



Polemics in the Israeli-Palestinian Conflict

By Jerome Slater

The Case for Israel by Alan Dershowitz. Hoboken, New Jersey: John Wiley & Sons, 2003. 264pp.

Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History by Norman G. Finkelstein. Berkeley: University of California Press, 2005. 332pp.

As he says, Dershowitz argues “the case for Israel,” especially in its policies and behavior towards the Palestinians; Finkelstein, in direct rebuttal, essentially argues the case against both Israel and Dershowitz. Polemics may have their uses, but these books certainly demonstrate their limits—especially in the case of the Israeli-Palestinian conflict, where it is not polemic but dispassionate, subtle, and balanced analyses that are in short supply.

Even so, it is not the case that both books are equally unbalanced. The character of The Case for Israel is captured by Finkelstein’s clever and telling quotations of Dershowitz on the responsibility of defense attorneys: “The defense attorney comes close to being a pure one-sided advocate for his generally guilty client.... It is the job of the defense attorney—especially when representing the guilty—to prevent, by all lawful means, the ‘whole truth’ from coming out” (Finkelstein: 89, 227).

Both books focus on four major issues in the Israeli-Palestinian conflict: the right of political sovereignty; the significance of anti-Semitism in explaining the growing global anger at Israel; the major human rights issues; and why the conflict is still unresolved. In this essay I shall focus on the first three issues, as those most directly relate to human rights, broadly defined, to include collective human rights, or the right of political sovereignty.

Dershowitz’s approach to these issues can be found immediately when he states, “The charges [against Israel] include being a criminal state, the prime violator of human rights, the mirror image of Nazism, and the most intransigent barrier to peace in the Middle East” (Dershowitz: 1). Denying that he wishes to defend “every Israeli policy or action,” Dershowitz insists on “Israel’s basic right to exist, to protect its citizens from terrorism, and to defend its borders from hostile enemies” (Dershowitz: 1).

Now it might appear that Dershowitz is taking on strawmen—who but a handful of “crazies” would consider Israel to be the Nazi-like “prime violator” of human rights? Who would deny Israel the right to defend itself against genuine threats, and not merely to its borders, not merely to its innocent civilians, but to its very existence? Nonetheless, despite some qualifications here and there, it is evident that Dershowitz either genuinely believes or perhaps just finds it tactically useful to suggest that the extremist charges—easily rebutted by a decent high school student—are at the very foundation of the overall criticism of Israel. This is hardly the case for serious critics of Israel, including many American, European and other Western writers, many of them Jewish. Even more importantly, throughout the entire course of the Israeli-Palestinian conflict (but especially in the last two decades) there has been no shortage of serious Israeli critics—including academicians, journalists, writers, intellectuals, retired military and Shin Bet leaders, and even a number of active politicians.

The Right of Political Sovereignty and the Israeli-Palestinian Conflict

As Michael Walzer (1992) has suggested, in principle the right to political sovereignty can be a basic human right, although one that is dependent on specific circumstances in different cases. As I shall argue, given the history of the Jewish people, few deny that their claim to a state of their own was an exceptionally powerful one, although the particular claim to create that state in Palestine was much more problematic. Moreover, in light of the history of the Israeli-Palestinian conflict, in principle the right of the Palestinian people to political sovereignty—a state of their own—is equally or at least nearly as powerful.

Though Dershowitz gives lip service to a two-state solution, it is evident that his concern is far more with what he regards as the unquestionable right of the Jewish people to create a state in Palestine, rather than the rights of the Arab inhabitants—or as they are now known, the Palestinians—to political sovereignty in this same land. His basic argument—a familiar one, of course—is that the Jews were forcibly driven from Palestine two thousand years ago but “never abandoned their claim to return” and indeed maintained a “significant presence” there over the centuries. Consequently, they had an “absolute right to seek refuge in the land of their ancestors.” Moreover, the Jews didn’t displace the Palestinians, for the area was “vastly under-populated, and the land...was bought primarily from absentee landlords and real estate speculators” (Dershowitz: 8, 15, 18, 23).

To be sure (his argument continues), many Palestinians were later displaced after the establishment of Israel, but that was a direct consequence of the Arab war of aggression against Israel in 1948, not of any deliberate Israeli policy to expel the Palestinians from the areas allotted to the Jews by the U.N. plan of 1947, or from the other Palestinian areas conquered by Israel in the 1948 war. In any case, he adds, wars always create refugees and “exchanges of population”—which is what occurred after the 1948 war, for hundreds of thousands of Jews from Arab and Muslim countries felt compelled to flee to Israel. In all cases other than Israel, the world comes to accept the new realities, and integrates the refugees into new homelands. Thus, there neither should nor would not have been an ongoing Palestinian refugee problem, had not the Arab states “kept [them] in refugee camps for more than half a century to be used as political pawns in an effort to demonize and destroy Israel” (Dershowitz: 87).

Finkelstein has no difficulty in directly rebutting most of Dershowitz's arguments. As he argues, some of the Zionist arguments are indeed quite weak, especially those that claim a permanent right, derived from ancient history, to the establishment of a Jewish *state* (that is, not merely a "refuge") in Palestine, regardless of the will of the overwhelming majority of its present-day inhabitants. Similarly, Finkelstein is correct that the weight of the historical evidence—most of it developed by Israeli historians—strongly suggests that David Ben-Gurion and other major Zionist leaders had long hoped that they would get the opportunity to "transfer" large numbers of Palestinians out of a Jewish state, and that they then used the opportunity presented by the 1948 Arab attack to do just that, as a *de facto*, if not official, policy.

Where Finkelstein goes badly wrong, however, is in his not quite explicit but strongly implied argument that there was *no* legitimate basis for Zionism's drive to create a Jewish state in Palestine. Finkelstein's central argument, appearing in one form or another throughout his book, is that it is "racism"—the belief that the Jews are superior to the Palestinians, and therefore their "rights" supersede the rights of the Palestinians—that is the foundation of Zionism: "Those admitting to the reality of a Palestinian presence...couldn't adduce any justification for Zionism except a racist one..." (Finkelstein: 9). Nor was racism limited to the Zionists: British support for Zionism during the Mandate period "had no recourse except to racist justifications for denying the indigenous population its basic rights" (Finkelstein: 10). Later, this racism was augmented by crass domestic or international politics in the West, Finkelstein argues. It is evident that for him these two factors are all that are required to explain Zionism as well as the support of so many non-Jews for the establishment of a Jewish state in Palestine. And it is racism and politics that continue to be sufficient explanations of Western support for Israeli policies towards the Palestinians since 1948.

As I have suggested, both Dershowitz's and Finkelstein's accounts of the early history of the Israeli-Palestinian conflict contain elements of truth, but are oversimplified, distorted, and partial—in both cases. To begin with, both authors fail to notice the crucial distinction between the arguments for the creation of a Jewish state—somewhere—and the arguments that such a state, by right, had to be in Palestine, regardless of the wishes of the present-day indigenous peoples.¹

Certainly, it is undeniable that some Zionists (including many non-Jews) and Israelis are guilty of racism towards the Arabs in general and the Palestinians in particular. Nonetheless, it is a fallacy that Zionism at its foundation had to be, or at least was, racist. The crucial argument for the creation of a Jewish state has always been not that the Jews were superior to anyone, but rather that without a state of their own, the Jews were vulnerable to everyone. One would have thought that the Holocaust would have ended that argument—as indeed it did in most of the West. But not for Finkelstein, who in his obsession with "racism" essentially ignores this not merely powerful but historically irrefutable argument for Zionism—even going so far as to (by implication) deny the relevance of the Holocaust, largely treating it as a cynical ploy, as is suggested by his repeated references to "the Holocaust industry."²

¹ The following paragraphs summarize arguments I make more fully in my article, "Can Zionism be Reconciled with Justice for the Palestinians?" *Tikkun*, Vol. 15 No. 4 (July/August 2000).

² The U.N. partition resolution of 1947, creating the state of Israel, was clearly motivated by Western sympathy with the plight of the Jewish people, especially in the wake of the Holocaust. For Finkelstein, however, the overwhelmingly

Dershowitz makes the opposite mistake. The terrible paradox of Zionism is that while the arguments for a Jewish state *per se* are strong, most—though not all—of the arguments for the right to create that state in Palestine are clearly weak. The argument from religion and Biblical history—God promised Palestine to the Jews, forever—can only persuade religious fundamentalists. The argument from ancient territorial rather than merely religious rights—the Jews lived in Palestine until they were driven out by the Romans 2000 years ago, and therefore their descendants have a permanent right not merely to “return” to that land but to establish political sovereignty over it—is no more persuasive. To begin with, the factual accuracy of the biblical story on which this historical claim is based has been severely challenged by both historians and archaeologists—particularly Israeli ones. More importantly, even if the history were entirely accurate, it would be irrelevant. There is scarcely any place on earth that has not at one time or another been conquered, subjugated, and populated by other peoples. Yet there is no other place in which it is taken to be a serious argument that the expulsion of a people twenty centuries ago does not affect their right to permanent political sovereignty over the land, regardless of the political (and other) rights of the peoples who have inhabited the land since then, including most of its present-day inhabitants.

To be sure, not all Zionist arguments for the right to create a Jewish state in Palestine are based on Biblical or ancient history, for the Balfour Declaration—in which Britain promised to use its post-WWI League of Nations Mandate over Palestine to establish a “national home” for the Jewish people³—is said to have established a much more modern right. However, the argument from the Balfour Declaration is also shaky—and not merely because it pointedly refrained from promising the Zionists political sovereignty over Palestine, but more fundamentally because neither Britain nor its fellow colonial powers who dominated the League had the right (even if their motives were pure, which they were not) to dispose of Palestine against the wishes of the overwhelming indigenous majority—at that time about 650,000 Palestinian Arabs, compared to 50,000 Jews.

The Holocaust, however, is altogether another matter, making it obvious that the case for the creation of a Jewish state and a haven for the victims of anti-Semitism was both powerful and urgent. To be sure, in theory such a state did not necessarily have to be carved out of Palestine. However, by 1945 there simply was no practical place for such a state to be created—all the other options that had been considered in the past, such as British West Africa, solved none of the moral issues, and raised additional practical ones.⁴

The argument from the history of anti-Semitism in general and the Holocaust in particular is the only truly strong Zionist argument, and it is a sufficient one—despite the fact that neither Finkelstein nor Dershowitz, coming from opposite sides, seem to understand or recognize it. Much more importantly, the entire history of the Israeli-Palestinian conflict might have been different had the Israelis rested their case on this argument, for then they would have been far more likely to have

international consensus that was embodied in the partition is explained by Zionist and American Jewish lobbying or, as he calls it, “machination” (Finkelstein: 284).

³ “His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country” (Balfour Declaration 1917).

⁴ Creating a Jewish state in parts of Germany would have perhaps solved the moral issue. It was briefly considered but quickly rejected by the Allies, so it was not practicable.

accepted a moral obligation to limit and later make up for the inevitable injustice to the Palestinians in every way they could, short of abandoning their drive to create a secure Jewish state.

Put differently, it is the bad arguments for Zionism that account for the moral blindness of the Israelis toward their responsibilities to the Palestinians, and although it cannot be proven, there is an excellent argument that it has been the failure of the Israelis to recognize and act upon this moral obligation, more so even than the initial creation of the Jewish state, that accounts for the ongoing Israeli-Palestinian conflict.

Anti-Semitism and the Israeli-Palestinian Conflict

A fair reading of The Case For Israel makes it evident that Dershowitz is suggesting that anti-Semitism is a major factor, if not the root cause, of the global criticism of Israel in its conflict with the Palestinians. Of course, he denies he is making such a suggestion: those who say that critics of Israel are often labeled as anti-Semitic—he cites in particular “Susannah Heshel” [sic]—are guilty of “a big lie” (Dershowitz: 209).

Yet, on the very first page of the book, Dershowitz argues that “when the Jewish nation is the only one criticized for faults that are far worse among other nations, such criticism crosses the line from fair to foul, from acceptable to anti-Semitic” (Dershowitz: 1). He goes on to cite what he considers to be the flagrant double standards that are applied to Israel. Why else (for but one example) is criticism of Israel so much harsher than criticism of the Chinese occupation of Tibet, which is “longer and less justified” than the Israeli occupation of the Palestinians, and which in any case “ended in 1995?” (Dershowitz: 159). He cites other examples and concludes that “I prove beyond any shadow of a doubt that a pernicious double standard has been applied to judging Israel’s actions: that even when Israel has been the best or among the best in the world, it has often been accused of being the worst or among the worst in the world” (Dershowitz: 7). Dershowitz does not hesitate in claiming that this accusation (which in any case is practically non-existent) “is the international equivalent of the old anti-Semitic blood libel” (Dershowitz: 234).

To be sure, Dershowitz admits, some of the strongest criticism of Israel today comes from other Jews, particularly Israelis themselves. This concession might seem to undermine his argument that not since Hitler and the Holocaust “has the world experienced so perverse and sustained an outpouring of primitive anti-Semitism” (Dershowitz: 232). Of course this apparent contradiction does not trouble those who resort to the “self-hating Jews” argument. Dershowitz does seem a bit wary of resorting to that argument—though not nearly enough—for he protests that “I do not mean to suggest... that *all* anti-Zionists and Israeli-bashers are self-hating Jews” (Dershowitz: 220, emphasis added). But, what does that mean? Just some of them, or many of them, or even most of them? What about Jews who are unhappy with Israel’s behavior towards the Palestinians, but who are neither anti-Zionists nor “Israeli-bashers?” Well, yes, Dershowitz concedes, there could be other reasons—though usually, in his eyes, illegitimate ones—for Jews and Israelis to criticize Israel: “people can be wrong on the merits without requiring any psychological explanation.” However, he immediately adds: “But the reality is that there are some Jews who despise anything Jewish...” (Dershowitz: 220).

As the subtitle of Beyond Chutzpah suggests, much of the book is an attack on the Dershowitz charges. Finkelstein’s main theme is this: “The main purpose behind these periodic, meticulously

orchestrated media extravaganzas is not to fight anti-Semitism but rather to exploit the historical sufferings of Jews in order to immunize Israel against criticism” (Dershowitz: 22). This implies that not only is there no actual problem of anti-Semitism, but that few of those who raise the cry of anti-Semitism even believe it themselves. Thus, those who cite the Holocaust as the basis for their anti-Semitic fears are not honestly mistaken, but are either cynical or victims of “the Holocaust industry,” which among other things was designed to be “an ideological weapon to immunize Israel from legitimate criticism” (Finkelstein: 16).

In short, it is just a “shameless exploitation” of the historical problem of anti-Semitism. To be sure, it may well be the case that Dershowitz, in light of the extremity of *his* language, is fair game for this kind of charge, but as usual Finkelstein goes much too far. Surely some of those who charge that anti-Semitism accounts for most of the criticism of Israel are not cynics who are making charges they know to be false. Rather, they genuinely, however mistakenly, believe in what they are saying—perhaps because of a hypersensitive reaction to the actual Holocaust, as opposed to the “Holocaust industry.”

Sometimes Finkelstein simply loses control. For example, he dismisses a report of a leading German academic institute that there has recently been a worrisome resurgence of anti-Semitism in Western Europe as a “typical earmark of Germany’s public culture....If Germany was once the European hotbed of anti-Semitism it has now become the hotbed of philo-Semitism.” (Finkelstein: 36). Thus, this and other public expressions of concern by German academics, commentators and even politicians about a possible resurgence of anti-Semitism are “lunatic,” “utterly cynical,” or mere “act[s] in this never-ending German passion play [about the Jews]...resembling nothing so much as a medieval witch hunt” (Finkelstein: 36).

U.N. Secretary General Kofi Annan gets the same treatment. Finkelstein is outraged at Annan’s public statement that there was an “alarming resurgence [of anti-Semitism] in new forms and manifestations.” In so “intoning,” Finkelstein tells us, Annan was merely “playing along with the charade...no doubt calculating that he could score a few easy points with his patrons in Washington” (Finkelstein: 63). Now, it is not unreasonable to suspect that in light of the incessant American attacks on the U.N., Annan might have welcomed an opportunity—as a side bonus—to side with the United States. Finkelstein, however, does not merely suspect but is *certain*, not only that this is the entire explanation for Annan’s stated concern, but that (he implies) it is the only possible explanation. Anyway, Finkelstein suggests, Annan should stick to his last, which is Africa:

One might have thought that a secretary-general coming from a continent historically decimated by colonialism would be somewhat skeptical of the Holocaust’s uniqueness and, given that Africa is currently being ravaged by starvation, disease, and war, that he would have bigger priorities than mobilizing the international community to affirm Holocaust uniqueness (Finkelstein: 63).

How much of a role does anti-Semitism really play in the global reaction to Israel’s policies and behavior towards the Palestinians? It is necessary here to distinguish between the Palestinians, the Arab and Muslim world as a whole, and the West, including Jews and Israelis themselves. In the case of the Palestinians, Finkelstein is right that the origins of the Israeli-Palestinian conflict are to be found not in Palestinian anti-Semitism but in the creation of the state of Israel in a land where the Palestinians were a large majority and had a legitimate claim to political sovereignty. There is no doubt, therefore, that the creation of Israel entailed an injustice to the Palestinians, but it does not follow that there was nothing necessary or legitimate in the Zionist drive for an independent Jewish

state. In its origins, then, the Israeli-Palestinian conflict is best seen as a tragedy: a conflict between two rights, which unavoidably must end with some injustice to the side that loses.

That said, Israeli policies towards the Palestinians since 1948 are another matter: the tragic necessity argument is not available to the Israelis and their supporters as a defense of Israel's expulsion of hundreds of thousands of Palestinians from their homes and villages and, since 1967, the continuing Israeli occupation and repression of the Palestinian people and the denial of viable statehood to them in a small part of their original homeland. To be sure, even though it is not Palestinian "anti-Semitism" that explains either the origins or the continuing dynamics of the Israeli-Palestinian conflict, it is clear that the longer the conflict goes on, the more likely it is that anti-Semitism will spread among the Palestinians, especially among both the nationalist and religious fundamentalists.

It is undeniable that this is already happening in the Arab and Muslim world as a whole, especially among the fundamentalists and fanatics. It is impossible to separate three components in the growing rage: legitimate anger at Israel; illegitimate anger at Israel; and anti-Semitism, pure and simple. Whatever its root causes, however, it is pointless and perhaps dangerous to deny that anti-Semitism—as well as anti-Americanism, partly in reaction to the nearly unconditional American support of Israeli policies towards the Palestinians—is growing.

The growing anger in the West at Israeli policies—including among a significant number of Jews and Israelis—is another matter altogether. Except perhaps among Muslims and Arabs who live in the West, there is little or no basis to the claim that European anti-Semitism is to blame for anti-Israeli sentiment, let alone that there is a pernicious double standard which works against Israel. Until the last few years, precisely the opposite was the case—*philo*-Semitism in Europe and America since the Holocaust served to insulate Israel from legitimate criticism, and when there were double standards they worked in Israel's favor.

For most of Israel's history, the West has looked the other way at its occupation and repression of the Palestinians. To the extent that this is no longer the case—or less so, since Israel is still often treated with kid gloves in the West—it is not a function of anti-Semitism but on the contrary of puzzlement, outrage, or even a sense of betrayal of the high hopes and expectations for a Jewish state. To begin with, it is often the case—at least in the U.S.—that Israel is held to lower, not higher standards than other Western states, especially over human rights issues (to be discussed below). A number of reasons account for this: Christian guilt over the Holocaust and the failure of the West to stop it; ignorance of the facts—sometimes, it seems, a willed ignorance; Jewish electoral and political power in the United States, supplemented by the recent alliance between fundamentalist Christian groups and right-wing Jews; and the fact that the United States believes that Israel serves American national interests in a variety of ways and therefore should not be criticized.⁵

Put differently, any Western double standards are hardly evidence of anti-Semitism, precisely because so much more has been expected from a Jewish state, one that not only presented itself as model for others to emulate—"a light unto the world," a product of Western civilization at its finest, an exemplar of "purity in arms" and the like—but whose claims of moral superiority until recently

⁵ These issues have been explored in the recent controversial essay by John Mearsheimer and Stephen Walt, "The Israel Lobby," *London Review of Books*, 23 March 2006.

were widely accepted in the West. Few Westerners consider Middle Eastern autocracies to be the appropriate standard of comparison for a state that is part of the West, its democratic traditions, and its “Judeo-Christian” civilization, heritage and culture. For such a state, then, it is not sufficient that its government is better than, say, Syria.

Human Rights

What is Israel’s human rights record in its conflict with the Palestinians? Dershowitz offers his readers three choices:

- *Not the worst in the world*: Israel is not “the prime example of human rights violators in the world” (Dershowitz: 181).⁶
- *Better than the Arabs*: the Arabs in general and the Palestinians in particular deliberately target innocent civilians in wars of “genocidal aggression,” whereas Israel only inadvertently kills civilians in legitimate defensive attacks on terrorists or Arab military targets (Dershowitz: 75, 141).
- *Better than any other countries “in the history of the world” that have faced “comparable threats” to its survival*, including most Western nations (Dershowitz: 222).

Despite these slippery, vague, and inconsistent formulations, it is clear that the impression Dershowitz wants to convey is that Israel’s human rights record, while “far from perfect” is “generally superb” and not merely relative to the Arab world, or even to Western states facing internal or external threats, in which his examples are the French facing the Algerian revolution, the British facing the Irish rebellion, and the Americans facing al-Qaeda today (Dershowitz: 204).

In his otherwise excellent refutation of Dershowitz’s claims on the human rights issues, Finkelstein as usual cannot refrain from going too far himself, as when he suggests that “some” of Israel’s policies toward the Palestinians might fairly be described as genocidal. In his words, the term genocide “subsumes a broad range of destructive aims, some of which perhaps are, and some clearly not, descriptive of Israeli policy toward Palestinians” (Finkelstein: 37). Serious human rights specialists, however, do not accept such a vague and tendentious use of language: genocide is nearly always defined to mean not “a broad range of destructive aims” but *only* those that seek to destroy national, ethnic, racial or religious groups, deliberately targeted as such. Understood properly, then, as unjust as has been Israel’s treatment of the Palestinians, it has never come remotely close to being genocidal.

This revealing lapse aside, Finkelstein’s chapters on human rights are the strongest parts of *Beyond Chutzpah*. Of particular value are his long quotations and summaries of highly-detailed reports on extensive Israeli violations of basic human rights, including war crimes, compiled by such respected international organizations as Amnesty International and Human Rights Watch, as well as

⁶ Lest the reader think that this is a straw-man and doubt that anyone has ever made such a charge, Dershowitz does provide a citation. Evidently—at least according to an article he cites from the *Washington Times*—this was said by Eric Reichenberger, a college student, at a University of Michigan student conference in 2002.

by Israeli organizations like B'Tselem (Israeli Information Center for Human Rights in the Occupied Territories) and Physicians for Human Rights-Israel.

Indeed, it is not even necessary to rely on reports by international or Israeli human rights organizations, for in its news stories, editorials and commentary, *Ha'aretz*, Israel's most prestigious newspaper (published in English as well as Hebrew), regularly covers the ongoing and extensive Israeli human rights violations against the Palestinians. Consequently, Finkelstein's conclusion is fully justified: "Either mainstream human rights organizations and independent experts have engaged in a vast anti-Semitic conspiracy to defame Israel, or Dershowitz has egregiously misrepresented the factual record" (Finkelstein: 223).

Even so, it is useful to examine in more detail several of Dershowitz's assertions and arguments, beginning with the issues of terrorism and deliberate attacks on innocents. Dershowitz sometimes includes attacks on Israeli military forces within his definition of "terrorism," as when he says that "Israel left southern Lebanon as a result of increasing Hezbollah terrorism" (Dershowitz: 235). In fact, Israel withdrew its forces occupying part of another country because the attacks on its troops had become too costly.

To be sure, Palestinian attacks on Israeli civilians are certainly constitutive of terrorism. However, according to Dershowitz, the Palestinians turned to terrorism "not as a last resort against a long occupation but as a first resort," (Dershowitz: 143), not out of desperation because of the failure of political and or even non-terrorist armed force, but because they have "glorified it as part of their culture and religion" (Dershowitz: 129). Israel, however, is very different. The structure of Dershowitz's argument is constructed as follows:

- *Not guilty*: Israel never deliberately targets innocents; when Palestinian and other Arab civilian deaths result from Israeli military actions they are "mostly caused accidentally in a legitimate effort to try to stop terrorism" (Dershowitz: 124).⁷ Even the well-known Israeli attacks on Beirut and other Lebanese cities are blandly denied by Dershowitz: "Israel is the only country in the history of modern warfare that has never dropped bombs indiscriminately on an enemy city in an effort to kill innocent civilians....Even when it attacked those parts of Beirut that were home to terrorists, the Israeli air force made great efforts—although not always with success—to avoid unnecessary civilian casualties" (Dershowitz: 151).

Elsewhere he elaborates, citing the principle of "double effect," under which a nation fighting a just war may legitimately attack important military targets even though the death of innocents is an accidental consequence, so long as these deaths are neither intended nor disproportionate to the military benefits. This principle, he claims, "perfectly describes Israel's policy of fighting terrorism" (Dershowitz: 191).

⁷ In a October 2001 article in *Harper's Magazine*, the acclaimed war correspondent and former *New York Times* Pulitzer Prize winning journalist Chris Hedges reported that he had personally witnessed Israeli soldiers "entice children like mice into a trap and murder them for sport." In one of his most astonishing and revealing remarks, Dershowitz writes that "ignorance alone cannot explain [this] alleged 'reporting' of a 'journalist' like Chris Hedges," which he likens to Arab accusations that Jews use the blood of Christian and Muslim children to prepare their holiday pastries (Dershowitz: 153).

- *Anyway, it's their own fault:* Palestinian and other Arab civilian deaths have been really the responsibility of the “terrorists” themselves, who first in Lebanon and then in the occupied territories “use their own civilians as shields... deliberately hiding in and operating out of civilian population centers such as refugee camps” (Dershowitz: 128, 143).
- *Besides which, Palestinian civilians are not really innocent:* Many observers, including Israelis, have described the various measures that the Israelis have employed to enforce the occupation as a form of collective punishment of the Palestinian population as a whole. These include the system of checkpoints and military outposts, the surrounding and enclosure of entire Palestinian towns and cities, the walls and other separation barriers that intrude into Palestinian lands, orchards and villages, the demolitions of the homes of the families of Palestinian terrorists, and the suffocation by various means of the Palestinian economy. Dershowitz chooses to specifically discuss only the home demolitions—where his argument, although questionable, is least weak.⁸ However, he is unmistakably making a much broader judgment: the Israeli actions are generally (though not always) justified because most of the Palestinian people as a whole support terrorism.

Dershowitz is clearly aware that this argument has been rejected for centuries by nearly all religious and moral philosophers, and is prohibited by international law today. He proposes, however, that we “rethink... [this] classic bright-line distinction between combatants and noncombatants,” substituting instead a sliding scale: the more a people “willingly allow combatants to hide among them... [or] provide support for the combatants... [or] make martyrs of the murderers,” the greater their complicity and “the closer they move to combatant status” (Dershowitz: 168-169).

None of these arguments stand up to serious scrutiny. There is overwhelming evidence—including testimony from Israeli generals and other participants—that the intended purpose of many Israeli military actions in the past was to kill Palestinian and other Arab civilians. Finkelstein’s list includes a number of civilian massacres during the 1948 war, the indiscriminate bombing and shelling of Egyptian cities during the 1967-70 “war of attrition” along the Suez Canal, and the attacks on Lebanese population centers in 1974, 1978, and 1982. He could have provided an even more extensive list, which would certainly include various brutal, government-authorized attacks on Palestinian and Jordanian civilians led or ordered by Ariel Sharon (for example, the 1953 attack on the West Bank town of Qibya, killing an estimated 60 -65 civilians, two-thirds of them women and children) throughout the course of his long career.

Why would Israel so have acted? Was it, as Israeli spokesmen have sometimes openly stated, to “send messages” to the civilian populations that they had better not support their enemies? Note the consensus definition of terrorism: deliberate attacks on civilians in order to achieve a political purpose. Thus, at least in the past Israel committed state terrorism. More recently Israel seems to be refraining from deliberate attacks intended to kill civilians, and therefore from outright terrorism. But it has not ended disproportionate actions, which have killed many civilians in the course of

⁸ He argues that as long as home demolitions are directed against only the “accessories to terrorism”—meaning the families of terrorists—they are not properly regarded as collective punishment and are “entirely consistent with law and morality” (Dershowitz: 167).

attacks aimed at “military targets”—i.e., Palestinian leaders and militants. These include the 1982 bombing of a Beirut apartment house, killing dozens of Lebanese civilians, because it was thought that Arafat was in it; the 1996 air and artillery attack on Lebanese Hezbollah forces thought to be in a Palestinian refugee village, killing over a hundred civilians; the 2002 missile attack on a Gaza apartment house containing a wanted Palestinian militant, which also killed thirteen Palestinian civilians, mostly women and children, and others. None of these actions were justifiable, in the first instance because their purpose (suppressing the Hezbollah and Palestinian uprisings against Israeli occupation)⁹ was unjust, and secondly because even if their purpose had been just they killed and wounded far too many innocents to be absolved by the principles of double effect and proportionality.

Secondly, it is misleading to say that Palestinian “terrorists” (in quotes, because while some acts of violence are aimed at civilians, others are attacks on Israeli soldiers in their capacity as occupiers) “hide” among the civilian population or use them as “shields.” Terrorists typically develop organically out of the general population and continue to live among them. And the Palestinian terrorists often come from breeding grounds of misery, poverty and rage, like the refugee camps—which is precisely where the effects of Israel’s treatment of the Palestinians since 1948 are most severely felt.

Third, the perils of excusing attacks on civilians on the grounds they support or are otherwise “complicit” in the actions of their militants are self-evident. Should this argument be widely accepted, the most crucial constraint on warfare would go out the window, and the consequence would be barbarism far greater than that inherent in warfare itself. Beyond that, Dershowitz fails to acknowledge that his argument would also justify Palestinian terrorism against Israeli civilians—indeed, that is precisely the argument made by the terrorists—since the majority of Israelis support, actively or passively, the continuing occupation and repression of the Palestinian people.

Torture

According to Dershowitz, Israel does not torture Palestinian prisoners. To be sure, he concedes, before 1999 Israel “did sometimes employ physical measures similar to those now being used by U.S. authorities against suspected terrorists”, meaning sleep deprivation, stress positions, loud music, and the like (Dershowitz: 134-35). However, in 1999 the Israeli Supreme Court “decided that not only is torture absolutely prohibited but even the types of physical pressure currently being used by the United States...even in cases in which pressure is used...to elicit information that could prevent an imminent terrorist attack” (Dershowitz: 134-35). Thus, Dershowitz claims, Israel’s record on torture can be defended not merely on relative grounds (its record “is far better than that of any other Middle Eastern or any Muslim nation, and better than that of most democracies, including the United States, France, and Germany” (Dershowitz: 135)—but on the merits as well.

Even if Dershowitz’s assertions about Israel’s comparative record were persuasive, it would not follow that its record was actually good. He is wrong on at least three counts. First, citing the

⁹ By the 1980s, Arafat and most of his followers had effectively given up their initial goal of regaining all of Palestine—meaning the destruction of Israel—in favor of gaining an independent state in the West Bank and Gaza. Recently, of course, with the rise of Hamas and Islamic Jihad, the matter has become more complex and ambiguous.

detailed investigations of international and Israeli human rights organizations, Finkelstein effectively demonstrates that before 1999 Israel regularly (not “sometimes”) coerced Palestinian prisoners, not merely with “physical measures” short of torture, but with routine beatings and other forms of systematic torture—and not merely to gain information to prevent attacks but also as punishment (Finkelstein: 142-167).¹⁰

Moreover, contrary to Dershowitz’s claim, the 1999 Supreme Court decision did not absolutely ban physical coercion but left two loopholes. First, if it could be proved that coercion was necessary to gain information in cases of “ticking bombs” —imminent attacks—the interrogators would not necessarily have to be prosecuted, let alone convicted, of violating the law. Second, despite the Supreme Court ruling, the Israeli government was still free to legalize coercion. As the Court put it: “If the state wishes to enable GSS [General Security Service, commonly known as the Shin Bet] investigators to utilize physical means in interrogations, it must seek the enactment of legislation for this purpose.”¹¹

Dershowitz is full of admiration for the Israeli judicial system, especially the Supreme Court, which he calls “among the finest in the world,” and one which “has played a far greater role in controlling the Israeli military than any court in history has ever played in the conduct of military affairs” (Dershowitz: 183). By contrast, however (as Finkelstein points out), a number of investigations of human rights organizations as well as reports in the Israeli media have demonstrated that both coercion and even sometimes outright torture of Palestinian prisoners is still continuing—without effective action by the Supreme Court, which has consistently refused to hear cases charging physical abuse and torture, whether brought by the Palestinian victims or Israeli human rights organizations.¹²

Thus, the Supreme Court has abdicated its responsibility even to ensure that its own rulings are enforced by the government, let alone to consider the entire range of illegal Israeli government actions against the Palestinians. David Kretzmer, the chaired professor of international law at the Hebrew University of Jerusalem, in the most authoritative work on the Supreme Court’s role in the Israeli occupation, argues that the Court has been “blatantly government-minded” and has even “occasionally conceded that courts are state institutions whose primary duty is to protect the state against its enemies”(Kretzmer 2002: 192). Kretzmer concludes that the Court, although strongly “rights-minded” when it comes to Israelis, with regard to the Palestinians has functioned primarily (although not exclusively) to legitimize rather than to constrain the government’s policies and actions in the occupied territories, where it “has rationalized virtually all controversial actions of the Israeli authorities, especially those most problematic under principles of international humanitarian law” (Kretzmer 2002: 3).

¹⁰ See especially Finkelstein’s citations from the annual reports of Amnesty International from 1991-1999 and special reports by Human Rights Watch and B’Tselem.

¹¹ In fact, in 2000 such legislation was initially introduced, although it was later dropped when the Shin Bet rescinded its request for legalized authority to coerce, because of concerns over Israel’s international image.

¹² For example, see *Ha’aretz* news stories of 15 April 2002, 18 August 2003 and 19 August 2004, all of which report the findings of B’tselem and their own investigative journalists on the continuing use of torture or coercion, together with the refusal of the Israeli courts to stop them.

Conclusion

As I have suggested, far too many books and articles on the Israeli-Palestinian conflict are polemics rather than subtle, nuanced, or impartial analyses. The two books discussed here are cases in point. Dershowitz's Case for Israel is an intellectually and morally crude book. Most of its arguments are unimpressive and some of them are preposterous. Even its unexceptionable arguments are well known and Dershowitz adds nothing original or interesting to them.

On the other hand, Finkelstein's Beyond Chutzpah might have been a very good book. Certainly its critique of Dershowitz is devastating. The problem, however, is that the book often lacks subtlety and complexity, and is sometimes marred by sarcasm, overstatement, and outbursts of rage. This is particularly the case regarding Finkelstein's unwillingness to accept that many Jews as well as concerned gentiles genuinely fear a resurgence of anti-Semitism—and while these fears are exaggerated, they are not wholly irrational nor mere cynical manipulations or “machinations” of Israel, its supporters, or “the Holocaust industry.”

In light of the general ignorance and climate of opinion in the U.S. concerning the Israeli-Palestinian conflict, truly serious criticism of Israel starts off at a serious disadvantage, especially compared to the demagoguery of partisans like Dershowitz. Consequently, it is especially important that critiques of Israel both appear to be and in fact are carefully balanced. Finkelstein's failure to achieve such balance is likely to ensure that even his many sound arguments will fall on deaf ears.

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