

Israel's Democracy Dilemma

West Bank settlements force an existential question.

By Doug Bandow

DESPITE ITS CONTINUED backing of Israel, the Bush administration's patience is apparently not endless. Should Ariel Sharon's government continue to construct a security fence effectively annexing Palestinian areas to Israel, Washington has threatened to withhold some of the \$9 billion in planned loan guarantees.

Israelis are not pleased. "It's none of their business," complained Zitrin Eliezer, an Israeli settler in the West Bank. "Let them give California and Texas back to the Mexicans and then they can come and tell us what to do."

In fact, Eliezer is correct: Israel's policies aren't America's business. At least they wouldn't be if Washington were not backing Israel against all comers, providing billions in aid annually, arming its distant ally, and offering diplomatic cover for Israel. The price of dependence on America is meddling by Washington.

The U.S. has no choice but to demand, pressure, and whine. As Sept. 11 dramatically demonstrated, America pays a price for being identified with Israel's policies in the Gaza Strip and West Bank. Obviously, terrorism against the U.S. reflects complex causes and circumstances, and the slaughter of innocents, whether Americans or Israelis, can never be justified.

But anger over U.S. support for Israel permeates Arab and Muslim nations. Even pro-American liberals in the most pro-American Mideast Muslim state,

Kuwait, uniformly criticize Washington when they see Israeli tanks confront Palestinian children. Dr. Steve Gilliland of Brigham Young University spent eight months in Jerusalem; he complains of "the assault on human rights, the incessant harassment, and the humiliation and violence the Palestinians suffer at the hands of the Israeli government."

Alas, the situation is only likely to get worse. Every killing encourages more killing: the young woman who set off the deadly bomb in Haifa apparently acted in retaliation for the killing of her brother and cousin in Jenin in the West Bank four months before. Her murder of 19 virtually forced an Israeli response. And on it goes, a tragedy without end.

Indeed, Israeli officials, including Vice Prime Minister Ehud Olmert, publicly

long pushed such an option; expulsion is the implicit if not explicit goal of most settlers. Understandable frustration over murderous suicide bombings has increased popular support for this brutal option.

American columnist Ben Shapiro writes, "If you believe that the Jewish state has a right to exist, then you must allow Israel to transfer the Palestinians and the Israeli-Arabs from Judea, Samaria, Gaza and Israel proper. It's an ugly solution, but it is the only solution."

The euphemisms roll off of his tongue. "It's not genocide; it's transfer." Czechoslovakia and Poland did it to Germans after World War II; Winston Churchill thought it was a good idea. Indeed, "expelling a hostile population is a commonly used and generally effective way

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talked of assassinating (or expelling or jailing) Palestinian leader Yasser Arafat. No great loss: the man is a blood-stained thug. But for Israel to murder an elected quasi-head of state would make it, and its chief ally, America, appear equally roguish.

Even worse is talk of "solving" the conflict through ethnic cleansing. An extremist segment of Israeli opinion has

of preventing violent entanglements." Expelling nearly five million people from their homes is permissible, says Shapiro, because "Jews are not Nazis."

But he is advocating forced ethnic cleansing, not voluntary transfer. And that means inflicting mass hardship and possibly death on the population being "transferred." After all, the Palestinians aren't likely to obey an Israeli decree to

abandon all. They will have to be forced to do so. That means destroying their homes. Wiping out their villages. Killing at least some of them. No wonder Shapiro concludes, "It's time to stop being squeamish."

Look at the World War II experience, which Shapiro endorses. An estimated 9 to 15 million Germans were forced from ancestral lands in Czechoslovakia, Hungary, Poland, Romania, and Yugoslavia. R.J. Rummel, author of *Death By Government*, estimates the casualty toll at between 500,000 and 3.7 million, most likely about 1.9 million, similar to the numbers offered by other analysts. Some ethnic Germans were killed before expulsion; many died while fleeing; some died later as a result of their treatment. So horrific was the "transfer" process that Rummel places Poland "among the megamurderers" of history.

In an earlier column Shapiro wrote, "I am getting really sick of people who whine about 'civilian casualties.'" For instance, the Palestinian town of Jenin, he argued, should have been leveled by air attack rather than searched by ground forces: "Civilian casualties? So be it. That might have struck a note of fear into the Palestinians."

About one thing he is correct: ethnic cleansing is distressingly common. Large numbers of Greeks, Hungarians, and Turks were expelled in the aftermath of World War I. Nazi Germany forced out 100,000 French and one million Poles from territory that it conquered early in World War II. Various nations "transferred" Hungarians, Lithuanians, and Russians. Some 700,000 Palestinians are refugees from the Arab-Israeli conflict of 1948. (Today survivors and descendents number about 4.5 million.) Over the last decade, Albanians, Croats, and Serbs all engaged in the practice during the Yugoslavian civil war.

But as common as the practice might

be, it now is uniformly condemned—except by those who think as Shapiro does.

In principle, separation seems the best answer. Whatever the theoretical long-term value of diverse peoples living together in harmony, it's not going to happen soon in the Mideast. Daily contact between Israelis and Palestinians seems only to provide further opportunities for the former to oppress the latter and the latter to murder the former. Better to stop the killing than foolishly to hold onto some hopeless multicultural ideal.

For this reason, a security fence that physically separates Jew from Arab makes sense. Unfortunately, the one being constructed by Israel mixes Jew and Arab and separates Arab from Arab. For Israel is attempting to protect a

number of disparate settlements erected in the midst of Palestinian communities. The more settlers Israel includes, the more Arabs it gains and the less continuity there is among Palestinian lands. Indeed, by one estimate, so far the fence is set to include 13 villages containing 12,000 Palestinians, 75 acres of greenhouses, 23 miles of irrigation pipes, and 100,000 olive and citrus trees. Those numbers could grow substantially, depending upon the path the fence ultimately takes.

Separation will work only if it really is separation. The more Palestinians end up on the Israeli side, the more seeds for continuing and future conflict will be sown. As long as Palestinian territory is fragmented, Arabs will live under a system of *de facto* apartheid, and the anger



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and hatred that helps give rise to suicide bombing will continue to fester. Peace will remain as distant as ever.

The basic question posed by separation on Israel's terms is: why should the Arabs go? Israel may have taken the land through conquest, but after 36 years of occupation the land remains almost exclusively Arab. The Jewish presence is largely the result of a conscious policy of colonization. Were the land empty to start, there would be little cause to complain. But it was not. When Israel triumphed in the 1967 Six Day War, Gaza was part of Egypt, and the West Bank was part of Jordan. There were essentially no Jews.

In 1978, when the Camp David Accords were midwived with the help of President Jimmy Carter, there were only about 4,000 Jewish settlers in the occupied lands—and everyone agreed that Israeli settlers had to leave the Sinai, which was returned to Egypt, to reach an agreement.

But during the 1980s the number of settlers increased six-fold. Since then the total has trebled again. With subsidies approaching \$1 billion a year, the number of settlers has reached about 230,000. (Most are in the West Bank, but, inexplicably, 6,500 live in Gaza.) The settlements require a pervasive Israeli military occupation, under which Pales-

tinians essentially live in Bantustan "homelands." Writes Avraham Burg, former speaker of Israel's Knesset:

It is very comfortable to be a Zionist in West Bank settlements such as Beit El and Ofra. The biblical landscape is charming. You can gaze through the geraniums and bougainvilleas and not see the occupation. Traveling on the fast highway that skirts barely a half-mile west of the Palestinian road-blocks, it's hard to comprehend the humiliating experience of the Arab who must creep for hours along the pocked, blockaded roads assigned to him. One road for the occupier, one road for the occupied.

This cannot work. Even if the Arabs lower their heads and swallow their shame and anger for ever, it won't work. A structure built on human callousness will inevitably collapse on itself.

At stake is the future of Israeli democracy. Burg argues, "The prime minister should present the choices forthrightly: Jewish racism or democracy." A single state requires nearly universal willingness to live and work together. Moreover, demographics create an ever-advancing crisis. There are roughly 5.3 million Jews in Israel and a couple hundred thousand in the occupied territo-

ries. There are 1.3 million Arabs in Israel and about 3.4 million in Gaza and the West Bank.

Given respective birthrates, there will soon be more Arabs than Jews in the combined territory between the Mediterranean Sea and Jordan River. Arabs are likely to account for 60 percent of that population and nearly one-third of Israel's citizens by 2020. Notes Uri Dromi of the Israel Democracy Institute, "Either we give the Palestinians equal rights, in which case Israel ceases to be Jewish, or we don't, in which case Israel ceases to be democratic. The only way for Israel to remain both Jewish and democratic is for it to pull out of the territories." Israeli academic Shlomo Avineri makes the same point. Separation is "a counsel of despair," but "the current situation is awful. We remain in a neocolonial relationship with the Palestinians, which forces us to do things that are incompatible with being a democracy."

The conflict between Israelis and Palestinians is intractable. The murderous bombing in Haifa and the retaliation that followed seem almost routine. But there is hope because, as Shapiro notes, "Jews are not Nazis." A number of Israeli soldiers now refuse to serve in the West Bank; 27 pilots recently declared their refusal to bomb targets in the West Bank. In the end, Israel is incapable of conducting Shapiro's plan of ethnic cleansing.

The most obvious solution is not ethnic cleansing. Not expulsion. Not assassination. But separation—and with it the dismantling of Israeli settlements that dot Gaza and the West Bank. And as long as Washington backs Israel financially and politically, the future of the settlements is America's business. ■

Doug Bandow is a Senior Fellow at the Cato Institute and a former Special Assistant to President Ronald Reagan.

A Woman's Right to Change Her Mind

The plaintiffs in *Roe* and *Doe* draft a new challenge to the cases that made them famous.

By Howard Sutherland

ABORTION IS THE MOST polarizing issue in America. It has been for 30 years, since the Supreme Court, in *Roe v. Wade* and its companion case, *Doe v. Bolton*, found that women had a constitutional right to abortion. The Court's rationales were not rooted in anything in the Constitution, yet the decisions pushed aside states' abortion laws, many over a century old. Protected from politics, abortion rights became a lightning rod, a talisman of feminists, and an abomination to abortion opponents. U.S. Senators have made judicial nominees' views of *Roe v. Wade* a *de facto* Test Act. It is strange that a novel legal challenge to something so controversial, and a compelling human-interest story, has attracted so little media coverage. Do our opinion-shapers fear that this challenge may succeed?

Allan E. Parker Jr. is a human-rights lawyer in Texas. He founded and runs The Justice Foundation in San Antonio. Parker believes *Doe* and *Roe* were wrongly decided and that there is a promising way to challenge them using the Federal Rules of Civil Procedure (FCRP) that govern federal trials. Parker's approach differs from previous challenges in not relying primarily on arguments about the right to life of unborn children and constitutional errors in the decisions. Those arguments are true—and tried. No majority of justices has heeded them, even in a challenge to the flagrant barbarism of partial-birth abor-

tion. Something different is needed, that “gives the Supreme Court a graceful way out of the problem it is in” over abortion, as Parker says. Rule 60 of the FRCP and Parker's plaintiffs may be that something.

Rule 60 provides that “on motion and upon such terms as are just, the court may relieve a party ... from a final judgment ... for the following reasons: ... it is no longer equitable that the judgment should have prospective application.” The original plaintiff may return to court to ask that a judgment be reversed if it is now unjust. There is no statute of limitations.

To bring Rule 60 motions challenging *Roe* and *Doe*, Parker needed *Roe* and *Doe*. Thirty years later, they had to be still alive, competent, and willing to overturn the decisions that created abortion on demand. Unlikely, one would think, yet both *Roe* and *Doe* are available, pro-life, and very willing to sue. Jane *Roe* is Norma McCorvey; Mary *Doe* is Sandra Cano. Represented by Parker, McCorvey has sued in the Dallas federal court where *Roe* began, and Cano is suing in the Atlanta federal court where *Doe* started. The goal is to get either case (ideally both) back before the Supreme Court.

McCorvey and Cano have similar stories. Young, poor, and poorly educated, they were used, first by the men in their lives, then by feminist lawyers looking for plaintiffs to challenge abortion laws.

McCorvey's Rule 60 affidavit tells how, pregnant and homeless in 1969, she saw an adoption lawyer who referred her to two young lawyers, Sarah Weddington and Linda Coffee. Over pitchers of beer they talked McCorvey into being their plaintiff to challenge Texas's abortion law. She was ideal: “You're white. You're young, pregnant, and you want an abortion.” In fact, McCorvey wasn't sure what an abortion was and in the end never had one. She signed her affidavit unread.

There was no evidence at trial about the reality of abortion or its effects on women. Following *Roe v. Wade*, McCorvey's life was a fog of drink, drugs, despair, and work in abortion clinics, punctuated by suicide attempts. What she saw in those clinics fed a growing remorse about her role in making abortion common. Nevertheless, she was a pro-choice heroine, until she came to Christianity in 1995 through an old adversary, Operation Rescue's Rev. Flip Benham. In 1998, McCorvey was received into the Catholic Church. She is a greater force in the pro-life movement than she ever was for the other side—with her own organization, *Roe No More Ministries* and an autobiography, *Won by Love*.

Sandra Cano's Rule 60 affidavit says that she never wanted an abortion. In 1970, 22, pregnant with her fourth child, and abandoned by her husband, Cano sought a legal-aid divorce. Her lawyer, Margie Pitts Hames, gave her some