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Jerusalem Gambit

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Gramm supporters point to all his straw-poll victories (30-some and counting), his money machine (he has raised \$15 million and enjoys fundraising), and his message (no massaging necessary). But an indicator just as telling in its way is an anecdote told by a former Texas A&M colleague. Professor Gary Halter, a Democrat, says his basketball buddies called Gramm "Phil Whiner" because every time a call went against him in a pick-up game he'd complain: "[He's] very competitive. He has to win." The moral of the story is that it's not much fun to play basketball against Phil Gramm. It's not much fun to play politics against him either.

Texas Democratic consultant Mark McKinnon, who worked on Lloyd Doggett's 1984 Senate race against Gramm, recalls how as soon as Doggett won his primary Gramm hit him with brutal radio ads about a contribution he accepted from a gay group. McKinnon says the rumor at the time was that Gramm supporters urged him to pull the ad—and Gramm responded by doubling his buy. "He just basically ripped

Doggett's legs and arms off and spat them out in June, and the election was six months away," McKinnon says. Isn't Gramm too ugly, too mean to win nationwide? "We said the same thing in 1984: 'Oh, you know, he may sell in [his district in] College Station, but he won't sell statewide,'" says McKinnon, who calls Gramm the best message politician he has ever seen. "I warn them all," McKinnon says of friends eager for a Gramm-Clinton match-up. "That could be a death wish for us."

In a speech back in 1975, Gramm proclaimed: "Those within our government who supposedly represent our views are defending our system with an ineptitude unparalleled in the history of the Republic. To reverse this trend we need but a unit of will." The same is true today. And if there is anything Phil Gramm has in spades, it's will. That's why conservatives who blurted "Yuck!" at their first glance at Phil Gramm—the near dropout who made good, the economics professor still fighting for his principles twenty years later—had best take a second look. □

Jerusalem Gambit

How we should treat Jerusalem is a matter of U.S. constitutional law as well as Middle Eastern politics.

MARSHALL J. BREGER

WITH the signing of the Israel-PLO accord in the East Room September 28, the attention of those concerned with the Middle East peace process has already shifted to the final-status negotiations to begin no later than the end of 1996. Foremost among the issues to be resolved is the status of Jerusalem.

Indeed, now that the Baltic states have regained their freedom, Jerusalem is one of the last places where *de facto* and *de jure* aspects of international law are sharply at odds. For while the United States and every other Western country *de facto* treat West Jerusalem as the capital of Israel, no government formally accepts Israeli sovereignty over any part of Jerusalem in its pre- or post-1967 borders. Just two countries, Costa

Rica and El Salvador, maintain embassies there.

Before the British Mandate ended, the Truman Administration supported internationalization of the city as a *corpus separatum*. This notion was opposed by Arabs and Jews alike and then made irrelevant by the 1949 armistice, which recognized Jordanian (eastern) and Israeli (western) sectors of the city. However, the United States has never recognized West Jerusalem as part of Israel, and it was not until the 1967 Six-

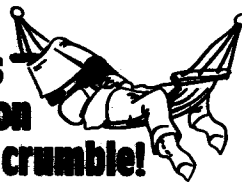
Mr. Breger is a Senior Fellow at the Heritage Foundation and Scholar-in-Residence at the Columbus School of Law, Catholic University of America. This article builds on a study published in the December 1994 Middle East Quarterly.

WAKE UP AMERICA!

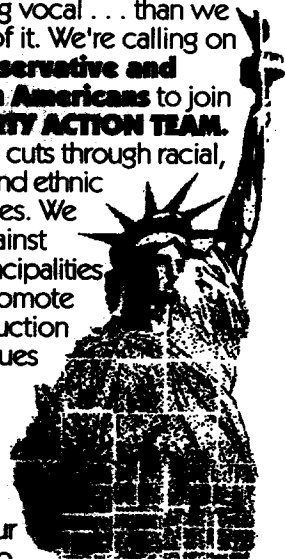
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Day War that the U.S. Government as a practical matter abandoned internationalization as a goal.

After the Israeli victory in June 1967, Ambassador Arthur Goldberg underscored that Israeli annexation of East Jerusalem "cannot be considered as other than interim and provisional and as not prejudging the final and permanent status of Jerusalem." Still, the Johnson Administration did not call for the restoration of Jordanian authority in East Jerusalem, arguing only that "there . . . must be adequate recognition of special interests of three great religions in the holy places of Jerusalem."

Two years later, Charles Yost, Richard Nixon's UN ambassador, staked out a somewhat different position, pointing out that "the United States considers that that part of Jerusalem that came under control of Israel in the June war, . . . is occupied territory." Secretary of State William Rogers, while affirming that Jerusalem should be a unified city, proposed that "there should be roles for both Israel and Jordan in the civic, economic, and religious life of Jerusalem." Later Administrations took a step backward, urging only that the final status of a "unified" Jerusalem be negotiated as part of a comprehensive peace settlement.

IN contrast, Congress increasingly views a united Jerusalem as the capital of Israel. Numerous concurrent resolutions (which express the "sense" of the House or Senate but have no binding effect) have been passed in the last twenty years urging Jerusalem as the site of our embassy. Some of these urge merely that the U.S. embassy be located in Jerusalem; others go further, urging that the United States recognize Jerusalem as Israel's capital. (The one does not necessarily entail the other.) In 1984 Senator Moynihan led a forceful campaign to pass legislation moving the embassy from Tel Aviv to Jerusalem, blunted only by the determination of the Reagan Administration.

This spring, pro-Israel activists upped the ante. More than 250 congressmen signed a letter urging President Clinton to move the embassy, and 93 senators wrote a letter on similar lines. Bob Dole introduced legislation requiring the U.S. Government to start

building an embassy in Jerusalem in 1996 and to open it by May 1999.

Dole's bill, the Jerusalem Embassy Relocation Implementation Act of 1995 (S-770), is more than hortatory rhetoric. It would block 50 per cent of the State Department's 1996 foreign construction funds until construction began on a Jerusalem embassy, and would do the same in 1999 if the embassy had not opened.

To Dole's chagrin the Jewish community has failed to line up 100 per cent behind him. While AIPAC (American Israel Public Affairs Committee), the powerhouse Washington pro-Israel lobby, supports the bill, it is joined only by the Jewish "Right," groups like the Jewish War Veterans and the Zionist Organization of America, who are at the margins of the Jewish communal establishment. Most establishment groups, meanwhile, have backpedaled. The American Jewish Committee and the National Jewish Community Relations Advisory Council refused to get on board. The American Jewish Congress flipped, first coming out in favor and then, at its May 18 Executive Committee meeting, expressing reservations. And the bellwether Conference of Presidents of Major Jewish Organizations punted, supporting the move "in principle" but remaining uncommitted on the specifics of the Dole proposal.

Prime Minister Rabin, of course, continues to restate the Jewish claim that the "united Jerusalem is our capital, the capital of the Jewish people, and will remain this way forever." Nonetheless, the Rabin government takes a surprisingly muted position on the Dole Bill. The Rabin line is as follows: Our capital is Jerusalem. We welcome any country moving its embassy to our capital. But it's your internal business whether you

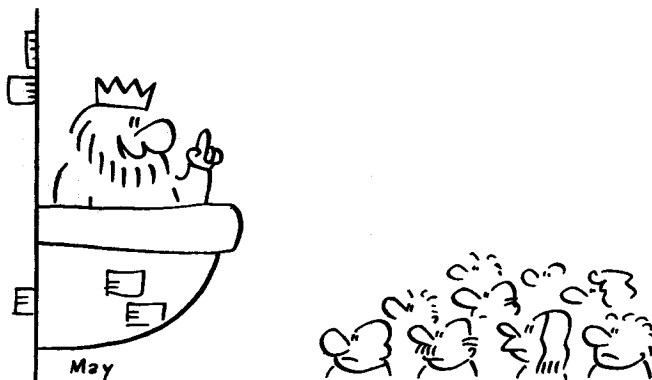
do so or not. Your actions in no way reflect on Jerusalem's status as our capital.

U.S. domestic politics aside, moving the embassy would not solve the Jerusalem issue. For as Jewish groups have themselves often argued in regard to the embassy in Tel Aviv, the fact that a U.S. embassy is located in a particular city does not necessarily mean that the U.S. recognizes that city as a capital. Indeed the U.S. embassy in East Germany was located in East Berlin, although the U.S. specifically rejected that city as the Soviet satellite's capital. The United States embassy in Nigeria stayed behind in Lagos when Nigeria changed its capital to Abuja; the U.S. embassy in the Ivory Coast remained in Abidjan rather than move to Yamoussoukro. Faced with congressional *force majeure*, the State Department may ultimately begin constructing an embassy in Jerusalem, while arguing that that does not mean that the U.S. recognizes Jerusalem as the capital.

In any event, there are clear constitutional problems with the Dole proposal. Article II, Section 2, grants the power to exercise foreign affairs to the President. Furthermore, the President is given explicit power to "appoint ambassadors . . . and consuls" and to "receive ambassadors and other public ministers." The Supreme Court has understood this language as authorizing the President to determine the form and manner in which the United States will maintain relations with foreign nations, and this includes the question of where an embassy will be situated.

THIS is, of course, well plowed ground. As long ago as 1876 President Ulysses S. Grant, in signing an appropriations act for the consular and diplomatic service, rejected Congress's right to order him to close a consulate. In his signing statement Grant pointed out that while "it is within the power of Congress to grant or withhold appropriation of money for the payment of salaries and expenses of the foreign representatives of the government," he would reject as unconstitutional any claimed "right in the legislative branch to direct the closing or discontinuing of any of the diplomatic or consular offices of the government."

President Reagan took the



"No, no, no—last year was the biggest tax hike in history; this year will only be the biggest tax hike since last year!"

same position when signing the 1988-89 Foreign Relations Authorization Act. Concerned that the State Department would respond to budget cutbacks by closing diplomatic missions abroad, Congress prohibited the use of appropriated funds to pay for closing a U.S. consular post. Going further, Congress ordered that no funds would be available to pay administrative expenses of the State Department should any consulate be closed. Since the offending provisions had been waived for a two-year period Reagan determined that he could sign the bill without immediate constitutional consequences and work to repeal the offending provisions before they became operative.

President Clinton staked out similar ground in 1994 when faced legislation that purported to require the establishment of a U.S. Information Agency office in Lhasa, Tibet.

In the current instance, Bob Dole sought to get around the constitutional problem by using Congress's appropriations power to encourage the President to take its advice by withholding half of the State Department's construction account in 1996 and in 1999 unless the embassy project has reached the appropriate stages.

One might argue that S-770 in no way restricts the President's authority to maintain the embassy in Tel Aviv. It merely creates a financial disincentive. Similarly in 1909, when Congress passed an appropriations rider offering President Taft the choice between, on the one hand, having Marines make up 8 per cent of battleship crews, and, on the other hand, no funding for the Marine Corps at all, the attorney general found such a contingent financial penalty constitutional, arguing that Congress has the power to provide that an appropriation for the Marine Corps "not be made available unless the Marine Corps be employed in some designated way."

But in the end, using the spending power to curtail the President's Article II authority won't work. Congress cannot use the power of the purse to seize a power textually committed to the Executive alone. While Congress can probably appropriate money for the construction of a building in West Jerusalem (and create a financial penalty if no construction takes place) it cannot use the "spending power" to order the Executive either in 1996 or 1999 to make that building an embassy rather than a con-

sulate or cultural center. Nor can it order the President to recognize Israeli sovereignty over Jerusalem.

The unspoken fact is that the U.S. Government is already committed to building in Jerusalem. It has secured a 99-year lease from the Israeli government for land in Talpiot in order to ensure that suitable space will be available whenever the diplomatic niceties allow.

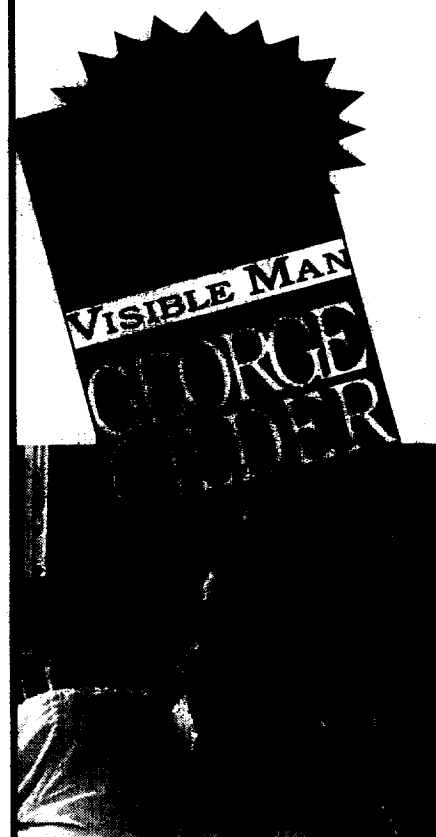
A side issue adding to the complexity of the embassy bill is the debate over the expropriation of land in East Jerusalem. This has always been an explosive issue between Jews and Arabs. After Likud Mayor Ehud Olmert stirred the pot, the Rabin cabinet announced plans to expropriate some 140 acres and build more than 5,000 housing units in East Jerusalem, only 400 of which would be earmarked for Arabs. The Arab world exploded. The Arab League called for a Jerusalem summit and an emergency debate in the Security Council. Only a U.S. veto prevented a Security Council condemnation of Israel's move. The King of Morocco (head of the Islamic Conference's Jerusalem Committee) sent a pained note to Rabin, and Jordan called in the Israeli ambassador to protest. When two small parties in the Knesset (cheered on by the Likud opposition) threatened to bring down the government over the issue Rabin beat a hasty retreat, suspending the entire project.

WHILE explosive, the expropriation issue is clearly peripheral. Even as an "occupying power," let alone as a sovereign, Israel has the right to expropriate land for public purposes (such as housing). And the land owners, of course, have the correlative right of compensation. Invariably, however, Palestinians refuse to apply for compensation when property is condemned, so as not to validate Israel's control over the territory.

Within the Senate, pressure to bring the Jerusalem bill to the floor is flagging. Warren Christopher has written Congress warning that he has urged a presidential veto (and the word is that he means it for once). And Dole, stung by the intensity of the opposition in the media and lukewarm support in the Jewish community, seems unwilling to press the matter without a clear and convincing veto-proof vote count (he now has sixty co-sponsors).

Sen. Dianne Feinstein (D., Calif.) is

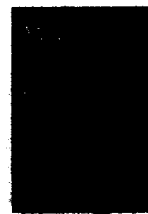
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working on language that will remove the "legislative hammer" forcing groundbreaking to begin in 1996, while leaving the 1999 deadlines. And this compromise might well attract some of those currently behind the Dole bill. Should this version pass, the President could safely sign it, treating the legislation as yet one more hortatory resolution expressing the sense of Congress that the embassy should be moved.

But what of the requirement that the Jerusalem embassy open in 1999? Clinton could use the same logic that President Reagan used when he signed the FY1988-89 Foreign Relations Authorization Act.

IRONICALLY the campaign to move the embassy may well backfire on its pro-Israel proponents. The land already purchased for a new U.S. facility in West Jerusalem, and the move are usually defended on the view that, in columnist Charles Krauthammer's words, "the embassy move does endorse Israel's claim to that part of Jerusalem that is indisputably Israel's."

This means that Israel's claim to East Jerusalem remains in dispute. Thus, by building a U.S. embassy in "unchallenged Jewish West Jerusalem," as the May 26 *Washington Post* points out, we would underscore the notion that Israeli sovereignty in East Jerusalem is "in play." Moving the embassy could well reinforce efforts to divide the city in final-status talks.

A divided-city scenario is just what the Palestinians want. Their more sophisticated ideologues no longer claim all of Jerusalem. As Faisal Husseini, the PLO's spokesman on Jerusalem, has pointed out,

We do not want to see the city divided. It is now divided. Part of it is under occupation and the other part sanctions this occupation. . . . We are seeking a comprehensive solution that will keep Jerusalem open, with free movement and without borders; but at the same time it will contain two capitals.

Moving the embassy will entail numerous unintended consequences. One issue, of course, is what kind of compensation will be proffered the Palestinians, and indeed the broader Arab world, which has significant interests in the holy places of Jerusalem.

The European countries, for example, are certain to upgrade their relations with Orient House, the PLO's unofficial

East Jerusalem headquarters. So may the Vatican. The King of Morocco, who while a devotee of the peace process remains chairman of the Jerusalem Committee of the Islamic Conference, will have to be assuaged. As will both King Hussein of Jordan and the Saudis, both of whom claim the mantle of protector of the holy places.

More problematically something needs to be done about our present consulate-general in Jerusalem. The U.S. consulate today has two branches, one in East Jerusalem and one in West Jerusalem. Reflecting the American position regarding sovereignty in Jerusalem, the American consul reports to Washington not through the ambassador in Tel Aviv but directly to the State Department. This sleight of hand has allowed the consulate more freedom to monitor events on the West Bank and to serve in a day-to-day sense as our liaison with the West Bank Palestinians.

Now it may be that the State Department will simply close up the consulate

and put all consulate functions under the embassy, as is the case in most countries. Certainly if there is an embassy in West Jerusalem there is little need of a consulate as well. But it is far more likely that the Jerusalem consulate will be consolidated at its present branch in the Eastern—that is to say Arab—sector. This kind of action replicated repeatedly by the international community can only reinforce the very notion of a divided city which the supporters of moving the embassy wish to deny.

Like Bill Clinton's 1992 promise to build a kosher kitchen in the White House, the Jerusalem bill may eventually prove to be simply another outgrowth of our quadrennial presidential marathon. There is no doubt that symbolism is important. But those whose goal is a united Jerusalem under Israeli sovereignty risk allowing the symbolic question of where the embassy lies to obscure, or indeed work against, that underlying purpose. □

Welfare States

Neither state nor federal bureaucrats can run welfare properly. It must be devolved to the people.

MARVIN OLASKY

THE Kenosha County Job Center, located in the southeast corner of Wisconsin, is the shiny face of state-level welfare reform, and its presence has launched a thousand trips. More than a dozen state delegations, scores of reporting teams from networks and national magazines, and welfare managers from all over have come and marveled at 54,000 square feet of calibrated administration in color-coordinated offices.

Wisconsin's attempt to provide social services with a human face has something for everyone: Conservatives have been charmed by the 20-hour-per-week work requirement for many AFDC recipients and the two-year time limit on many welfare benefits, and liberals have

been mollified by a package of social-worker-intensive programs that will continue to keep the welfare world safe for bureaucracy.

The Kenosha County Job Center has been such a hit that many states are following the leader: Michigan, New Jersey, and others have Wisconsin-style programs, and Massachusetts even hired Wisconsin's social-services director to head its Department of Health and Human Services. Any poster child that popular deserves a closer look.

Kenosha County is an hour's freeway drive from notorious Chicago slum high-rises like Cabrini-Green, but a semi-bucolic world away. The county's population of 130,000 is 90 per cent white; the unemployment rate is about 3 per cent. On the way from the interstate to the Job Center, drive-by shootings are not a concern and drive-

Mr. Olasky is a senior fellow at the Progress & Freedom Foundation and editor of World.