

# Zionism, Health Care and the Illiberalism of Progressive Minds

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By **Peter Berkowitz** - April 8, 2012

The ability to appreciate the merits of the other side of a question, John Stuart Mill asserted in his 1859 classic, “On Liberty,” is a hallmark of the liberal spirit. By this measure, Peter Beinart’s new book, “The Crisis of Zionism,” which has become a cause célèbre among progressives, marks another step in the parting of ways between progressives and that old-fashioned and indispensable liberalism that recognized that multiple perspectives were vital resources to a free society.

Fittingly, the book was released late last month, during oral arguments before the Supreme Court over the constitutionality of the Affordable Care Act of 2010. The progressive defense of the constitutionality of Obamacare embodies the same determination to not merely criticize but to demonize opposing points of view. Taken together, liberals’ critique of Zionism and their defense of the individual mandate provide an instructive window into the growing illiberalism of the progressive mind-set.

The questions at the center of “The Crisis of Zionism” are why does Israel occupy the West Bank -- the territory, now home to approximately 2.25 million Palestinians and 300,000 Israelis, seized by Israel from Jordan 1967’s Six Day War -- and what can be done to bring the occupation to an end. Beinart answers that the occupation is a result of Israel’s ethical failings, and that to compel Israel to behave justly American Jews must renounce their conservative American leadership, epitomized by AIPAC and the Conference of Presidents of Major American Jewish Organizations, and exert pressure by boycotting goods produced by Israelis living in the West Bank.

Beinart’s book has been subject to severe criticism, nowhere more thoroughly than in an extended review by Wall Street Journal columnist Bret Stephens in the online magazine Tablet. Stephens shows that “The Crisis of Zionism” is rife with factual errors, half-truths, and partisan pronouncements masquerading as disinterested observations.

This is not to say that Beinart’s book is devoid of merit. His anguish over the West Bank seems heartfelt, if promiscuously flaunted. Liberalism and democracy, as he argues, are a part of Zionism. And because they are in tension, balancing them is a vital imperative. He also is right that Israel’s continued occupation of the disputed territories between the Green Line -- the 1949 armistice line between Israel and Jordan -- and the Jordan River represents

a grave problem, because ruling over another people conflicts with the principles on which Israel was founded and the liberal and democratic spirit with which the vast majority of Israelis are imbued.

But Beinart's insistence that occupation can be reduced to moral blindness and racism on Israel's part (that the West Bank Palestinians "are treated as lesser human beings simply because they are Palestinians"), betrays a bent of mind determined to transform a tragic conflict into a simplistic tale of oppressors and oppressed.

Beinart suggests that the question merely comes down to whether Israel will exercise its overwhelming military power in a moral manner. His readers, however, are given little context of political exigencies and looming dangers in which Israel must operate. He pays scant attention to the strategic and moral calculus faced by Israeli leaders who must balance humanitarian responsibilities against the very survival of their citizens.

Of the long history and resolute persistence of Palestinian intransigence and terrorism, one hears little in Beinart's book, and when such matters are mentioned, as in the case of Hamas mortar, rocket, and missile attacks from the Gaza Strip on civilian populations in southern Israel, it is typically to discount the significance -- or to implicate Israel.

Of Israel's bitter experience in withdrawing from southern Lebanon in 2000, which turned it into a launching pad for Hezbollah rockets and missiles targeting Israeli civilian populations, one hears next to nothing.

Of the threat posed by Iran's funding and equipping of Hamas in Gaza and the West Bank, and of Tehran's decades-long pursuit of nuclear weapons (feared by almost all Sunni Arabs of the region as well as Israel), one hears next to nothing.

Of the dangers to the east presented by an increasingly unstable Jordanian monarchy, vulnerable to a restive Palestinian population within its own borders as well as a rising Muslim Brotherhood, one hears next to nothing.

Of an increasingly hostile Egypt to the southwest, whose parliament is dominated by Islamists and which is unable or unwilling to prevent the Sinai Peninsula from being used as a terrorist haven and staging ground for attacks on Israel, one hears next to nothing.

Beinart also suppresses good news. Of Israeli Prime Minister Benjamin Netanyahu's substantial easing of roadblocks and travel restrictions in the West Bank and the contribution Israel has made to a growing Palestinian economy, one also hears next to nothing.

Indeed, Beinart brings characters with whom he disagrees on stage only to establish their villainy. Netanyahu, in this book, comes off as little better than a Jewish fascist. Beinart presents AIPAC and the leaders of other major Jewish organizations as mindless minions loyal to Israel's prime minister. This is an old charge, usually tinged with anti-Semitism. That is not Peter Beinart's intention, but he is keeping strange company.

Beinart's bottom line is clear: Conservative opinion about how to resolve the conflict between Israel and the Palestinians is not just deficient or mistaken, but benighted, bigoted, brutal.

This style of argument is of a piece with the approach adopted by leading progressive commentators to the debate over the challenge by 26 states to the constitutionality of the Affordable Care Act. A New York Times editorial proclaimed that should the five more conservative justices vote to strike it down, they will demonstrate that their majority is "virtually unfettered by the law."

Concerning the conservative argument, New York Times online columnist Linda Greenhouse announced, "There's just no there there." The belief that the individual mandate, which requires people to buy insurance or pay a federally imposed fine, is unconstitutional, according to Greenhouse, "is simply wrong."

Washington Post columnist E.J. Dionne declared that were the high court to strike down the Affordable Care Act it could only be the result of a lawless imposition of "ideology." Slate's Dalia Lithwick casually observed that the constitutionality of the health care law was "uncontroversial."

In the New York Review of Books this week, heavyweight constitutional law scholar Ronald Dworkin agreed with progressive conventional wisdom that the constitutionality of the individual mandate "is not really controversial: the Constitution's text, the Supreme Court's own precedents, and basic constitutional principle seem obviously to require upholding the act." Since the Affordable Care Act is "plainly constitutional," he concludes, "it will be shaming if" five conservative justices "do what Obama's enemies hope they will."

Even President Obama got in on the act, declaring that holding the individual mandate unconstitutional "would be an unprecedented, extraordinary step of overturning a law that was passed by a strong majority of a democratically elected Congress." Leaving aside that the president had his facts wrong (the now-unpopular legislation passed Congress narrowly, in a contentious, party-line vote that helped Democrats lose the House in 2010), the step would be neither unprecedented nor extraordinary. The Supreme Court's power to strike down

congressional acts repugnant to the Constitution was explained by Alexander Hamilton in "Federalist 78"; affirmed by the Supreme Court in *Marbury v. Madison* in 1803; and, though particular exercises of it are always criticized by the losing side, it is all-but-universally regarded as a central function of the court.

The president's efforts to walk back his remarks the next day by insisting that he was referring only to post-New Deal cases that dealt with economics or commerce did not change the fundamental point. The president had joined the progressive chorus in insisting that willful and rank judicial activism would be the only conceivable explanation of an adverse ruling by the court.

Actually, in assessing the constitutionality of the Affordable Care Act, the Supreme Court faces a hard question. On the one hand, the Constitution's Commerce Clause gives Congress the power to regulate interstate commerce; since the New Deal the Supreme Court has interpreted that power broadly; and health care involves an enormous national commercial enterprise.

On the other hand, Congress has never before sought to compel individuals to engage in commerce by making failure to purchase a good punishable by federal law; upholding the individual mandate would be tantamount to changing the structure of American constitutional government from one of limited and enumerated powers to one in which all activities would be subject to congressional regulation, because all activities indirectly affect interstate commerce in the way that not buying health insurance indirectly affects interstate commerce; and invalidating the individual mandate would not require the court to overturn a single precedent, only set an outside limit on the vast power Congress already exercises in the regulation of interstate commerce.

The failure to acknowledge any merit whatsoever to the conservative case against the individual mandate exhibits a breathtaking unfamiliarity with 30 years of conservative constitutional thought concerning the architecture of limited government. What's more, it bespeaks a stunning failure of the liberal imagination.

A progressivism that has so lost its liberal bearings is poorly suited to lead the nation in crafting reforms to our flawed health care system. And, as Peter Beinart's book vividly illustrates, when it looks abroad and directs its attention to the Middle East, that same progressivism is unfit to instruct Israel on how to deal with its tragic conflict with the Palestinians.

*Peter Berkowitz is a senior fellow at the Hoover Institution, Stanford University. His writings are posted at [www.PeterBerkowitz.com](http://www.PeterBerkowitz.com) and you can follow him on Twitter @BerkowitzPeter.*