intensity campaign of guerrilla warfare against Israeli military and civilian targets inside Israel and in the occupied territory. They utilized tactics such as ambushes, sniper attacks, and suicide bombings. The reprisal to these attacks began with economic sanctions on the Gaza strip, but eventually led to Operation Cast Lead. During Operation Cast Lead the IDF targeted the members and infrastructure of Hamas in response to the numerous rocket attacks upon Israel from the Gaza Strip. "Though the terrorist raid is aimed at civilians, the reprisal must not be so aimed"(Walzer, 217). The Israelis are continuously in reprisal mode, and they are continuously scrutinized from the outside community.

This is not to say that "two wrongs make a right." The intifada was wrong, in that there were violent attacks against civilians, but occupation as a reprisal is moral. If what I have argued so far is correct, the Israelis had the right to defend themselves and protect the security of their nation. Occupation provides an appropriately limited form of military action, while still protecting the Israelis and providing vital resources to the occupied territory. There has not been a conscious effort by Palestinian officials to make peace with the occupying territory. The Israelis are in danger, and they will be even more so if they disengage from Israel's last remaining occupied territory.

**5.7 Israel's Obligation In Palestinian Territories:**

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So far I have argued that Israeli occupation is permissible when it can be considered a peacetime reprisal, while Walzer does not mention Israeli occupation in his book *Just and Unjust Wars*, so far I have used much of his material to connect with the Israeli occupation. When we looked at the Israeli occupation as a nonviolent aggression, it makes it attractive, but may push the case for morality too much. This meaning that; occupation is a nonviolent interaction with the Palestinian territories, yet the violence is replaced with political struggle. “Everywhere their soldiers would encounter sullen, resentful, withdrawn and noncooperative civilians. Though these civilians would never take up arms, they would rally, demonstrate, and strike; and the soldiers would have to respond coercively, like the hated instruments of a tyrannical regime” (Walzer, 331). While the Israeli soldiers attempted to occupy the Gaza strip in a nonviolent form, they often were cornered into violence when rioters would make aggressive attacks on the Israeli Defense Force (IDF) soldiers, and send rockets into Israel. This would force Israeli occupation from a place of nonviolence to a place of minimally violent aggression on both the part of the Israelis and the Palestinians.

The occupation of the Gaza strip has been terminated, yet there is a continued Israeli influence on the area. Israel regards itself primarily bound by the humanitarian obligation toward a civilian population in wartime. Since summer 2005, Israel has had no physical presence in the Gaza Strip itself. Hamas, a terrorist organization that does not acknowledge Israel's right to exist and is known to attack Israel, exercises full authority over the territory. Currently, Israel is bound by the international laws of war, rather than bearing general responsibility for the welfare of Gaza's inhabitants, as it did during the occupation. It is understood that Israel had and still has an obligation to the people of Gaza, but Israel itself assumed this responsibility after the occupation. The point of this section is to understand that while Israel no longer occupies the Gaza Strip, there is still the responsibility over those that were previously occupied.

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Because of the recent occupation of Gaza, Gaza still relies on Israel heavily for its everyday supplies and livelihood. "...as an occupying power Israel would be obligated to facilitate the provision of all consignments of foodstuffs, medical supplies and clothing, whether by humanitarian organizations or by foreign states, to the population of Gaza at large"(Meisels, 97). At the present time, Israel has good grounds to argue they no longer occupy Gaza, but they still have a responsibility to the people they occupy on the West Bank.

During the occupation of Gaza, Israelis had an obligation to those they were occupying, yet the Israelis also had to prevent the fueling of Gazan terrorists. "In an interim decision regarding fuel supplies, the court had already ruled that proposed energy cuts were permissible, noting that militants in Gaza actually employed a considerable amount of energy in fueling the terror machine and that it was possible for the Hamas government to set priorities in distribution by directing energy to meet civilian needs...while at the same time reducing terror activity against Israel" (Meisels, 101). These cuts in energy were directly aimed at Hamas militants, for the Israeli government still cannot be freed from their responsibility to protect the occupied civilians. Israel must uphold all civilians human rights despite the Palestinian's own limitations on everyday supplies.

Hamas has no regard to their civilian needs and has especially anti-semitic views towards the people of Israel. Following many attacks from Hamas onto Israel, the United Nations General Assembly had a special session with the Human Rights Council on July 6, 2006. They, just as Israel's government, regarded Hamas as a terrorist organization. The statement that the United Nation's published follows "Article 8, the slogan of the Islamic Resistance Movement – Hamas (widely quoted by clerics and others) is a blueprint for jihadist terrorism; "Allah is its target, the Prophet is its model, the Koran its Constitution; Jihad is its path, and death for the sake of Allah is the loftiest of its wishes"(United Nations). The civilian casualties in Gaza should not merely be seen as an effect of Israel's actions, but

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should take into account the direct harm of the anti-Israel, anti-Zionist (anti-Jewish State), and anti-semitic nature of Hamas. If there are terrorist groups that are not open to discussion or negotiation then a state is correct in taking measures to protect themselves, perhaps through occupation. Because the aggressive actions, Israel took during the occupation of territories, was not aimed at Gazan civilians, rather at Hamas militants and directly taken to ensure the safety of Israeli officers, Israeli occupation is a moral occupation based off of my definition of ethical occupation.

**5.8 Israeli Minimally Violent Occupation:**

The Israelis restrained from war by occupying two of the surrounding territories who were fighting against Israel, the West Bank and Gaza. As stated earlier, before the Six Day War the West Bank was a territory of Jordan and the Gaza Strip was a territory of Egypt. After Egypt and Jordan, amongst other Arab nations, fell to Israel, Israel occupied the West Bank and Gaza. The people living in the West Bank and Gaza had the ability to flee the occupied territories, but they had nowhere to go. Jordan was the only Arab country to welcome the Palestinian refugees and grant them citizenship. To this day Jordan is the only Arab country where Palestinians as a group can become citizens. Earlier I stated that the citizens have to have a chance to flee for an occupation to be justified, even if they have nowhere to go.

The Jordanian Government extended sovereignty over the West Bank and East Jerusalem in 1950. As a result, all Palestinians residing in the West Bank technically began living in Jordan. Under the 1949 amendment of the 1928 Citizenship Law, these West Bank refugees were granted full Jordanian citizenship. In 1967, after the Six Day War, which saw Israel occupying the West Bank and East Jerusalem, a second group of Palestinian refugees fled to Jordan. These '1967' Palestinians in Jordan were never granted citizenship (Fahamu).

They were able to enter Jordan, yet those entering the country were seen only as refugees. "Jordan has a population of approximately 6.3 million, over half of which is of Palestinian origin....Jordanians and Jordanians of Palestinian origin have equal rights to work in Jordan, in both the public and private

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sectors” (Fahamu). Still, many fled to Jordan, Egypt did not offer Gazans the same deal, and the civilian population of Gaza did not have an escape route. “Israel's restrictions, such as the closing of border crossings, were largely coordinated with Egypt's Mubarak government, so that the two external powers jointly controlled the entrances and exits from all sides”(Meisels, 99) (See section 6). The Egyptians did not want the refugees of Gaza to go into Egypt, so when a proposed gate was to be built to surrounded the Gaza Strip the Egyptians particularly helped in the building.<sup>9</sup> A strong objection against my thesis is that the Palestinians do not have the right to leave the occupied territories, yet the occupation has persisted for 47 years now and that is not because Israel wants to rule over the territories. The occupation persists because peace talks, in which Israel seeks recognition, security, and guarantees in return the creation of Palestinian state in the Gaza Strip and West Bank, have failed thus far. That is why the occupation continues, not because Israel wants to imprison and control these people.

## **Chapter 6: Moral Objections Against Occupation**

There are strong objections to my theory that moral law can govern an ethical occupation. My main focus is on the philosophical arguments and objections to the cases of when I consider occupation moral. Later in this chapter I will discuss objections to my claim that the Israeli occupation is an example of a moral occupation.

### **6.1 Objection 1: National Defense is not Self-Defense**

The first objection I shall consider is that national defense is not the same as self-defense, and so can not be morally justified in the same way as self-defense. Based off of this objection, we cannot argue that occupation is a form of self-defense and therefore could not be morally justifiable. David

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<sup>9</sup> Only recently, in May 2011, Egypt's new government unilaterally declared a permanent reopening of its Rafah border crossing with Gaza; though how extensive and enduring this loosening of restrictions on the Egyptian side really is, remains to be seen(Meisels, 99).

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Rodin, a leading authority on the ethics of war and conflict, argues that there is no reasonable analogy between self-defense and national defense.

He claims that war has two levels, for it is both a relation among persons and a relation among super-personal political entities such as nations or states (Rodin, 63). Rodin argues we cannot “attempt to model international law and international ethics on domestic law and interpersonal ethics...”(Rodin, 63). Here in lies his issue. National defense is not properly conceived as a right that individuals have or a right that states have. Self-defense is possible only when an individual is attacking another individual. For example, if someone is attacking me with a knife and I shoot him or her in the leg I am acting out of self-defense. Nations, however, cannot do this. When a nation is being attacked the nation cannot act in the moment. Rather, a nation must organize, plot, and plan their attack, which removes an important aspect of self-defense, namely, the necessity of acting in the moment. When I shoot someone in the leg, when I am attacked, I am doing whatever I can in the moment to protect myself. If the person stabbed me with a knife and I recovered in the hospital and then went to where the person lived and shot them in the leg, this is no longer considered self-defense, but actually sounds more like revenge.

Another difference between self-defense and national defense is that a state can have the right to defense even when the lives of none of their citizens are threatened. Observing that “...soldiers fighting a defensive war are permitted to use violence against persons who pose no imminent threat to anyone exceeds that which could be justified solely in terms of the right of individual self-defense...”(Rodin, 127). For example, if soldiers are sleeping or retreating from the conflict, they are not posing an immediate threat, but are still permitted in war to kill. This is unnecessary for self-defense because the soldier is not directly coming after the supposed defender. Also, it is natural to regard war as defending what we call “common life” implicit to a nation or state. “The challenge here is to provide an interpretation of the value of the common life in such a way that it could function as ground for a right

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of national defense...This is because the character of a nation's common life may be oppressive, unjust, or cruel”(Rodin, 66-67). Thus, defending an immoral common life would be unjust, yet may still be regarded as self-defense. War or occupation can properly be considered self-defense only if occupiers are defending moral life. While this argument is strong, it can only work to contradict my theory if the occupiers are occupying for the security of an unjust cause or people.

To reject David Rodin's theory, I use Jeff McMahan's *War as Self-Defense*, he states, ...if war at least in some instances, lies on a continuum with individual self and other defense, and if acts of individual self and other defense can sometimes be morally justified, then war can in principle be morally justified as well”(McMahan, 75). McMahan's argument goes as follows; if the war began because a nation acted in self-defense, and acts of self-defense can sometimes be justifiable, then war can also sometimes be justifiable. McMahan's objection to Rodin is based on Rodin's theory that war cannot be justified as self-defense, yet can be justifiable individually.

Rodin argues that soldiers are permitted to use violence against any persons in war, because the conditions of war are different from a situation in domestic society. “War involves threats that consist of activities organized in phases over extended periods of time. A soldier sleeping in invaded territory has already attacked and is engaged in attacking in the same way that I am engaged in writing this essay even while I pause to make a cup of tea” (McMahan, 76). The quote is arguing that a “sleeping soldier,” although not presently attacking a person is still engaged in the act of “attack,” and so can still be considered a threat in the same way that a person invading your home is a threat. Similarly, it would seem impermissible to attack a fleeing army, yet if there is reason to believe an attacker's retreat is a strategic way to prepare for a renewed attack, it would be misguided to merely wait passively for the attacker to catch his break (McMahan, 76). In these two cases, self-defense in war is justified, for in war the other side does not have to be actively engaged in violence in order to be considered an “attacker.”

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While self-defense in interpersonal relationships requires the individual to be actively engaged in an attack, countries cannot attack in that reflexive nature. While countries or territories cannot defend themselves in a reflexive manner, this does not mean they should be stripped of their ethical right to defend ones people.

**6.2 Objection 2: Occupation is Similar to a Preemptive Attack**

If occupation is “preemptive” then it is not an act of self-defense. If I see someone standing across from me with a knife, but making no move to actually attack me I am not justified in shooting him. I cannot say that I am acting in self-defense. Even “Stand your Ground” Laws require that the perpetrator be attacking me or threatening me in some way. The idea that Iraq had weapons of mass destruction was a reason for the USA to attack Iraq in the name of self-defense, and there was reason to believe Iraq was intending to use weapons of mass destruction against the USA, so the preemptive strike to be considered self-defense. Since it turns out they did not have weapons of mass destruction, there is no way to say that it was a form of self-defense. Analogously, occupation is often seen as an act of war that is taken to protect a country from what could possibly happen if the occupied country was not occupied. Preemptive attacks are considered unjust for a variety of reasons, but the main objection is because they are carried out before the other side attacks with military force, so it appears to make the side carrying out the strike the aggressor. Usually, preemptive attacks are carried out before a formal declaration of war. As such, occupation is often looked upon as a preemptive attack, and occupation may be seen as unethical.

Franklin Eric Wester, author of *Preemption and Just War: Considering the Case of Iraq*, writes that the use of military force by the Bush administration against the regime of Saddam Hussein does not meet the ethical criteria for “preemptive war” set forth in the classical *Just War* tradition (Wester, 32). *Just War* tradition, tells us what actions can and cannot be justifiably taken in war. The attack failed

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crucial ethical tests, Wester analyzes. Occupation could not be compared to the Bush administrations attack. This section serves to argue that occupation, while in some circumstances is a preemptive attack may also be a moral preemptive attack given the circumstances.

The first requirement for a justifiable preemptive attack; is that the attack may only be moral when the threat is real and so near at hand that launching war could be considered self-defense. “Anticipatory self-defense is recognized in international law and *Just War* tradition as a just cause”(Wester, 33). The first test is whether a nation is acting out of self-defense or out of aggression. Wester gives four standards of preemption, for if they are not followed the threat is not done in self-defense. The criteria is as follows; there must be a threat, the probability of the threat must be certain, the threat must be imminent, and the cost of delay must be high. For the case of Iraq, the strike fails this test, yet later I will explain how occupation seems to be different.

Historically, before the United Nations, the inherent right of self-defense was limited to what Daniel Webster, American senator during the period leading up to the Civil War, called “instant and overwhelming necessity with no choice of means and no time for deliberation.” As the nature of war changed, “anticipatory self-defense” also is permissible. There must be credible evidence that the attack was imminent, and that peaceful means of settling the issue been exhausted, but it can be argued preemptive attacks should be permissible in cases of imminent defense.

Michael Walzer does think preemptive strikes are sometimes moral. Walzer lays out three requirements for justified preemptive attacks. First there must be an obvious intention to do injury, for example, the Israeli attack on the Lebanese planes(See section 5.4), was directed to hurt the Lebanese by attacking their planes. Second, there must be active preparations that turn that intention into a positive danger, To use the same example of the Lebanese planes, the attack was so prepared that they knew when to attack that there would be no civilian casualties. If this fight was delayed the PFLP would have

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continued to kill Israeli citizens with the Lebanese support. Finally, there must be a situation in which the risk of defeat will be greatly increased if the fight is delayed.

In the case of Israeli occupation it is unclear whether who attacked first. The Israelis were attacked in the Six Day War, then they occupied, then the occupied people attacked (first and second intifada), the Israelis disengaged from Gaza, the occupied people attacked even greater, and now Israel is only occupying the West Bank in hopes that there will one day be peace. The current occupation of the West Bank seems to be the most current preemptive action, for they are occupying in self-defense of what could happen if the Israelis disengaged from the West Bank. Occupation is a justifiable preemptive attack, but only after the conditions are met.

### **6.3 Objection 3: Right to Self-Determination**

A strong argument against the ethics of occupation is that it withholds the occupied country from their right to self-determination. In general terms, self-determination is a community's autonomy, and its right, to manage its affairs as it sees fit independently of external interference. This can be compared to interpersonal self-defense. Presumably, if I defend myself against an attacker my only aim is to keep him from attacking me. I do not try to interfere with his autonomy in any other way. In the strict sense usually intended, self-determination is a matter of sovereignty over territory.

When existing self-governing countries are viewed as beneficiaries, the principle calls for recognition of state sovereignty and non-intervention in internal affairs. For a deserving community which is not yet self-governing, it provides that the community be allowed to determine the form of government that shall exercise authority over its territory and resources (Kapitan, 12). Tomis Kapitan, author of *The Israeli-Palestinian Conflict: Its History, and Some Philosophical Questions it Raises*, gives some arguments for self-determination. She defines self-determination stating, "By contrast, national self-determination exists when a nation or people preserve itself and manage its affairs as it sees

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fit, including when it constitutes itself as an independent sovereign state (Kapitan, 13). She argues that self-determination is most important when it is applied to an "unsettled territory," such as a community that is currently under some form of internationally sanctioned trusteeship, or an occupied territory.

The legitimate residents of an unsettled territory shall be permitted to constitute themselves as a self-governing unit upon qualifying as a politically coherent community. Agents with the moral prerogative--whether by circumstance or investiture--to affect what institutions prevail in that territory, must ensure that self-governance is achieved through popular consent. There are limits upon the application of this principle; specifically, there must be institutional protection of individuals' human rights and of legitimate cultural interests of significant subgroups...Imposing an arrangement upon the inhabitants against their will, by contrast, creates resentment that threatens future instability (Kapitan, 14).

The argument for viewing regional self-determination as a norm of international justice is straightforward. This is because political settlements in a territory must be responsive to what it has established, and an understanding to what the inhabitants take to be in their legitimate interests.

An inherent value in national self-determination cannot be disputed, but I must distinguish what it might yield if people were perfectly impartial from what it is likely to produce in practice. It is unlikely because there are very few areas of the world that are culturally homogenous, and the "unsettled" regions that are permitted self-determination are typically not homogenous. Is each ethnic group then entitled to self-determination? If so, not only would secession movements proliferate, so would the number of incompatible claims to one and the same region (Kapitan, 15). The government is supposed to represent the people. Occupation keeps a governed people from self-determination. Essentially a democratic society is supposed to be individuals determining the way their government rules. There is no reason to think that just because there are multiple view-points that we cannot come to a compromise. Thus, I would argue self-determination should be in the hands of peoples, not the government, and self-determination and autonomy are rights we ought to protect for individuals.

**Chapter 7. Objections Against Israeli Occupation**

In this chapter I consider objections that have been brought against the Israeli occupation of Palestinian territories. The Israeli-Palestinian conflict is complex, but I will show that there are good reasons for thinking the Israeli occupation is itself moral.

For example, the USA has a strong campaign to end the Israeli Occupation. The campaign is called “End the Occupation.” They will encourage one of the most powerful anti-Israel movement's in the USA right now, the Boycott and Divestment Sanctions (BDS). The End the Occupation movement along with the Palestinian civil society in 2005, issued a call to the world to apply boycott, divestment, and sanctions (BDS) against Israel until it upheld international law (End the Occupation). While I do not submit that every action taken by the Israel is moral, I will show that this particular occupation is morally permissible given the nature of the conflict.

**7.1 How Do We Know Israel Wants Peace?**

One of the main claims in my thesis is that it is unethical to occupy a territory for anything but future peace. Many critics argue that Israel is not motivated by a desire to instill peace, but instead wants to control Palestine with the intention to be in full control of all the land that was Israel post-'67 and to kick out all of the Arabs.. If this is true, then, given my arguments laid out above, to stay moral Israel must disengage from the West Bank just as they disengaged from Gaza in 2005 (see section 2.6). In this section, I show that there are good reasons to think that Israel is motivated by a desire for peace. While I cannot look into the mind of the Israeli policy-makers, we can look at their actions in the past and their plan to move forward as evidence that they are aiming at peace.

Earlier in the paper I wrote about 1948, when Israel's Arab neighbors tried to destroy the State of Israel. In 1948, Yasser Arafat rejected a plan to create a Palestinian State, which the UN offered them at

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the same time as when Israel was founded<sup>10</sup>. The West Bank, which Jews call Judea and Samaria, is part of the ancient kingdom of Israel, and has been home to Arabs and Jews for thousands of years. Arafat himself said he will take back Israel in its entirety, if he has to do it all at once or piece by piece. This meaning that Israel has consistently attempted to give up land for peace, yet Arafat and other Palestinian leaders historically declined.

The Israeli government has consistently shown a readiness to uproot settlements in the West Bank in the pursuit of peace. Land for peace, as stated above, is a necessary component of an ethical occupation. They returned settlements both from the Sinai, as part of the 1979 treaty with Egypt, and unilaterally from the Gaza Strip, in 2005(See section 2.6). Moreover, after the territories were captured in 1967, Israel attempted to return the territory to the Arab nations that had originally attacked Israel. The Arab response, commonly referred to as the “three NOs”: “no peace with Israel, no recognition of Israel, no negotiations with it.” So, construction across the West Bank continued and the West Bank and Gaza would remain under Israeli control.

Further evidence that Israel is engaged in an ethical occupation for peace, is that they try to respect the autonomy and self-determination of the occupied territory. For, instance, Benjamin “Bibi” Netanyahu, current Prime Minister of Israel, agreed to relinquish control over Hebron, a city in the West Bank, burial place of the Jewish Patriarchs, and religious site to many Muslims, to the Palestinians. Additionally, he froze Jewish building in the West Bank for 10-month in 2010 in hopes for peace. These things amongst others, while are not proof of his intent, are evidence of Netanyahu's commitment to peace, and his understanding that the civilian population is not to blame.

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<sup>10</sup> Had Arafat chosen to lead his people to peace and reconciliation with their Jewish neighbors, as he had promised the British officials who appointed him to his high rank in the early 1920s, the Palestinians would have had their independent state over a substantial part of Mandate Palestine by 1948, and would have been spared the traumatic experience of dispersion and exile. Had Arafat set the PLO from the start on the path to peace and reconciliation, instead of turning it into one of the most murderous terrorist organizations in modern times, a Palestinian state could have been established in 1948.

## **7.2 Just Give It Back?**

One of the most asked questions about Israel, is why doesn't Israel just give back the occupied territories. The assumption is that if Israel stops occupying these territories, then there will be peace. The Britain Israel Communications and Research Centre (BICOM) shows that historically peace has not been restored when Israel no longer occupies these territories.

Simply put, when Israel 'just gets out', Iran 'just gets in'.

1. Israel 'just got out' of a security zone it controlled in Southern Lebanon in 2000 and there are now 60,000 rockets aimed at Israel in the hands of the Iranian proxy, the antisemitic and terrorist organization Hezbollah.

2. Israel 'just got out' of the Gaza Strip in 2005 and 8,000 rockets have since been fired from the Strip onto Israeli civilians. And those rockets are getting more powerful; in November 2012 Iranian-supplied Farj-5 rockets<sup>123</sup> reached Tel Aviv<sup>124</sup> and Jerusalem.

3. To 'just get out' of the West Bank without any security guarantees would be extraordinarily risky because of the topography of the land. The West Bank is the strategically critical high ground overlooking Israel's narrow coastal plain where most of its population and industry, and its only major international airport, are situated. Unilateral withdrawal from the high ground of the West Bank could be followed by an Iranian-backed Hamas takeover of the PLO and the West Bank, and the conversion of a Palestinian state into an Iranian-supplied rocket base from which missiles could rain down on the Israeli cities strung along the narrow coastal plain (BICOM, 38).

Overall, Israeli withdrawal without negotiated political and security commitments from the Palestinians would most likely perpetuate the conflict not resolve it. While arguing that the Israeli occupation is an act of self-defense, I also have great sympathy for those living under occupation. There is great pressure on the Palestinians to move toward a final peace agreement, but that will only happen when there is security ensured for both Israelis and Palestinians.

## **7.3 What About the Refugees?**

One may argue that the Israeli occupation is immoral because there are many refugees of occupation who are not allowed in the occupying country. It is understood that displaced Palestinians have long asserted that they have a legal right to return to what was once Palestine, including land that is

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now Israel. Israel does not grant Israeli citizenship to West Bank Palestinians. This may seem to be a problem for my claim that a state must not occupy for an acquisition of land. This objection that settling in occupied land breaks Rawls' laws of just occupation, goes beyond what is necessary for self-defense, and is in fact a strong objection.

Walzer argues that even outright sieges may be morally permissible in the face of necessity, though on his account this is so only when civilians are ensured at least the right to exit the besieged city, if they wish to do so: 'People have a right to be refugees', he argues (Walzer, 168). Walzer takes his cue from Talmudic law, cited by Maimonides, placing a moral restriction on this practice, and sanctioning the siege of a city from only three sides, not all four, thus guaranteeing the inhabitants' right to escape starvation and death (Walzer, 168). Israel's blockade of Gaza cannot literally be carried out from all sides, as the Gaza Strip borders Egypt, nor do Gaza's inhabitants face starvation and death at the hands of Israel (Meisels, 99). However, the bulk of the occupied civilian population does not have an escape route. In fact, the bulk of the civilian population of Gaza has not had much of an escape route for over four years. Additionally, Israel restricted the occupied citizens by closing the border crossings, yet that restriction were largely coordinated with Egypt's Mubarak government, so that the two external powers jointly controlled the entrances and exits from all sides.

My response to this argument goes as follows; Prime Minister Benjamin Netanyahu has said. 'We do not want to rule over them, we do not want to govern their lives, we do not want to impose either our flag or our culture on them' (Netanyahu). Most Palestinians do not want to be annexed to Israel either. They want to be citizens of a sovereign and independent Palestinian state, not citizens of Israel. The Palestinians were displaced, but there are twenty-one Arab countries that are morally obligated, and should be required to take them in. If at the very least, the struggle and plight of Palestinian refugees could help to urge the Palestinian Authority to negotiate with the Israelis.

#### **7.4 Human Rights Violations Against Occupied People**

As stated earlier, occupiers must uphold the human rights of those they occupy in order to keep the occupation justified. Members of the opposition, who report Israeli occupation is unjust, would report about the recent issue where Israel has been targeted for not allocating Palestinians enough access to water in the occupied territories.

To understand this issue one must understand the facts of this occupation. “The Palestinians would not have been forced to buy water from Israel if it were not an occupying power which controls their natural resource, and if it were not for the Oslo II Accords, which limit the volume of water they can produce, as well as the development and maintenance of their water infrastructure” (Haaretz). The Israelis do not give water to the Palestinians. Rather, it sells it to them at full price. Israel sells about 60 mcm per year, which is more than the Oslo II Accords agreed for it to sell. Israel will sell and the Palestinians will drill for the rest, and Palestinian dependence on the occupier, Israel, will only increase.

As stated in Chapter 3, Israel has been criticized by the media for what *Haaretz*, Israel's version of *USA Today*, calls “The Israeli 'Watergate' Scandal.” The issue is that occupied Palestinians in the West Bank receive twenty percent of water produced in the West Bank and about eighty percent goes to Israelis, who also enjoy resources from the rest of the country (Haaretz). Water accessed in the occupied West bank is much better off than those living in the unoccupied Gaza Strip. “A 2011 survey shows that 70.9% of households in the West Bank consider the water quality to be good, while the share in the Gaza Strip is only 5.3%” (Palestinian Central Bureau of Statistics). While not to make this a relativistic argument, for this does not release Israel of moral responsibility for what happens in an occupied territory, the relation of course is meaningful. The water use and access to water is undoubtedly imbalanced, for the water is diverted to Jewish settlements. Water infrastructure is simply better for the Israelis than the Palestinians, and explains the access issue. The Israelis corrected the weakness in the

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Palestinian water infrastructure, but there is obvious inequality of water. If the Israeli objective is a commitment to peace following the occupation, the Palestinian state has to be responsible for building its own infrastructure capable of accessing water in the same way Israeli systems can. The Palestinians cannot currently fix their own infrastructure, and hence calls for inequality.

**7.5 Morality of Economic Sanctions:**

Gazans are not living under the same circumstances as Israelis living in Tel Aviv, the most populous city in Israel, and a city approximately forty-four miles from the center of Gaza. The economic sanctions on Gaza from Israelis were particularly problematic. These were the 2006–2007 economic sanctions against the Palestinian National Authority which were imposed following the January 2006 legislative elections that brought Hamas to power. The economic sanctions included the U.S.A ceasing to providing both direct and indirect foreign aid to the PA, with the exception of some emergency humanitarian assistance. These sanctions were difficult to abandon, for they may have signaled weakness and encouraged the enemy, so Israel continued to impose its ineffective sanctions and Hamas continued launching rockets at Israeli civilians. By signaling vulnerability, Israel would be putting the lives of its citizens at risk, for many more rockets would fall onto Israeli cities and more suicide bombers on Israeli buses. Israel's subsequent Operation “Cast Lead” was the response to the issue of security and considerably reduced the rocket attacks, after eight long years. Gaza is not developed enough independently to produce adequate supplies of food and other essential supplies. “In some cases, of which Gaza may be one, economic sanctions can be worse than traditional sieges. Economic sanctions may be considered unjust because of its immediate harm of the civilian population living under occupation. Walzer would debate this argument stating that it is the right of the occupying country to restrict the goods of the occupied civilians, for they had the option to leave and now must live under the conditions. Israel did not see it from this perspective and are strong supporters for human rights, for

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even when Israel is attacking they alert the civilians of the attacks. Overall, Israel will still enforce sanctions when needed to protect the security of their people.

In the case of Israel, the state has accepted the responsibility they have to the civilians of Gaza at least to the extent of supplying basic humanitarian needs, securing the passage of minimal goods and monitoring the humanitarian situation in the Strip. Even in the case of the sanctioning of water, the people of the occupied territories have what they need. "Israel's loosening of the restrictions on Gaza and Egypt's reopening of the Rafah border, along with the continuing unrestricted supply of vital needs, goes a long way toward alleviating immediate civilian suffering. But the long-term concerns regarding peace and normality remain, as no overall end to the conflict is clearly in sight" (Meisels, 100). This is not to say there are not inequalities because there are, but Israel never restricted the dyer needs of occupied persons. While inequalities will exist between the occupier and the occupied people, it may be out of a future hope for peace. There is always the underlying reason of security, and the economic sanctions placed by Israel on Gaza were to ensure Israel's security. Occupation could become too comfortable, and the occupied must be able to suffice for itself and not simply off of the occupying country.

## **7.6 What is Apartheid?**

'Apartheid' is the term used to describe the racial segregation and discrimination in South Africa from 1948 to 1994. The South African apartheid was when violence was forced on black people, by a white minority government. Under South African Apartheid, people were legally classified into racial groups and forcibly separated from each other. Apartheid South Africa was ruled by a White-only government, and a wide range of laws ensured racially based discrimination, including the prohibition of Blacks from voting, using Whites-only schools and hospitals, and even mixing with Whites in public places. Article 3 of the 1965 International Convention on the Elimination of all Forms of Racial

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Discrimination (ICERD) defines apartheid as 'governmental policies based on racial superiority or hatred.' All signatories to the Convention, including Israel, 'condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.' (ICERD).

The State of Israel has nothing in common with apartheid, yet there is a claim that Israel is an 'apartheid state' just like South Africa was in those years.

It is true that the Israeli occupation and the South African apartheid have certain similar characteristics.

In the West Bank, there are roads "for Israelis only." But the Israeli policy is not based on race theories, but on a national conflict. A small but significant example: in South Africa, a white man and a black woman (or the other way round) could not marry, and sexual relations between them were a crime. In Israel there is no such prohibition. On the other hand, an Arab Israeli citizen who marries an Arab woman from the occupied territories (or the other way round) cannot bring his or her spouse to Israel. The reason: safeguarding the Jewish majority in Israel. Both cases are reprehensible, but basically different (Avnery, 2009).

In South Africa there was total agreement between the two sides about the unity of the country. The struggle was about the regime. Both whites and blacks considered themselves South Africans and were determined to keep the country intact. The whites did not want partition, and indeed could not want it, because their economy was based on the labor of the blacks (Avnery, 2009).

This is the foundational stone of what is called the 'Boycott Divestment Sanctions' or BDS. This is the effort by anti-Israel pressure groups to boycott, divest from and sanction Israel for their 'apartheid'. This objection is wrong, malicious, and severely damages the peace process. The groups who support BDS have an extremist political agenda. Their hope is to make Israel into a state shunned by global civil society, diplomatically friendless, and eventually left completely vulnerable (BICOM). This will make Israel vulnerable to every country that surrounds it, of whom has opposed the very existence of a homeland for the Jewish people, since the very day it was founded. The hope of these extremists is to

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pass their campaign off as a reprise of the globally popular boycott of apartheid South Africa, which helped bring white minority rule to an end in that country. If they succeed, the prospect of peace will be further from a possibility.

The prospect of peace will be further of a possibility because the BDS movement encourages Palestinians not to accept Jewish national rights to occupation and the State of Israel. Without this acceptance, Israel cannot consider the territorial compromises it must make for the creation of a Palestinian state alongside Israel. The BDS movement projects separation and is severely impacting the prospect for peace in the middle east.

### **7.7 Why Israel is NOT an Apartheid State**

Israel cannot be considered an apartheid state for many reasons, but most importantly, 20 percent of Israeli citizens are Arabs. Israel's Arab population is made up of communities who were living in Israel prior to the formation of the state, previously living under Ottoman and then British Mandatory rule. "Israeli Arabs currently constitute 20 percent of the population, numbering 1.7 million people, the religious majority of which are Muslim (84 percent), with large Druze (8.1 percent) and Christian (7.8 percent) populations"(UK Task Force, 2012). The 2012 Index of Jewish-Arab relations, released by the University of Haifa, found that 58 percent of Israel's Arab citizens accept Israel's definition as a nation with a Jewish majority, with 60 percent regarding Israel as their homeland and 71 percent describing it as a good place to live (UK Task Force, 2012). This study from the UK Task Force on issues relating to Arab citizens of Israel found that while many Arab citizens of Israel are sympathetic to Palestinian self-determination and statehood and are often critical of Israeli policy in Gaza and the West Bank, the majority have integrated into Israeli society. The Arab-Israelis, also many Jewish-Israelis do not support violence against the state, and have no interest in conflict.

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Further, Professor Avi Degani of Tel Aviv University asked Arabs aged 30-55, if the existing Arab parties in Israel represent the interests of the Arab sector in Israel well or badly. “61.4 percent of Israel's Arabs have a less than favorable opinion of the way the Arab Knesset members represent the interests of Israeli Arabs according to a new poll”(Ronen, 2012). It is a fact that Israeli Arabs have been consistently voting extremist Arab parties into the Knesset, Israeli government, and these extremists distort the world's understanding of the Arabs living in Israel and those under occupation.

#### **7.8 Inequality Between Arabs and Jews**

There are inequalities between Israeli society and Israel's Arab citizens, by Arab-Israeli I mean non-Jewish Israeli citizens. Just as was stated in Chapter 4 in the issue of the water shortage in the West Bank, there is still anti-semitism from the Arabs towards the Jews and anti-arab sentiment towards the Arab-Israelis. Whilst 20 percent of the Israeli population is defined as living in poverty, the Arab figure is 50 percent, yet 60 percent of the Haredim or ultra-Orthodox Jews in Israel also live in poverty (Margalit,2013). Additionally, Arabs are underrepresented in key areas of employment; for instance, only 460 of Israel's 150,000 high- tech workers were Arab in 2013. “Arab death rates from preventable diseases are 1.5 per cent higher than that of Israel's general population. Disadvantage also exists in education; only 10.6 per cent of Israeli university students were Arab”(UK Task Force, 2013). Finally the socio-economic gap exists in education.

I read the arguments from the Human Rights Watch organization and I find their information generally skewed and one sided. For example, Human Rights Watch has compiled an extensive study of Israel's policy of, "separate, but not equal" schools for Palestinian children, finding, "Government-run Arab schools are a world apart from government-run Jewish schools. In virtually every respect, Palestinian Arab children get an education inferior to that of Jewish children, and their relatively poor performance in school reflects this"(Jewish Voice For Peace, 2012). Human Rights Watch blames this on

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Israel, arguing that it is the Israelis obligation to build schools. Israel has an obligation to make sure that the citizens in the occupied territories have all of their needs met, are treated fairly, their autonomy respected (which would mean fair and equal treatment). Israel may even have an obligation to ensure that money is not being funneled into terrorists groups. Thus, they also deserve the blame for allowing inequality and sub-par living conditions in the territories they occupy.

In 2008, the U.S. State Department, in their Country Reports on Human Rights Practices criticized Israel for the unequal spending on education for Jewish and Arab children. “Knesset Committees and the Israeli High Court have identified uneven allocation of resources to Arab schools and higher dropout rates amongst Arab pupils”(BICOM). Western nations have given the Palestinians money in aid specifically to fix the issue regarding education. These funds, more than was given to Europe to rebuild after WWII, went to one man, Yasser Arafat. He was the Chairman of the Palestine Liberation Organization (PLO), and President of the Palestinian National Authority (PNA). It was discovered that he had secret investments of over one billion dollars. These millions of dollars is the money that Arafat chose not to use on his people’s education. The objection that the socio-economic conditions of the Arab-Israelis makes the Israeli occupation immoral, while legitimate is unfair. There is a socio-economic gap between the national majority group and the national minority group in Israel, yet this does not make Israel an apartheid state.

The position of the Arab minority in Israel is totally different to the position of the black majority in apartheid South Africa. All citizens of Israel vote in elections on an equal basis, for there are no restrictions on legal movements, employment or sexual or marital relations. Even opponents of Zionism have free speech, assembly, and may form political organizations. Additionally, some of the major Israeli towns and cities are considered mixed Arab-Jewish cities (e.g. Acre, Haifa, Jaffa, Lod and Ramle) with large Arab and Jewish populations. The Mixed Cities Project is a project that operates in

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the mixed cities of Lod, Ramle and Acre, fighting to promote equality in housing, infrastructure and planning and for the advancement of social justice. This project was established in 2003 at the initiative of Shatil, the New Israel Fund's Empowerment and Training Center for Social Change Organizations, with the support of the European Commission (TMCP). Their vision is "A strong community of Arabs and Jews living in equality and dignity in Israel's mixed cities" (TMCP). These organizations and peace seeking behavior did not happen by accident. Israel's 1948 Declaration of Independence committed the country to 'complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex' and pledged to 'guarantee freedom of religion, conscience, language, education and culture.' Israel has kept to their declaration, and while the Arabs and Israelis are not socio-economically equal at the moment, they are working towards it. Of course, Israel has a very long way to go before it can say its minorities are completely free of discrimination as a national minority. I acknowledge that Arab areas often face significant challenges in relation to infrastructure, housing, education, employment, access to municipal services and crime (UK Task Force, 2012). Yet of which society is it not true to say that minorities suffer from disadvantage and discrimination, yet they are not considered an apartheid state. Dr. Mohammed Wattad, Israeli Arab Legal Scholar, says it best,

Is there discrimination in Israel? Yes-there is discrimination against women, elderly, Arabs, Russian Jews, Christians,... But the same goes for Canada. Is it good-No? But it means we have to deal with the problem from within.... The existence of discrimination in a state does not mean it is an apartheid state...There is a big difference between apartheid and discrimination (SPME).

While Israel, just as any country, could do better in breaking discrimination, it is not apartheid. If Israel has enough power to secure safety and some level of peace, then they presumably have the power to help the citizens of the occupied territory. Occupied territories have an obligation to work towards peace. By making sure the citizens of the occupied territory have the same rights and access as Israeli

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citizens, this will probably help bring about peace much more quickly. Especially concerning education. Educated people are more likely to negotiate.

### **Chapter 8. Conclusion**

Since 1967, the Israeli presence in Gaza and the West Bank has been the subject of entirely legitimate criticism. Israel has a moral responsibility to do all it can to end the occupation, but it also has a responsibility to do so in a way that does not endanger the lives and future of its own citizens. The current occupation must ensure there will not be a future conflict. That is Israel's dilemma. In this paper I set out to show that occupation is moral given that it is necessary for self-defense and so allowable by international law. The people in the territories were treated in respect to human rights so it is a legal occupation. By using the works of John Rawls and Michael Walzer, I was able to argue that occupation is a justifiable action in a just war. Thus, when the Israeli occupation is put next to their standards, the Israeli occupation is justified.

This Israeli occupation of the West Bank could bring about a future of a two-state solution or a Jewish State and a Palestinian State. This is not unheard of, for a good example of a successful state-building project is the much-studied Allied occupation of Germany after World War II. After a military defeat and a recent political history of totalitarian rule (but a prior political history with democratic institutions), the German nation was in need of a fresh institutional start, for which the Allied occupation provided the basic infrastructure (Bali, 7). In addition, Germany had prior experience with democratic institutions, providing a favorable context for the reconstruction of a stable and liberal institutional framework.

Finally the U.S. Occupation of Germany took place against the backdrop of an external security environment that was conducive to local acceptance of the state-building exercise. While I am not

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saying this is entirely the same issue facing the middle-east, state building requires this first step of occupying the territory.

Yet this is not the last word I have to say on the ethics of occupation. What is essential is that occupation can help two conflicting communities thrive and eventually come to a peaceful agreement. There is good reason to think that the Israeli occupation can be good for both the Palestinians and the Israelis so long as the citizens of both communities can retain dignity and a capacity for interacting in a manner that is conducive to long-term stability throughout the region.

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