

Let Us Rethink Our 'Special Relationship' with Israel

"Here I touch the very quick of my own strong and deep feelings on this subject. I see my country being led through actions and postures that make public mockery of our most ancient and most sacred dedications."

- Professor Charles L. Black, Jr.

About Professor Charles L. Black, Jr.

A Texas native, Charles L. Black, Jr. was one of the nation's leading authorities on constitutional law and jurisprudence, writing the legal brief for the historic case *Brown v. Board of Education*. Professor Black joined the Yale Law faculty as its first Henry R. Luce Professor of Jurisprudence, going on to become the Sterling Professor of Law, the Yale School's highest teaching post.

A professor for 52 years, Black wrote more than 20 books and hundreds of articles. "Let Us Rethink Our 'Special Relationship' with Israel" was the only one in his long career that no magazine or journal in the United States would publish.

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Professor Charles L. Black, Jr.
Sterling Professor of Law Emeritus, Yale University

If Americans Knew Mission Statement

In a democracy, the ultimate responsibility for a nation's actions rests with its citizens. The top rung of government - the entity with the ultimate power of governance - is the asserted will of the people. Therefore, in any democracy, it is essential that its citizens be fully and accurately informed.

In the United States, currently the most powerful nation on earth, it is even more essential that its citizens receive complete and undistorted information on topics of importance, so that they may wield their extraordinary power with wisdom and intelligence.

Unfortunately, such information is not always forthcoming.

The mission of If Americans Knew is to inform and educate the American public on issues of major significance that are unreported, underreported, or misrepresented in the American media.

It is our belief that when Americans know the facts on a subject, they will, in the final analysis, act in accordance with morality, justice, and the best interests of their nation, and of the world. With insufficient information, or distorted information, they may do the precise opposite.

It is the mission of If Americans Knew to ensure that this does not happen - that the information on which Americans base their actions is complete, accurate, and undistorted by conscious or unconscious bias, by lies of either commission or omission, or by pressures exerted by powerful special interest groups. It is our goal to supply the information essential to those responsible for the actions of the strongest nation on earth - the American people.

LET US RETHINK OUR 'SPECIAL RELATIONSHIP' WITH ISRAEL

By **Charles L. Black, Jr.**
Sterling Professor of Law Emeritus, Yale University
September 1989

I believe that the so-called “special relationship” now assumed to connect the United States and Israel ought to be radically rethought in all its aspects and clear down to its deepest foundations. I believe such a rethinking would sooner or later put an end to this “special relationship,” in anything at all like its present form.

This “relationship,” as it now functions de facto, is sweepingly and grossly incompatible with our country’s supposed dedication to the cause of human rights throughout the world; it poisons the sheer basic honesty of that dedication; and must more and more be seen to do so, by ourselves and by the whole community of peoples and nations. I have no illusion that our extrication from this involvement, this visibly and invisibly “entangling alliance,” will be easily or soon accomplished — or even that it is certain of accomplishment at any time. But that depends, after all, on the possibility of change in the knowledge and conscience of the whole American people, and we can’t begin to know about that until we try. I think it a duty to try, and to keep trying.

It can never be too early or too late to address oneself to such a duty. At just this time, we are being furnished copious and moving, contemporary illustrations of the actions of Israel in cruel derogation of basic human rights. It seems best, therefore, to put the case mainly on what has been shown us in the months of the Uprising - though massive corroboration can be found in the past.

On the West Bank and in Gaza — the Occupied Lands — there is no let-up in the killing of Palestinians, mostly young ones, often mere children, by the soldiery of Israel. But I fear a flagging of American concern. It is hard not to be touched by that fear, for I remember what happened here in our country after Israel’s 1982 invasion of Lebanon. The savagery of that rampage —

culminating as it did in the pitiless and deadly summer-long bombardment of civilians in West Beirut — dropped all too quickly out of interest. Many Americans who at the very time of those events were almost as horrified as they should have been, seemed before long to have become a little confused about who had been killing whom to have plastered over the inexcusable with excuses so vaguely conceived and expressed as to be hard to pin down for refutation. Then they dismissed the whole distressful thing from their minds, while American “aid” to Israel rolled on cluster-bombs, Security Council “vetoes” and all. It would be naive not to be afraid that a like oblivion may come to wash over the present doings of Israel. Indeed, I suspect the Israelis are counting on it.

Probably the best defense against this is to insist again and again on the point that these doings are not only Israel's, but ours as well. Through the actions of our government, we have put and seem bent on keeping Israel in a position to do whatever it desires, without fear of serious consequences. This corrupting power of Israel is in main truth and substance our creation; we are therefore ourselves fully responsible for the use to which Israel puts the power we thus place in its hands, particularly as we have now a very long and broad experience of what Israel will do with the power we hand over to it. If the American people can ever be made clearly to see even this one point, it may, in the end, become impossible to get them to disgrace themselves by continuing to arm Israel to the point of absolute power in the region, while shielding that country, diplomatically and otherwise, from the effects of world-wide anger and disgust.

But there ought also to be found other ways — of more coherency than that mere stringing together of daily reports called “the news” — for starting and sustaining in American minds a full and above all a durable impression of what has been happening, under our enveloping protection and with huge subsidy from us, in the Occupied Lands of Gaza and the West Bank. Our responsibility for these happenings is not doubtful, it rests on the simple argument, inevitably true in its premises and in its conclusion, that is stated in the last paragraph. But the weight and high seriousness of our responsibility is a function, in part, of the character and magnitude of recent and ongoing events in the Occupied Lands. How can we get a hand on that character? How can we see that magnitude, steadily and whole? What has it

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Israeli Attacks on the US Navy and Marines

The Attack on the USS Liberty — Israel's attack on a US Navy ship, in which 34 American servicemen were killed and 172 injured. By Ambassador James Akins, Admiral Thomas Moorer, and Captain Ward Boston.

'Israel Charged with Systematic Harassment of U.S. Marines' — The Marines in Lebanon. By Donald Neff, former Senior Editor and Mideast bureau chief for *Time Magazine*.

Being a Target: Reports from Gaza & 'Close your organization or die...' Two letters home from freelance journalist Alison Weir, describing, among other things, what it's like to be shot at. Following this trip, Weir founded If Americans Knew. The last piece is on a death threat received by the organization.

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Jewish Fundamentalism in Israel A description of Jewish supremacist groups in Israel, first published in *The Nation*. By Israeli author David Hirst.

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Do Palestinians Teach Their Children to Hate? A scholarly study of Palestinian textbooks and curricula. By George Washington Professor Nathan Brown. (The quick answer: no.)

Einstein's Letter to the New York Times A 1948 letter signed by Einstein, Hannah Arendt and other prominent thinkers opposing Menachem Begin's "terrorism." Begin later became Prime Minister of Israel.

The Information Blockade: The Prism Between Middle Eastern Reality and Americans A first-hand account of the perils of filming — and trying to air — an honest documentary on Israel. By prize-winning filmmaker and Ohio State Professor Tom Hayes.

Iraq, Palestine, and the Israel Lobby “Connecting the dots,” by Former Yale Professor Mazin Qumsiyeh; and “The Debate that Never Happened,” by Mideast analyst Jeffrey Blankfort, co-founder of the Labor Committee on the Middle East.

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Life in a Palestinian Refugee Camp The human aspect of the Israeli-Palestinian conflict. By former award-winning author and foreign correspondent Grace Halsell.

Serving Two Flags: Neo-Cons, Israel and the Bush Administration The decades-long pattern in which US intelligence agencies have investigated US officials for alleged espionage, only to have their investigations quashed. By author and analyst Stephen Green.

Biased Thinktanks Dictate US Foreign Policy The interlocking pro-Israel network that has come to dominate US foreign policymaking in the Middle East. By Brian Whittaker of the *UK Guardian*.

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been, what is it now, that our massive, unwavering and as good as total support of Israel makes us responsible for?

I choose to start with numbers. I am as aware as anybody can be that mere numbers, and comparisons of numbers, cannot do much to evoke insight into the pity and the terror of what is being done to the Palestinians. For that, profoundly unnumerical things need to be looked at, or heard, or sensed on the skin, or felt in the heart. But I do think that numbers can start the mind moving toward a decent seriousness on this great matter. I never hear anybody say, "Only 290 people killed?" Big deal!" But I sometimes think I hear something like that, a silent subtext, in tones of voices, in off-guard expressions, or, it may be, just in a marvelously widespread refusal to get seriously bothered about the whole matter.

This attitude, in itself and on even the rawest figures, is all but incredible in people who very surely would be hopping out of their skins with indignation if the Nicaraguan government, say, had shot 290 protesters to death on the streets in a year's time. But there is a good deal more than that to be said; some further consideration of numbers can furnish a coherent and clarifying frame.

The death toll mounts a little every week, but for stability in calculation I will stand firm with the figure of 290 West Bank and Gaza Palestinians (mostly young people) killed in the Uprising in its first year up to December 9, 1988. In its horrifying basics, the situation in regard to killings by the army of Israel has not changed for the better since that first year's end, and a year makes a good comprehensible basis for calculations. There are, on the other hand, about 1.5 million people now under Israel's rule in these Occupied Lands. Let's go with those two numbers for a while.

What ought one to feel and say about the proportion in which Palestinians are being killed? How would opinion stand if a like proportion in other populations had in that year been shot dead on the streets, or beaten to death? How thick on the ground are the sorrow pain and death that have been sown in the Occupied Lands?

A population of 1.5 million stands in a ratio of about one to 163 to the now estimated population of the United States — 163 times 290 is 47,270.

It ought really to be unnecessary to go on. But I will go on a way, for one learns that on the matter involving Israel one has to say a good deal more

than ought to be necessary. How heavily would our suffering weigh, if an occupying army had gunned down 47,270 of our people, mostly our young people, in one year, for demonstrating against a repressive regime? That's 40% more than all our own battle deaths (also mostly young people but not nearly as young as a very large fraction of these dead Palestinians) in the three-year Korean War (33,629) and about the same as battle deaths in the whole long (102-month) Vietnam War (47,321).

These two raw comparisons need to be refined. The Korean War was fought when our country was of only about 150 million population. There were, on the other hand, not only "Battle Deaths" (33,629) but also "Other Deaths" (20,617). (All this is, from *The World Almanac*.) I don't know how many of these "other deaths" were due to enemy action — doubtless most of them, since they are listed as "casualties." To be safe, I'll just include them all (which will reduce the point I'm making to its minimum) and so take the whole Korean War death figure as 54,246. The Korean War lasted a little over 36 months, call it three years, which gives an average yearly death figure of 18,082. The population of our country was then about 100 times that of today's West Bank and Gaza, where 290 protesters have been killed in a years time. Projected proportionately on this 1950 American population, at the ratio of a hundred to one, that would amount to 29,000 killed — over 60% higher than the Korean War yearly average of all deaths.

The Vietnam War figures tell an even more striking story. That war produced a total death figure, both "battle" (47,321) and "other" (10,700) of 58,021. Since the war lasted about 102 months, the overall monthly average of deaths was 569, or 6,828 (12 times 569) for an average year. Our population for those years can be taken as about 203 million (the 1970 census figure), or about 135 times the present Occupied Lands population. The projection of the rate of killings in those Lands on our population around the times of the Vietnam War, would then be 290×135 , or 39,150, up toward six times the corresponding per-year Vietnam War figure.

The help afforded to insight by these projections of casualty figures on a larger population is, obvious enough, and I probably would have thought of it by myself. But the fact is that it first entered my mind through comments by others on the casualties suffered by Israel in its 1973 War. Several times then and many times, since, I have read and heard that, in evaluating the

stature as an authority on civil rights issues and his love for jazz and Louis Armstrong led Ken Burns, the documentary filmmaker, to feature him in an episode of last year's documentary "Jazz," and in the opening chapter of a companion book, *Jazz: A History of America's Music*.

Professor Black's poetry was published in many journals and magazines. His books of poetry were *Telescopes and Islands* (Alan Swallow Press, 1963), *Owls Bay in Babylon* (Dustbooks, 1980) and *The Waking Passenger* (New Orleans Poetry Journal Press, 1983).

and Middle English literature, writing a thesis on Shelley as a translator of verse, and earning a master's degree. He entered Yale Law School in 1940 and graduated in 1943. He served in the Army Air Corps as a teacher, and after the war practiced law for a year with the New York firm of Davis, Polk, Wardwell, Sunderland & Kiendl.

But he preferred teaching, and joined the Columbia law faculty in 1947. He became a full professor in a few years. In 1954, he married Barbara Aronstein. Besides his wife, he is survived by two sons, Gavin and David, both of North Brunswick, N.J.; a daughter, Robin Black of Bala Cynwyd, Pa., and his brother, Thomas B. Black of San Antonio.

In 1956, Professor Black joined the Yale law faculty as its first Henry R. Luce professor of jurisprudence. In 1975, he became the Sterling professor of law, the Yale school's highest teaching post, and one he held until 1986, when he retired and became the Sterling professor emeritus of law.

At his retirement, the law school student body gathered in a dining room and sang, "The Battle Hymn of the Republic." The Yale Law Journal devoted its July 1986 issue to him, incorporating colleagues' tributes and poems and other writings by Mr. Black. "He is the rare professor who consistently seeks out students for conversation, debate, spirits and good tidings," a preface said. His teaching days were not over, however. Moving with his wife to Columbia University, where she became law school dean, he continued lecturing there as an adjunct professor until 1999. His last book, *A New Birth of Freedom* (Grosset/Putnam, 1997), re-examined the Declaration of Independence and the Ninth and 14th Amendments to the Constitution as a basis for unwritten human rights.

As his bibliography and his reputation as a constitutional scholar grew over the years, Professor Black was often sought out by reporters for opinions on civil rights, the death penalty, impeachment and other national issues. He also wrote extensively for legal and academic journals, and occasionally for *The New York Times* and other publications.

Professor Black's work on *Brown v. Board of Education*, his

seriousness of such casualties, one ought to make just the kind of adjustment I have been making. For illustration, less than 2,000 deaths suffered by Israel in a war, treated proportionately, would correspond, given the 58 to 1 ratio of the populations of the United States and Israel, to the total of deaths suffered by the United States in the Korean and the Vietnam Wars put together. This approach was, and is, plainly right, as to casualties suffered by Israel, or by any other people.

So let's go on. The population of Poland is about 25 times that of the West Bank and Gaza. Suppose 7,250 people (25 x 290) had in the last year been shot to death on the streets of Poland, to suppress, say, Solidarity protests, or demonstrations generally against the government. What would have been thought and said in this country? Would it have made any difference if some of the protesters had been burning tires, or throwing rocks?

This last horrible imaginary example conveniently suggests another point that should be made in passing: The merely legal right of the Polish government in Poland to take such suppressive action as it sees fit cannot be questioned; that is the nature of a "state", and of "sovereignty." We would be numb with shock if the horrible imagining (of 7,250 Polish deaths) were true, not because what the Polish government had done was "illegal," but because, "legal" or not, it was wickedly wrong, far below the most permissive standards of civilized conduct. This point should be brought to mind whenever actions of Israel are defended (as one sometimes hears) as "perfectly legal." Mere legality (as the common use of the phrase "perfectly legal" suggests) can be the cloak of hideous outrage. The history of our own century copiously illustrates this in ways which need no recital. There is, moreover, a corollary vital to us. We Americans are in no way obliged to continue our huge affirmative support of Israel just because Israel's actions might arguably be taken under the shield of technical "legality". (I do not here mean to concede anything about the actual lawfulness of any or all of the actions of Israel in the Occupied Lands.)

Lets go on to one more comparison. There are about 3 million Jews in the Soviet Union, about twice as many as there are Palestinians in the Occupied Lands. Suppose that young people among them should demonstrate against the government, using just the means the Palestinians do, and that Russian troops in one year were to shoot or beat to death 580 of these — about 2 a

week. If the Russians were doing this, and defending it as the right thing to do, while announcing (as Israel recurrently does) that they proposed to intensify their "pressure," our country would throb with an indignation so great as to be uncontainable and doubtless never really forgettable.

(Regarding the deaths, another point of reference from the same country, though from a long time ago, recently came to my attention. A book review in *The New York Times* (2 July 1989) cites a scholarly work by Salo Baron, *The Russian Jew Under Czars and Soviets*, to the effect that the hideous pogroms of 1903 and two years thereafter "cost the Russian Jews about 1,000 dead." There were then about 5 million Jews in Russia, as compared with the million and a half Palestinians in the Occupied Lands of whom "at least" 290 were killed in the first year of the Uprising. Without worrying about the arithmetic too much, it is obvious that, as to numbers of dead as a proportion of populations, these two things are in much the same range.

To return to the Palestine of today, we have lately been given a chance to look through the other end of the telescope. We know that when, in April 1988, one Jewish girl, in the village of Beita on the West Bank, was thought to have been killed by Palestinians, the spiritual and temporal leaders of Israel were convulsed with an anger so stormy, so out of control, that it didn't at all recede even when it was learned that the girl had in truth been killed by a bullet from the gun of a Jewish "settler," not by Palestinians at all. Banishments, and arrests, and the partial destruction of the village, all went grimly forward as punishment for something that hadn't even happened, and was known not to have happened by those who were inflicting this inef- fably outrageous "punishment."

Now it would be easy to speculate on the psychopathology of perseverance in the infliction of "punishment" when the facts turn out to have been mistakenly perceived. But that would take us away from the more significant thing, both now and eternally, in the sequel to the Beita tragedy: Not the anger, but the sorrow — the sorrow felt in Israel for the death of one girl. If that sorrow for the one young death was natural — and of course it was — then it is in its naturalness a measure of the sorrow naturally called forth among the Palestinians when one of their own young people is shot dead. If the suffering in that one girl's family and circle of friends was expectable — and of course it was — then that suffering mirrors the suffering we must look

ning and forever, is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers."

Professor Black — who taught his students that being a good lawyer in an era of increasing specialization required that they broaden their horizons through interests outside the law — was something of a renaissance man himself. He published three volumes of poetry; he painted landscapes in oil; and he played the trumpet and what he called a cowboy harmonica.

He lectured in a Texas drawl that drew on a rich blend of logic, metaphor, humor and poetry. Flowing along with the declarative sentences on torts and contracts were references to Descartes, to a Stuart king's last words as he was about to be beheaded, or to the rationality of Japanese gods.

"It's mesmerizing," a former student wrote in a profile of the professor for an alumni magazine. "It is not filibustering. It is all, beautifully, to the point."

Akhil Amar, a Yale law professor who was in many of Mr. Black's classes, said: "He was my hero. So many of the great moral issues of the 20th century seem clear in retrospect, but were quite controversial at the time. He had the moral courage to go against his race, his class, his social circle."

Professor Amar said Professor Black regarded the Constitution not as something to be read literally or loosely, but as a whole, a carefully organized expression of democracy at the heart of law and politics. "He saw the architecture in the document," Mr. Amar said. "Many of the people who do Constitutional law now do it differently, and I hope better, because of Charles."

Charles Lund Black Jr. was born on Sept. 22, 1915, in Austin, one of three children of Charles L. Black Sr., a prominent lawyer, and Alzada Bowman Black. The boy stood out early. After graduating at 16 from Austin High School in 1931, he entered the University of Texas, focusing on Greek classics as if he had been born in another age.

After taking a bachelor's degree in 1935, he went to Europe to indulge his appreciation of ballet. He then enrolled at Yale, taking Old

Murray Professor of Law at Columbia and the school's first woman dean, serving from 1986 to 1991.)

He also wrote more than 20 books and hundreds of articles on Constitutional law, admiralty law, capital punishment, the role of the judiciary and other legal subjects, including "Impeachment: A Handbook," that was widely praised in 1974, when President Richard M. Nixon resigned in the Watergate scandal, and also when reissued during the 1999 proceedings against President Bill Clinton.

The handbook was an analysis of the law and history of impeachment, and took no position on the fates of Nixon or Clinton. As a liberal Democrat, Professor Black had no sympathy for Nixon politically. But in letters to newspapers, he argued against forcing Nixon to surrender tape recordings that implicated him, contending that the balance of federal power might be harmed if the principle of executive privilege was breached. But a judge ruled against Nixon, who resigned in the face of certain impeachment.

Professor Black was a vehement opponent of capital punishment, and his book, "Capital Punishment: the Inevitability of Caprice and Mistake" (Norton, 1974), argued against it. The United States Supreme Court outlawed capital punishment in 1972, in part because states were arbitrarily imposing it. Dozens of states had passed new laws to revive the practice, and the book contended that the new statutes were as bad as the old ones.

Besides his work in Constitutional law, Professor Black developed a second major field in admiralty law, which governs maritime affairs. With a colleague, Grant Gilmore, he was the author of "The Law of Admiralty" (Foundation Press, 1957). There was a second edition in 1975. The book was widely regarded as the definitive text on the subject.

Colleagues were often struck by his legal insights, and a writing style that was eloquent and powerful. For example, while the Supreme Court often made news by striking down a lower court's ruling, he observed once that "the prime and most necessary function of the Court has been that of validation, not that of invalidation," adding, "What a government of limited powers needs, at the begin-

to find among Palestinian families and friends for each of the young Palestinian deaths during the Uprising.

At this point, I had almost written, "if not, why not?" But I don't think I could even bear to listen to the only reason that could possibly be given, whatever its niceties of expression.

So much for exact numbers and their meanings. Other numbers are less exact, but we can make reasonable guesses; the lowest reasonable guesses will be bad enough.

First of all, *The New York Times*, (by no means an anti-Israel paper) has for some time now been routinely saying "at least" before the total number of Palestinians killed by the troops of Israel in the Uprising. Everybody who has been following these horrible events knows that there are good reasons for wounded Palestinians not to go or be taken to the hospital; for once there they are likely to be visited by the feared Security Police of Israel, and will in that case be identified as having taken part in a protest — with the consequences to themselves and to their families houses and lives, that may follow such identification. Often for a badly wounded person, staying out of the hospital means dying away from the hospital. I don't have any means of putting even a well-guessed number on this; But it usefully reminds us that the words "at least" in *The New York Times* are justified. The number of 290 shot or beaten to death, as of 9 December last, is a minimum figure. You can be pretty sure it is somewhat low, but you can be entirely sure, as historical and political sureness goes, that it is not possibly too high.

Two hundred and ninety — "at least" — have been killed in a year. How can we estimate the number suffering great pain through wounds, or disfigurement, or serious impairment of function? (Remember, these are mostly young people; I read of one quite lithe girl who was so lucky as to lose only one eye. A few days ago, an 8-month old baby boy suffered brain damage from a "plastic" bullet fired by a soldier of Israel.) No one can at this time confidently commit to even a tentative number. I note that in World War II, the Korean War, and the Vietnam War, the consolidated ratio, of "wounds not mortal" to "deaths" was about 2 1/4 to one. (Some recent reports from the Occupied Lands suggest that the ratio of wounds to deaths is much greater than this; but here as throughout I am willing to use minimal numbers; the story they tell is shocking enough, for consciences that can be shocked.) Is it

reasonable to think that half such “wounds not mortal” are to some extent impairing - blinding, laming, rendering impotent, causing the loss of an arm, and the like? Coming at it another way, it’s a guess, but not an unreasonable guess, that troops firing into a crowd of unprotected protesters, and firing in such a way as sometimes to kill; will seriously impair the bodies of about as many as they kill. We know there’s a lot of this, from not seriously contradicted accounts. Amid all this (for now) inescapable incertitude, perhaps it would be best to ask, “How much of this do you think is likely? How much of this do you think is tolerable?” Your answers must be multiplied by 25 to fit the population of Poland, and by 163 to fit the population of the United States, before you can have a true sense of the magnitude of this part of the evil, of its thickness on the ground.

We must now consider the beatings.

I have a confession to make here. I have for a long time been outraged by Israel’s cruelly implemented disdain of Palestinian human rights, and on that account have long opposed American aid to Israel. I have held these views (which are certainly anti-Israel views, as Israel is now governed and predominantly minded) because I have thought that the policies of Israel were terribly wrong, and that the methods used by Israel to make those policies prevail were bloodily wrong, extending as they did even to death. (Reported on the inside pages of newspapers, incidents in the “Kent State” style — young deaths and all — have for some years been occurring now and again in the Occupied Lands but, as far as I can remember, no account of any cluster of these incidents ever mentioned the others that had occurred some time before, much less totaled up the young deaths over a long period.) I knew that “due process” didn’t exist in Israel’s dealing with protesters or other Palestinians under this “occupation,” that people were being done out of land and water by a mere mockery of legal process, under a substantive law that aimed at ethnic dominance. I knew (from many conversations and from some publicly reported utterances) that all this was being defended not only by the use of bluntly ethnocentric reasoning, but also by some kinds of non-reasonings that trivialized the Palestinians and their rights and their dreams and their sufferings — a trivialization I recognized as an old enemy, because it is pretty much the same thought-poison that, in my own native American South, used to warp and numb judgment as to the wrongs being

**CHARLES L. BLACK JR., 85, CONSTITUTIONAL LAW
EXPERT WHO WROTE ON IMPEACHMENT, DIES.**

By **Robert D. McFadden**
New York Times
Tuesday, May 8, 2001

Prof. Charles L. Black Jr., a leading authority on constitutional law who taught at Columbia and Yale Universities for 52 years and was a prominent voice in the national debates on presidential impeachments, desegregation, the death penalty and other issues, died at his home in Manhattan on Saturday. He was 85. The cause was respiratory failure after a long illness, according to his wife, Barbara Aronstein Black.

In 1931, as a 16-year-old freshman studying Greek classics at the University of Texas at Austin, Charles Black, a jazz aficionado, heard Louis Armstrong play. He was dumbstruck by the genius of the performance, and by a conundrum: “Blacks, the saying went, were ‘all right in their place,’” he recalled. “But what was the place of such a man, and of the people from which he sprung?”

In 1954, as a teacher of Constitutional law, Professor Black composed his answer, helping Thurgood Marshall of the NAACP Legal Defense and Educational Fund Inc., and others, to write the legal brief for Linda Brown, a 10-year-old student in Topeka, Kan., whose historic case, *Brown v. Board of Education*, became the Supreme Court’s definitive judgment on segregation in American education.

In a career that arched across the last half of the 20th century, Professor Black taught generations of law students, first at Columbia from 1947 to 1956, then at Yale for 30 years, and then at Columbia from 1986 until his health began to fail two years ago.

Among his students were Senator Hillary Rodham Clinton (although not her fellow law student, Bill Clinton) and countless others who became leaders in government, business and academic life. (One of them was Professor Black’s wife, the George Welwood

pick up stones.

What name shall we give to the trait of character that produces conduct like that?

Why, do you hesitate? You know what the word is. Do you hesitate because that word just never happens to be spoken in America, in application to these young Palestinian people? Or is it because you fear that a revolution in your thought and feeling will have to follow your pronouncing the word?

Well, you're very likely right about that last. That makes you nervous? So let me help you. I'll start things off by saying the word for you the first time.

The word is "courage."

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done to black people. I guess, with views like these, matured over many years, I shouldn't have been surprised at anything.

My confession is that the beatings did surprise me. A slumber did my spirit seal; it had never occurred to me that the people of Israel, through their political leaders and their soldiery, would do a thing like that. Systematic, cruel beatings — torture at best, at worst incapacitation, sometimes extending to mayhem, to deliberate maiming? Soldiers of Israel holding a prisoner down, while another such soldier broke his bones with a large rock? Well, I was wrong. The beatings don't surprise me any more. We live and learn.

We have some guide to numbers here. A *New York Times* dispatch (18 August 1988) quotes an Amnesty International report to the effect that "Israeli troops have beaten thousands of Palestinians in the West Bank and Gaza Strip, at least eight have died of beatings... Several thousand Palestinians have been injured, many seriously, by these beatings. Such a charge had been answered, as of the filing of the *Times* story, by official statements from Israel that Amnesty International "had not spoken with Israeli officials in compiling the report," and that the report was "one-sided." What kind of a report do you expect when the beatings are one-sided? How many "sides" are there to swooping down on people's houses at night, and cruelly beating the occupants. Were there two "sides" to a pogrom?

As to numbers, we have then this serious report by a well-esteemed international group without connection with either party, a report that has not to my knowledge been substantially impeached and that is to some extent corroborated by everything else we read, and disconfirmed by nothing we read or otherwise know. The government of Israel has not, it seems, addressed that report substantively — that is to say numerically. It is reasonable for us now to take it as true. Let's take it as true at its lowest, and say that two thousand people — a rather unidiomatically low gloss on the phrase "several thousand," but let that go — have been seriously beaten, many of them seriously injured. Given the population ratio, of 163 to one, that would project to 326,000 American people seriously beaten by an occupying army, and very many seriously injured — or to 50,000 protesting Poles so beaten and injured.

Are beating and maiming on this scale things we can observe, and still decide to keep on "aiding" Israel? Suppose you think (against all probabili-

ty) that Amnesty International (even at my low interpretation of the phrase "several thousand") is way off - by a factor, say, of four. That would correspond to "only" 81,500 American beatings, and "only" 12,500 Polish beatings. What would you think of that? Suppose, just to throw probability to the winds that Amnesty International were only 10% right. That would come to "only" 32,600 beaten Americans, "only" 5,000 beaten Poles. Would you think that was all right? Serious injuries and all?

And remember that there is not the slightest hint that this "beating" policy, this savagery, has been changed.

I must turn now (though, as a lawyer, I shudder as I do so) to the "justice" system — or, perhaps better, the "non-justice" system — applied by Israel to the Palestinian people in the presence of the Uprising. There is only one thing real about that system. Very many of the accusations are phantomic, or lacking, or trivial; the hearings and trials are mockeries. The only thing real is the punishment. It is a very substantial reality.

Some numbers first. I take my numbers from a June 2 dispatch printed in *The New York Times* for June 3, 1988. That dispatch reported that 5,000 Palestinians were in confinement. That figure, at the 163 to 1 ratio of populations, projects into 815,000 in the United States. At the 25 to 1 Polish ratio there would be 125,000 Poles in prison, in a similar regime.

The projected 815,000 figure for the United States is nearly half again higher than the total actual prison population in the bulging state and federal correctional institutions in our own country. But the truth is even worse than that. The prisoners in our country are not in any significant numbers imprisoned for political offenses; most of the Palestinians are. And though our criminal justice system is far from perfectly fair, it is all but infinitely fairer than the system Israel uses against the Palestinians.

Of the 5,000 Palestinians jailed, somewhat fewer than half (2,200) have been imprisoned under the now notorious regime of "administrative detention" - detention, that is to say, for six months, imposed by a military commander without formal charges and without "telling the prisoner what he is supposed to have done wrong." Think about that. The six months can be started over again when they expire. An appeal may be taken to a military tribunal, but it is very hard for a lawyer to see what the basis could be for an "appeal," where there is no binding law to define the "offense", and where

Palestinians - the recalcitrant, disorderly, "incorrigible," "extremist" Palestinians. Why, they even get violent sometimes, though they haven't the means of coming near to matching in kind or in amount, the violence that has long been and is now being visited upon them. "Down, wantons! Down!"

Well, you can blow all that kind of thing away by asking yourself the simple question: "What would we be doing in their place? What do you think we should be doing?"

In their position, would you rather be known as a "moderate" or as an "extremist"? Would you rather have such a man as Shamir think you to be "docile", or think you to be "incorrigible"? Just asking such a question might have a broader effect even than that of producing its obvious answer, for the first hesitant step toward sympathy is to put yourself imaginatively in somebody else's place. It might lead toward a dawn of that most fundamental recognition of all — recognition that the Palestinians, who have been so tortured in body and mind, and so grotesquely caricatured, are real people just like us. "Hath not a Palestinian eyes?..."

If we can turn our minds all the way around and look into those eyes, their human eyes, great changes must ensue. But the first change, I think, will have to do with the young people of the Uprising. When we really look at them, face to face, what do we see?

Let's think about that. They count themselves part of a people; they believe this people to be grievously wronged. Their oppressors, as they see the matter, need fear nothing, being armed and protected beyond the possibility of fear by a great power across the ocean — whose hostility to themselves they cannot understand. They are spoken of by their oppressors with contempt and arrogance. They can expect nothing but cruelty. So what do they do, these young Palestinians?

Against huge odds, quite without real weapons or any other resources, they at last decline to submit, and instead go out on the streets and pick up stones. They are beaten without let or mercy. They are imprisoned under obscene conditions, after kangaroo trials, or no trials at all. They are regularly shot at; enough of them are killed to make death as ever-present and as realistic a possibility as it was in our Korean and Vietnam Wars. Many are maimed; many are disfigured for life. Yet they come out in the streets again and again, these young people, some not much more than children, and they

sudden and of great amplitude.

One matter, parenthetical to my main themes, must be addressed.

What can one say about the people whose position may be the most tragic of all — but with the very highest of tragic dignity — those Jewish people in Israel who have the courage to oppose what is happening, to call their country to a better vision of its own meaning and destiny?

I have no words of my own that will do for them: "How beautiful, upon the mountains, are the feet of them that preach peace." "Blessed are the peacemakers, for they shall be called the children of God."

But I must sorrowfully say that I cannot see any signs at this time, indeed I have not for a long time seen any signs, of impending change that would warrant our any longer supporting, as Americans, the government of Israel, Israel as a state, in what I have to believe is for the present epoch its fixed character. We are bound to consider, fully and centrally, the Palestinians. They have had enough. We should no longer be accomplices to their destruction. They have in no way deserved that of us.

But I do dare hope that the peacemakers in Israel may at last, in some way we cannot now foresee, play the part they deserve to play in the making straight of this crooked bloody business.

I will close by confessing expressly what I have perhaps already confessed by implication and in my tone: I do "sympathize," (perhaps a little in the sense of the dictionary definition quoted above) with the Palestinians. Though I cannot claim to any deep acquaintance with even one of them, the ones I have to some extent come to know startlingly contradict the stereotypes that we have all these years been fed. This contradiction is confirmed by everything I read, and by all I hear from reliable friends. But I'll just focus, in this closing, on the one thing that has most of all called out to my heart — the Uprising itself.

In Boswell's Johnson the story is told (I believe by one of Johnson's friends) of a woman who was seen frying live eels in hot grease in a large pan, on a street in 18th century London. When the eels struggled up the side of the pan, trying to get out, the woman would strike them with a stick, scolding them angrily: "Down, wantons! Down!"

The eels, it seemed, just didn't understand their place in the higher scheme of things. There's a lot of that in what one hears and reads about the

the procedural requirements, first to last, approximate zero. Very few appeals are taken, and very, very few of these succeed.

As to the other people in jail, they may have had some kind of a "trial." Such an account as that given in *The Yellow Wind*, by David Grossman, is typical of all these "trials" that I have heard or read about. The "judges" are Army officers; the procedural requirements are hard to make out, but they are surely low, vague, and of uncertain application — more succinctly, shocking.

Now, 2,000 of the people that are committed to imprisonment by these nightmare processes, have been sent to a concentration camp called Ketziot, in the Negev desert, fiercely hot in summer. The prisoners sleep "elbow to elbow", 28 to a tent on 2-foot foam pads; the pad itself is the only space each prisoner calls his own. The "bathrooms," as they are called in *The New York Times* dispatch describing this place, are "closed cubicles with a hole cut in the wooden floor over an open pit of sewage" that stinks to high heaven in the heat. The prisoners are of course denied most basic amenities; the camp commander says "a radio could be inciteful." Even water — not ordinarily thought to be "inciteful" is dealt out skimpily (a major deprivation, even a threat to health in this climate). All this for political prisoners very many of whom haven't been found guilty of anything or even been charged with anything.

I don't think that one can in a short piece convey the cynical and cruel characteristics of this "justice system." I can only say that if it were applied to the Poles, or to any other people, we would be revolted by it, and would not want to be caught within miles of being the cornucopian supplier of the means — material, political, diplomatic — by which such a regime is made safe in the arrogance of invulnerability.

Something must be said about the banishment of Palestinians from their lifelong homes into exile. (This banishment into exile is commonly referred to by Israel as deportation, doubtless to exploit the common modern usage of this latter term, which applies it to the removal of aliens — a thing these Palestinians very certainly are not.) About 33 of such banishments have at this writing already taken place; 25 more orders are pending; these numbers would translate proportionately (at the population ratio of 163 to 1) into 5,379 Americans banished from the United States, and 4,075 more awaiting

banishment. Our own government, has actually criticized these actions rather strongly — for us. But these criticisms have been treated with contempt by Israel — a contempt both deserved and expectable, so long as it is known that not the slightest change in our “special relationship” with Israel will attend any abstract disapprobation our government may whistle up the nerve to express, whether of these banishments or of anything else. As to one recent “deportation” case, which can stand as an example to all, Anthony Lewis has rightly called the proceeding a “mockery of justice.” It is that, for pretty much the same reasons as in the jailings described above, Lewis reminds us of the late Justice Brandeis’ statement that exile from one’s family and native land may be the loss of “all that makes life worth living.” Yet the applicable “due process” for these exiled Palestinians, is by an order of magnitude less than what our legal system requires for fining somebody ten dollars for breach of the peace.

Throughout, so far, I have tried to give to what I have said the reality-tone of numbers. These numbers force the mind to be aware of the integral hugeness of what Israel has done and is doing — of its enormousness as well as of its enormity. They serve conclusively to refute any careless charge of exaggeration in the language in which these actions must be described. This is not a case of much ado about nothing, or about nothing very much. As to both public and governmental reaction here in America, it is rather a case of shockingly little ado about very much indeed.

(I have passed over, as merely corroborative, such things as the loosing of high-powered tear-gas in hospitals, the attempt at intellectual genocide made by the closings of schools and universities, the destruction of houses, the application of the hateful concept of “guilt by family association” to the parents of protesting young people. Instead of going into these and other such matters, I want to move to a reciprocal negative point: Nothing at all contradicts the cruelty and injustice of this regime. And, no official statement of Israel suggests so much as the possibility that there maybe anything in all this to be ashamed of.)

I want to go now to something not at all numerical, something intangible — but at the same time surely present in Palestine.

When I was writing on our American racial segregation system as it presented itself in the fifties and sixties, I came to the view that, though very,

means, then you are punishing us!” I wonder if “insanity” would be too unlikely a verdict. Certainty that verdict would be returned if the petitioners added “If you refuse to start subsidizing us just because you think what we have been doing is shockingly inconsonant with your positions on human rights, then you surely are punishing us.

One of the most fruitful concepts for the understanding not only of law, but also of the formation and maintenance of all norms, is the concept put forward by a nineteenth century jurist, of “the normative power of the actual.” That which is often comes to be looked on as that which is required as of right. The main purpose of the enunciation of this concept is to free the mind from its operation, and so to enable us to take a fresh look: “What is it about women that makes it right that they should have to do all the cooking?” The fact that we have been subsidizing and supporting Israel for some time may make it seem to the thoughtless that we are obligated to continue and that we would therefore be punishing Israel if we stopped — and it may be in the interest of the less thoughtless to exploit this prelogical habit of thought. But it insults the intelligence to suggest that there is any more to the matter than that.

To have a clear opinion is not to possess or to claim foreknowledge of an outcome. Nobody who looks over any considerable body of human history can doubt that sometimes, possibly more often than not, the wicked do prosper. And it seems to be true that there is nothing people can get used to more easily than injustice inflicted on somebody else. But I am glad to have recorded here my own view as to what our decision ought to be, and some of my reasons. I do think the chances of a right decision can be maximized by the spreading among the American people of knowledge about Israel’s oppression of the Palestinians in all its rich detail, and about the decisive weight of our subvention and protection of Israel. If such knowledge won’t do it, much argument probably will not.

I would add that this situation brings powerful forces into contradiction and one never knows how rapidly a situation like that may change. Our “special relationship” with Israel is built on a fault-line formed by uneasy junction of radically unconformable strata — on the one hand our commitment to human rights, and on the other the forces that sustain our massive so-called “aid” to Israel. Along a fault-line, so in stress, movement may be

ly as possible what he thinks is right.

I think we ought now to bring our so-called “aid” to Israel, our “special relationship” with Israel, to an end.

I do not look on this as a thing we have a right to do or not to do, on the basis of our liking or not liking Israel, liking or not liking the Palestinians. The outcome of everything I have written here is that we are morally obliged to do this, whether we like to do it or not; we ourselves otherwise remain *participes criminis* (partners in crime). We have no right to keep on sustaining and constantly renewing the power of Israel.

Israel would be in no sudden danger. The overwhelming military superiority we have given Israel is not something that would vanish as soon as our subvention stopped. Israel would have abundant time to consider, quite deliberately, how it could maintain itself, how it might change its policies and actions so as to be able to get along in the world, just as other nations have to do, without absolute guarantee of absolute invulnerability, without the automatized total support of a great power.

There is another crucially important thing to say just here, and to hold constantly in mind. It is in the nature of the case, it is in the very nature of time itself, that we cannot now, with any pragmatic meaning, decide whether, when, or on what terms we might later think it well to resume some level of help to Israel. There is, therefore, no need to try to decide anything about that now, and no profit could come from discussing the innumerable hypothetical questions that might now be posed.

At some point the wholly inapplicable idea of “punishment” may be expected to be brought forward. If we were ever to seem likely to move away from our “special relationship” with Israel, it is to be depended upon that the cry will be raised that we are “punishing” Israel. One might pause just a moment there, to ask whether it is the thought that actions such as Israel has taken in the Occupied Lands deserve no punishment. But I don’t really want to argue the question whether Israel deserves “punishment”, because the cessation of huge subsidy and support can be “punishment” only in some variety of Newspeak. If we had never supported and subsidized Israel, consider what we would think of the claim, “If you don’t start subsidizing us to the blue sky, letting us have access to huge quantities of your best weapons, protecting us in the Security Council and by every other possible diplomatic

very many tangible hurts, many of them heavy indeed, were inflicted on black people by that system, the one hurt that entirely pervaded the system was the intangible hurt, the insult, of having your society officially declare that you were not fit to associate with the dominant race. I guess the Montgomery protests against segregation on buses finally opened wide my eyes. There is no tangible advantage to sitting in the front rather than in the back of a bus — except perhaps the advantage, surely *de minimis*, of not having to walk quite so far on boarding or leaving. Yet the black people of Montgomery were willing to put their livelihoods and their very lives on the line, day after day, rather than walk to the back of that bus and sit down. Why would they do that? I think it was because they saw that, in being made to go just that short way to the back of the bus before they could sit, they were being forced to act out with their own bodies a sort of charade, the decipherment of which was: “The society I belong to authoritatively determines that I am not fit to sit among the members of the dominant race. I am declared a contaminant. I hereby acknowledge that declaration.”

Now no two huge historic situations are ever exactly alike; I don’t want to waste any time on arguing the question whether the system Israel is maintaining against the Palestinians is a form of “racism.” It does seem inescapably true that it has a lot in common with “racism,” and that these common traits suffice to damn it, whether you call it racism or not. But the point I want to make here is that although, like the old American racist system, the system that Israel imposes and practices inflicts many very heavy tangible hurts — torture, banishment, spoilation of the land-and-water basis of life, even death itself — there is in it a wholly pervasive quality of contempt, of setting the Palestinians, together with all their claims and longings, at nothing. This attitude runs throughout and suffuses all the dealings of Israel with these people who have had the accursed bad luck of being in Israel’s way, of falling into Israel’s power.

What is attempted, along with all the other thefts, is a theft of dignity. I borrow that phrase from a perhaps surprising source. On television some time ago, I saw a close-up shot of an American policeman, an inspector I think, who had been given the task of dealing with racist actions and incidents in his (American) city — the setting-fire to “Asian” shops, and all that. He looked like a stereotypical senior policeman — hardboiled, worldly-wise,

no bleeding-heart. Then he spoke, and I learned yet once more the folly of such stereotyping. What he said was, "These actions are a theft of dignity. That's the worst theft of all, the theft of dignity."

In addition to all the unutterably grave tangible hurts, the actions of Israel toward the Palestinians add up to an attempted theft of dignity. In words and in the stronger language of deeds, it is conveyed that these people weigh nothing on the scale, don't matter, are of negligible worth, of no account. In the American South of my young days, we knew all about that too.

I judge that so far this attempted theft of dignity has not been successful. It cannot easily succeed, as long as people are willing to die to prevent its success. The diminution of dignity is occurring, in quite another quarter. There is a look of lowness about Rabin, in press pictures taken as he goes on his "command" inspections around the moral desolation he and his troops have made.

I will sum up. Israel is killing Palestinians in the Occupied Lands at a rate, adjusted for time-period and population, much greater than our own death-rate in the Korean and the Vietnam Wars. Thousands of Palestinians have been (and are still being) cruelly beaten, with serious injury and some deaths as the result — often beaten quite at random, with no charge and with no disclosed grounds for any definite suspicion, except as the mere fact of being Palestinian may be thought such a ground. (Even before the Uprising, an official body in the government of Israel found that Palestinian "suspects" were being subjected to violence in interrogation. This commission said in effect to the dreaded Security Police, "You needn't stop, but do go a little easier." Is it so much as barely possible that, in the presence of the Uprising, this situation has improved?) Thousands have been arrested and confined in prison without charge or trial, or after a mockery of trial, under conditions so grossly inhumane that our own legal system would hold these to be in violation of our own Constitutional guarantee against cruel and unusual punishments. A significant number of Palestinians have been sent, with no adequate hearing or trial, into exile. These things are being done in order to support and to advance a scheme of piecemeal conquest that aims at bringing the assets of the Occupied Lands — the cultivable land, the precious water, and all else of value — into the possession of an ethnic (or, if you prefer, a

the Palestinians without fear of consequences. This is a question not about sympathy, or even primarily about Israel, but about our own conception of our own duty toward the Palestinians of Palestine who have done nothing to deserve the cold enmity we show toward them, the hard fate we confirm for them, by our knowing empowerment of their deadly adversary. The "sympathy" question invites a diffuse "feeling" response, inappropriate to correct and ultimately defensible resolution of a stern, stark question in political morality and bed-rock truthfulness.

Such "sympathy" polls, moreover, not being framed in terms of decision or outcome, suggest that there need be no outcome, that we may just slip along from day to day, consulting our own interior states as to the "sympathy" level, thus comfortably balking the hurdle of decision. So long as one is merely consulting ones "sympathies," one need never decide anything.

The same is to an extent true of polls testing "approval or "disapproval" of Israel's actions. One may indulge for an indefinite time one's feelings — perhaps one's shifting feelings — of "approval" or "disapproval." Instead, the question ought at least to be one calling for the relevant judgment; "Do you regard the United States' continuing to give the support it does to Israel, given Israel's actions, as tolerable, when confronted with our own historic and modern stand on human rights?" That's at least something close to the right question. The finally right question is itself even leaner and more direct: "Shall we go on supporting Israel in doing what it is doing?"

There can hardly be movement on this in America until the question becomes one that calls for resolution on action, rather than for mere feeling, or at-large opinion. We have no direct power, perhaps no present power at all, to end the wrongs of Israel toward the Palestinians. But the power we do have is the power to decide whether we ought any longer to give our own support and protection to those dealings. That is the American question, that is the decision up to us — a decision within our power and our right, and our duty, to make.

What step or steps ought we to resolve on taking?

I am not running for anything. I am not and never have been in front-line politics. The best contribution somebody like that can make to this subject is not to try to guess what kind of action is now (or may by continued struggle be made to become) politically saleable, but rather to set out as clear-

Independence. The consequence must in the long run be loss of our moral authority, erosion of esteem for us throughout the world. But it is enough that the position is a disgusting, a shameful one for our country to have put itself in.

How do we dare to call, in the name of "human rights" for freedom of Soviet citizens to emigrate, while we go on, month after month, arming to its own taste (as expressed in what is often called its "shopping-list") a nation that is shooting young people to death for protesting against what can only be, to them, a hateful tyranny?

Given the character of our proclaimed national ideals, and the character of Israel's actions toward the Palestinians, how is it that we have continued in this "special relationship?" I will put forward the thought that it is partly because the question has so often been stated both wrongly and incompletely. The language one hears and uses about a problem affects one's thoughts on that problem.

As one example, I happen to have before my eyes right now, an account (*New York Times*, 3 June 1988) of three "polls" in America. I think it of capital importance that those polled were asked whether their "sympathies" were more with Israel or with "the Arabs" (by which, I take it, was meant "the Palestinians") — though that imprecision, by mixing up the oil-rich Gulf nations, and perhaps even Qaddafi, with the beleaguered, unarmed, hard-pressed, far from rich Palestinians, may tend to trigger a response based in part on the resentment of oil prices and oil embargoes, and in part on Qaddafi's public character, and even his haircut.)

"Sympathy" is a disastrous word. The question should not be one of "sympathy," of "entering into or sharing the feelings, interests, etc. of another; the character or fact of being sensitive to or affected by others' (or another's) emotions, experiences, or especially sorrows." The question is one of justice. "Sympathy" is, strictly speaking, irrelevant to moral judgment as to the rightness or wrongness of one's assisting or not assisting the person with whom one "sympathizes", in that person's actions toward a third person with whom one may happen not to "sympathize" (as few Americans have sufficient knowledge fully to "sympathize" with "the Arabs").

The question should at the least be one of approval or disapproval of our own action in putting and keeping Israel in a position to act as it does toward

religious) group, for that group's benefit and enjoyment forever, and the Devil take the Palestinian population. What the Palestinians have to expect from Israel in times to come is unclear, but it is unclear in a hellish range of sinister possibilities, not within sight of political or economic equality, or of a livable life.

I lack the gift of reading the future, but I will own that I find it hard not to foresee the operation, in the Israel-Palestinian events, of a sort of Gresham's Law: Bad coinage drives out good. Oppression that has reached a certain critical point may seem to have no way to go but up — because the oppressed people may be so outraged as to make retreat by the oppressor very difficult. When you have put yourself as far in the wrong as Israel has done, it's hard to back away.

I must say that my mind forces me a step further. It seems possible that if the forces that govern Israel should drive their deadly course of action so far that the Palestinians in the Occupied Lands become for a time quite incapable of negotiating with people who have so treated them, then Israel might, with some color of narrowly and ironically factual truth, say that the Palestinians have become quite unamenable to reason, quite "incorrigible" (a favorite word of the unspeakable Shamir), and that the only thing to do with them is to banish them, all of them, from what is by this act to become Greater Israel — the Meir Kahane solution. I read that "transfer of populations," the sinister euphemism for mass exile, is already being seriously talked about in Israel.

It should be obvious that it is wrong for the United States of America to be arming and supporting such a regime, to the point of ensuring that it can pursue and attain such ends, by such means, while fearing no serious consequences. After years of watching this pervasive pattern of support, I still sometimes can hardly believe it is there. How could this bizarre thing, going against all that is best in our own national ethos, have happened? But it has happened. And so we are driven back to absolute basics and must ask freshly the question, "Why is it wrong of us to be doing this?"

It is wrong not because of this or that little peculiarity in the present situation, in the intricate history of the region, in some understandings King Abdullah or somebody else may have had in 1948 or in some other year, in the nature of the previous British occupation, or in anything else of that sort;

but because of the most ancient and at the same time the most modern commitments of our nation, the United States — commitments that cannot by any stretch be brought into line with our total support of Israel, as Israel's character has developed and now stands revealed.

Our Declaration of Independence begins with the claim that all people are born free and equal, and that God has endowed all people with the rights to life, to liberty, and to the pursuit of happiness. Thus, it is not merely for ourselves that we claim these rights. Quite on the contrary, we base our own claim to them on the more general claim that they belong to all human beings, and that it is to secure them that governments — not merely our own government — are instituted and are given their just powers by the consent of the governed.

These words state ideals and goals, not facts about the United States on the morning of 5 July 1776, or today, or on any day in between. But if they are not ideals to which we are in deepest good faith attached, goals we quest after earnestly and with decent consistency, then we ought to put a warning to that effect in large red block-letters at the head and foot of the Declaration, and stop celebrating the Fourth of July. We have been far from wanting to do that, and so we have come to our modern commitment to "human rights". The very phrase that expresses this commitment again points our concern outward as well as inward — to "rights" asserted to be in the birthright of all people because they are "human," and not just of ourselves, and of our special friends. (Indeed, in this country the term "human rights" now most commonly occurs in discussion of the actions of other nations than our own though that is perhaps not just as it should be.) This human rights concern, with the promise of its being prudently implemented by our still considerable influence and power, is the very essence of our presentation of ourselves to the world, the very basis on which we invite the world to esteem us and to trust us.

But if we don't want to throw the whole "human rights" thing up, our so-called "special relationship" with Israel is a howling paradox. It is flatly inconceivable that we would ever have gotten into such a relationship with such a regime if we had known in advance what the nature of that regime was at last to be. Rather we have drifted by degrees into this sorry plight. As to the Palestinians, Israel neither conducts nor intends to conduct a regime in

In that juxtaposition, there inheres a major and continuous disgrace to the United States. The world knows the pattern, and that knowledge exhibits our human rights positions as not merely imperfect but as flawed all through, eaten out by this major inconsistency. The inconsistency lies not only in the mere sum of the particular things we do, but also in what those deeds, in their totality, say. For such a pattern of material, political and diplomatic support sends forth a message beyond itself — a message of approval of Israel's actions; it would be something like insane to furnish all this support for a regime such as Israel's while at the same time not approving the actions of that regime. The world at large must draw the inference that we do approve, that our weak protests over a few things cannot be seriously meant. The least possible inference would have to be that we don't care very much for human rights.

Here I touch the very quick of my own strong and deep feelings on this subject. I see my country being led through actions and postures that make public mockery of our most ancient and most sacred dedications. This is worse than merely watching one's own country be made to look foolish, manipulable, a mere gull, an easy mark, in regard to some unimportant matter. There is vastly more to it than that; the deadly direction is always the same — toward unwavering support of Israel, no matter what Israel does — which, in practice, has been shown to mean, whatever Israel does in violation of the human rights of the Palestinians under its power. We have put our national conscience into the hands of Israel; we have no right to do that to each other, to the Palestinians, and above all to the world.

I add that last phrase because the value of the United States to the world can be very great, as proponent, advocate, spokesman for human rights. The world needs us to play this part. But this value of the United States is stained, adulterated, in all ways diminished, so long as we insist on making of Israel an arbitrary exception, exempt by tacit understanding from the duties we seek to persuade and to influence other nations to take upon themselves. We talk a good game about "human rights", as far as the Soviet Union and Nicaragua are concerned; then we follow toward Israel a policy of total support. We are thus made worse than merely ridiculous; we become a people with a forked tongue, as to the very matter — human rights — that we have claimed as our own special subject, ever since the Declaration of

In the very midst of the cruelties of the Uprising, Shamir visited the United States, and after defiant speeches defending all the measures taken by Israel against the Uprising and all the theories on which those measures rest and from which they flow, after treating the weak protests of our government with disdain, smirked his way out of the country, having been given by our government an even sweeter deal than he had before, in regard to "strategic cooperation" between us and Israel; but the details of this non-treaty were not even sketched in the New York papers, so far as I could find. One day the Congress of the United States suddenly discovered that the Palestine Liberation Organization (the head of which had been received in friendship by the Pope) was so terrible, a threat to the United States that without the ghost of hearings in either House, and nearly without debate, we must violate the plain terms of a treaty by passing a statute to force closure of the PLO Mission at the United Nations; this action was fortunately nullified by a judicial holding. We didn't just decide on our own hook to send to Lebanon the second contingent of Marines, so many of whom were tragically killed in 1983; the decision to station these troops in Lebanon was preceded by intensive lobbying of Congress by pro-Israel groups — but it's not the done thing to stress that in the press, anymore than it is to stress the role played by Israel in our being suckered into the "arms for hostages" deal with the late Ayatollah. Another conspicuous disgrace to our nation is the string of United Nations Security Council votes in which we have "vetoed" resolutions, overwhelmingly supported by the rest of the civilized world, deploring the actions of Israel.

These incidents are mere details in a vast pattern, mere illustrations of the working of a master-rule: Israel is to receive support across the board, as to all matters, by the United States, variations from this master-rule being weak, indecisive, and soon receded from and as good as apologized for. The vice in this vast and pervasive pattern is not to be understood by mere isolated examination of particular incidents. The worst of it is in its substantial totality and unambiguity, and above all in the picture of our country that is to be made out from such totality of support, in juxtaposition with Israel's human-rights record and theories, not only as seen in measures taken in the face of the current Uprising - though that would be bad enough and then some — but going back a long way.

which such concepts as "equality," the right "to the pursuit of happiness," political liberty, or the "consent of the governed" are to play any part at all. The methods by which this regime is now being maintained are simply cruel and vile. Nor is there held out any prospect of improvement. The dreadful course of killing, beating, banishment, house destruction, and mass imprisonment under inhumane conditions, is bossed by a leader in the Labor Party, from which so many people in this country have seemed to expect so much — though with no reason visible to me. (The hubristic arrogance of the building of the "settlements" in the Occupied Lands, which advertises and seeks to guarantee that no real change is ever to be looked for, was commenced under this same Labor Party.)

To furnish such a regime, offering such prospects, with the materials and means it needs for so acting with impunity, flatly and massively contradicts any pretense, on our part, to a consistent commitment to human rights. Our saturating subvention and total support of Israel has been given the name "special relationships." This "special relationship" has no *de jure* status; we are in no way bound to continue in it. It surely has a *de facto* status, as a very "special" relationship indeed. It is a relationship that seems best to be expressed in the wink that might accompany the question, "After all, what are human rights between friends?" But it has the strength — one can hope, the short-term strength — that often goes along with such cynicism.

Again, numbers make a good beginning — dollar figures in "foreign aid." The numbers here are widely known, at least in a general way, but I think it best to restate them. They certainly do evidence an altogether special relationship.

Again I rely on *The World Almanac*, in its tabulation of United States "aid" to foreign nations; I take the 1986 figures which are the ones just now accessible to me, there has been no important change. These numbers tell a clear, and bold story.

Net grants of foreign aid by the United States were about 12 billion dollars in all, for all the countries of the world. About 3.7 billion of this went to Israel some 31 percent of the world-wide total.

With two exceptions, no other country got even one-tenth as much as Israel. The Philippines, a nation of 58 million people to Israel's 4.2 million people, got \$373 million, and so is (just barely) the first exception.

The other exception, and it is a huge one, is Egypt, which got about 2.4 billion. But Egypt is, with great neatness, the exception that proves the real rule. Of course, the aid to Egypt started and continues because Egypt negotiated a separate peace with Israel, and uncomfortably keeps that peace. You may call that what you will — using either the short hard five letter word that rises first to the mind, or an elaborate euphemism — but this exception does prove the real rule, which is that truly huge grants are made only in the interest of Israel. If anyone can think of a better reason for this altogether astonishing out-sized largesse to Egypt, starting just when the separate peace was coming into sight, I would be glad to hear it, but I won't promise to buy it.

The "aid" to just these two neighbors, Israel and Egypt, thus constitutes more than half of the total U.S. net grants to the entire world. Quite obviously, the word "aid" is being used in two different senses, when we move from Israel and Egypt to any other countries, an order-of-magnitude boundary has been passed. It is as if the support of Israel were the major and prime concern in our foreign policy. (Sometimes I am all but brought to wonder whether this may not be so, "at least in the minds of some of our officials and citizens.)

Now Guatemala, a country, of 8.6 million people with a sorry human rights record, got 52 million dollars in net grants in 1986. El Salvador, a human-rights basket-case too, with about 5 million people, got 310 million dollars. I pick out these two countries because the issue as to Israel is sometimes sought to be blurred by pointing out that we do "aid" other nations with poor human-rights records. I'm not at all embarrassed by this attempt at blurring, because I would be willing and even eager to consider receptively the cessation of all grants-in-aid to such countries as Guatemala and El Salvador. But it's reasonable to take the big problems first. Incomparably the biggest problem for us, as the very figures show is the inconsonance between our commitment to human rights and our enormously disproportionate "aid" to Israel.

My confession is that the beatings did surprise me. It had never occurred to me that the people of Israel, through their political leaders and their soldiery, would do a thing like that. Systematic, cruel beatings — torture at best, at worst incapacitation, sometimes extending to mayhem, to deliberate maiming? Soldiers of Israel holding a prisoner down, while another such soldier broke his bones with a large rock? Well, I was wrong. The beatings don't surprise me any more. We live and learn.

These mere dollar amounts, as suggestive as they are, fail to reveal a fact of cardinal importance. A very great part of our so-called "aid" to Israel consists in our making available state-of-the-art weapons in grotesque overabundance. We have thus made Israel something like the fourth military power in the world, a power that could easily defeat any combination of its neighbors, without serious consequences to itself. I think we have not done that with any other country; if we have, and if that country shows a rooted determination, as Israel has, to treat a people within its power in a way utterly disregarding of their human rights, then I'll join you in seeking to end that country's "aid" from us. But let us not abstain from needful action in the huge case, the clear case, while we consider whether there exist other cases

which, to a lesser degree and in a less clear manner, may deserve correction as well.

(Another asserted "inconsistency" is sometimes charged to those among us who would radically dissociate our country from the outrages of Israel. We are reminded of our own nation's worst cruelties - slavery, the wrongs done Native Americans, the Japanese Exclusion Cases of World War II. But we are ashamed of those things; we have, made, and are still making attempts at atonement for those crimes against humanity. The suggestion

that we are obliged, because of our own past wrongdoing to renew our own guilt by becoming and continuing to be accomplices in Israel's guilt, puts forward a desperately ridiculous argument - and one, moreover, that says something so bleak about the actions of Israel that I would not believe anybody would have had the nerve to make it, if I hadn't seen and heard it made. In the apologia for Israel, anything goes.)

Our world-wide pattern of "aid" — half for Israel and in Israel's interest, half for the rest of the whole wide world — has the clarity of arithmetic, the simplicity of the obvious. The enormous web of that component of our support of Israel that is not reducible to mere arithmetic is more difficult to give body — partly because it is so skimpily recorded in our press, and partly because it is so bewilderingly variegated.