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# Discord “Behind the Table”: The Internal Conflict Among Israeli Jews Concerning the Future of Settlements in the West Bank and Gaza

*Robert H. Mnookin\* & Ehud Eiran\*\**

## I. INTRODUCTION

The Israeli-Palestinian conflict is deeply paradoxical: the basic outline of a deal that might better serve the interests of most Israelis and most Palestinians is reasonably clear and yet this violent conflict persists. Since the Camp David negotiations orchestrated by President Bill Clinton collapsed in the summer of 2000, the entire Oslo peace process has disintegrated and in the following four years more than 1000 Israelis and 3000 Palestinians have died in renewed violence.

The essential terms of such a deal are well known. President Clinton outlined them to the parties in December of 2000.<sup>1</sup> It would involve a two state solution. There would be arrangements to insure a secure Israel, which would remain a democratic Jewish state. The new Palestinian state would include Gaza and the West Bank. All Jewish settlements would be evacuated, with possible exceptions for those very near the Green Line or adjacent to Jerusalem.<sup>2</sup> Those settlements might be annexed to Israel in exchange for land that is presently part of Israel and other consideration. Jerusalem would become a condominium of sorts. Those portions of East Jerusalem presently occupied by Palestinians would become the capital of the new Palestinian state, while the Jewish portions of Jerusalem would remain the capitol of Israel. The Palestinian claim that their refugees have a “right of return” would be definitively resolved in a way that insured that Jews remained a substantial majority in Israel proper.

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1. See DENNIS ROSS, *THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE* 752-753 (2004).

2. The Green Line was the cease-fire line, established in 1949, that became a provisional border between Israel and the territory controlled by Jordan before the 1967 War. See Fr. Robert J. Araujo, S.J., *Implementation of the ICJ Advisory Opinion—Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Fences [Do Not] Make Good Neighbors?*, 22 B.U. INT’L L.J. 349, 365-66 (2004).

If the outline of a deal that would better serve the interests of most Israelis and Palestinians is so obvious,<sup>3</sup> why has it proven so difficult to make progress towards peace? The most common explanation relates to failures of leadership. Many blame the breakdown at Camp David on Yasser Arafat,<sup>4</sup> although Prime Minister Ehud Barak and President Clinton are sometimes said to be responsible as well.<sup>5</sup> In the years since, some commentators have suggested that President George W. Bush's administration bears blame for the lack of progress towards resolution because it failed to design a strategy to enable the parties to accept the terms of a deal that would appear to serve the interests of both sides.<sup>6</sup>

While we agree that political leadership is a necessary condition for progress towards peace, we believe there is a deeper reason for the apparent paradox: there are profound internal conflicts among Israeli Jews, on the one hand, and among Palestinians, on the other, that stand as barriers to progress at the negotiation table. Among Palestinians, this conflict relates to the refugee problem and the meaning and scope of any Palestinian "right of return" that would essentially be extinguished by the deal. Among Israeli Jews, the conflict concerns the future of the settlements. A contiguous Palestinian state would encompass many existing Jewish settlements, and as a practical matter displace thousands of Jewish settlers; it would also mark the end of the "settlement project." For some religiously observant Israelis this project was meant to guarantee the fulfillment of a messianic desire to include within the Jewish state the cradle of "Eretz Yisrael"<sup>7</sup>—Biblically

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3. Two different "third track" unofficial collaborative efforts by Israelis and Palestinians have demonstrated that the terms of a beneficial deal remain well known. Over 100,000 Palestinians and 150,000 Israelis have signed the Ayalon-Nuseibeh initiative, which spells out the essential principles that would provide a foundation for a deal. Ami Ayalon is a retired admiral who headed the Israeli Navy and served as head of Israel's internal security agency. Sari Nuseibeh, a leading Palestinian public intellectual, is President of Al-Quds University in Jerusalem. In a process facilitated by a Swiss professor, leading Israelis and Palestinians negotiated the Geneva Accords, an agreement that works out in considerable detail all of the final status issues. The Ayalon-Nuseibeh initiative is available at <http://www.mifkad.org.il/en/> (last visited Mar. 15, 2005). See also Ami Ayalon & Sari Nuseibeh, *Finding Common Ground: The Missing Pieces of Middle East Peace*, 2 SEATTLE J. SOC. JUST. 415 (2004). To access the Geneva Accord, see [http://www.heskem.org.il/index\\_en.asp](http://www.heskem.org.il/index_en.asp). For a Palestinian critique of the accord, see Haithem El-Zabri, *Palestinians Outraged by Geneva Accord*, THE PALESTINE MONITOR, Oct. 19, 2003, at [http://www.palestinemonitor.org/Analysis/palestinians\\_out\\_raged\\_by\\_geneva.htm](http://www.palestinemonitor.org/Analysis/palestinians_out_raged_by_geneva.htm). For an Israeli critique, see Yaakov Amidror, *The Geneva Accord: A Strategic Assessment*, ONE JERUSALEM, Dec. 4, 2003, available at <http://www.onejerusalem.org>.

4. See ROSS, *supra* note 1, at 710.

5. Hussein Agha & Robert Malley, *Camp David: The Tragedy of Errors*, NEW YORK REVIEW OF BOOKS, Aug. 9, 2001, at <http://www.nybooks.com/articles/14380>. Compare to responses by Ross and Grinstein in *Camp David: An Exchange*, NEW YORK REVIEW OF BOOKS, Sept. 20, 2001, at <http://www.nybooks.com/articles/14529>. See also Jeremy Pressman, *Visions in Collision: What Happened at Camp David and Taba?*, 28 INT'L SECURITY 5 (2003), at [http://muse.jhu.edu/journals/international\\_security/v028/28.2pressman.pdf](http://muse.jhu.edu/journals/international_security/v028/28.2pressman.pdf).

6. See Gareth Evans & Robert Malley, *Roadblocks on the Path to Peace*, N.Y. TIMES, Oct. 24, 2002, at A35 (claiming President Bush lacked a sufficient plan for comprehensive political settlement between Israel and Palestinians); Thomas L. Friedman, *A Rude Awakening*, N.Y. TIMES, Feb. 5, 2004, at A31 (blaming the Bush foreign policy team for failing to tailor the peace process to build a moderate center Palestinian bloc). Other explanations suggest the possible absence of a bargaining zone between the two parties, or mutual hard bargaining. See Russell Korobkin & Jonathan Zasloff, *Roadblocks to the Road Map: A Negotiation Theory Perspective on the Israeli-Palestinian Conflict After Yasser Arafat*, 30 YALE J. INT'L L. 1 (2005).

7. "Eretz Yisrael," literally "land of Israel." Politically, the term means "greater Israel," those areas that were promised to the Jews in the Bible but are not under the sovereignty of the modern state

significant parts of the ancient Jewish land. These internal “behind the table” conflicts interact with, and create problems for, any negotiations across the table between the Israeli government and the Palestinian Authority and explain why it is difficult for Israeli and Palestinian leaders to make and implement a comprehensive deal.<sup>8</sup>

Our exclusive focus is on one of these conflicts—the profound internal rift among Israeli Jews over the Jewish settlements in the West Bank and Gaza. We are especially interested in the role of the national religious settlers and the Israeli government’s response to them. These settlers lead the movement and are dominant actors in the internal conflict. The current controversies within Israel regarding Prime Minister Ariel Sharon’s “unilateral initiative,” which was not the product of a negotiation with Palestinians, demonstrate the importance of understanding the internal conflict within Israel and the dominant role of the leaders of the settlement movement.

Prime Minister Sharon’s initiative seeks to evacuate the Jewish settlements in Gaza as well as four small settlements in the northern part of the West Bank. If implemented, this initiative will displace only 8000 of the 230,000 Jewish settlers. Its immediate impact is primarily in the Gaza strip, home to over one million Palestinians, and an area with little, if any, religious significance to Jews. Although polls suggest a majority of Israelis support the withdrawal from Gaza,<sup>9</sup> national religious settlers—who make up less than 2% of the electorate—are leading the opposition and may well succeed in blocking implementation of the initiative.

Our essay is organized as follows. In Part II, we briefly describe the settlements today and then outline the two dimensions of internal conflict. Next, in Part III, we review the history of the settlement movement, and show how, in the face of opposition, a determined minority (the national religious settlers) promoted and vastly expanded the settlements. In the process, they helped create “facts on the

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of Israel. The territory that was held under British control (1917-1948) was called “Palestine-Eretz Yisrael.”

8. These kind of interactions, between across the table negotiations and conflicts among each negotiator’s constituents, characterize bargaining in labor relations and international relations, and there is academic literature dealing with each. In a seminal article published in 1988, Robert Putnam, building on the work of Walton and McKersy in the labor field, put forth the notion of “Two-Level Games.” Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT’L ORG. 427 (1988). Putnam emphasizes the idea that the political leaders negotiating across the table at an international level are constrained and influenced by the domestic political negotiations in which they are necessarily involved at the same time, he states:

At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored . . . .

*Id.* at 434. The only academic application of Putnam’s theory to the internal conflict within Israel we have found is an unpublished paper by Ben Soetendorp, which we discovered after this article had been drafted. See Ben Soetendorp, *Choosing Stalemate: The Interaction Between Domestic Politics and Israeli-Palestinian Bargaining*, Paper Prepared for Presentation at the 43rd Annual Meeting of the International Studies Association (Mar. 24-27, 2002), at <http://www.isanet.org/noarchive/soetendorp.html>.

9. See *Israeli Public Opinion on the Withdrawal from Gaza*, ISRAEL POLICY FORUM, May 2004 (for the results from the Ma’ariv-Telesaker poll and the Peace Index Poll, as conducted by the Steinmetz Center for Peace Research, seeking Israeli public opinion concerning Prime Minister Sharon’s disengagement plan), at <http://www.israelpolicyforum.org/serial.cfm?id=10&Sub=57&dis=1>.

ground”<sup>10</sup> that contributed to the failure of the Oslo process. In Part IV, we will offer an explanation for why the national religious settlers have wielded such disproportionate influence. In Part V, we will describe Prime Minister Sharon’s proposed limited withdrawal and show how the settlers, drawing on their sources of influence, are attempting to block any evacuation of settlements. Finally, in our concluding section, we focus on the current conflict over Prime Minister Sharon’s proposal and offer suggestions about how the internal conflict might best be managed.

## II. THE SETTLEMENTS TODAY AND THE NATURE OF THE INTERNAL CONFLICT

### A. *The Settlers and Settlements Today*

About 230,000 Israeli settlers,<sup>11</sup> out of a total population of some 5 million Israeli Jews, live in 140 settlements in the West Bank and Gaza.<sup>12</sup>

Often, non-Israelis have a tendency to view all settlers as messianic nationalists—zealots in the desert wilderness—pursuing a religiously based expansionist vision of “Eretz Yisrael,” a Greater Israel. But the settlers today are a diverse lot that can be broken into three reasonably distinct groups. One group, the religious nationalists, is deeply committed to a religiously based expansionist vision. Although they comprise only about a quarter of the settlers, they make up the vast majority of the movement’s institutional leadership.

Many more settlers—perhaps half of the total—moved to the settlements not for any deeply religious or ideological reasons but in order to improve their quality of life. They were initially motivated by generous government subsidies and the opportunity to acquire better housing in a less densely populated area with more open space from which they could still commute to Tel Aviv or Jerusalem.

A third group—about a quarter—are ultra-orthodox Jews (called the “Haredim”) who had similar, primarily economic motivations.<sup>13</sup> The Haredim have traditionally lived in segregated communities and abstained from participating in Israeli public life. Indeed, some have never recognized the existence of the

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10. The term “creating facts on the ground” was used to describe the early Zionist strategy of establishing a Jewish presence through pioneering settlements in order to push out the future borders of a yet to be established Jewish state. See generally Abraham D. Sofaer, *Jewish Law and the Middle East Peace Process*, 21 LOY. L.A. INT’L & COMP. L. REV. 313, 319-20 (1999).

11. This number does not include the 176,000 Jewish inhabitants of those portions of Jerusalem previously in the West Bank that were annexed to Israel in 1968. See Yehezkel Lein, *Land Grab: Israel’s Settlement Policy in the West Bank*, B’TSELEM, May 2002, at [http://www.btselem.org/English/Publications/Summaries/Land\\_Grab\\_2002.asp](http://www.btselem.org/English/Publications/Summaries/Land_Grab_2002.asp). See also Dror Etkes, Director of Peace Now’s Settlements Watch Project, Testimony Before the Near Eastern & South Asian Affairs Subcommittee of the Senate Foreign Relations Committee (Oct. 15, 2003) (transcript available at <http://foreign.senate.gov/testimony/2003/EtkesTestimony031015.pdf>).

12. Etkes, *supra* note 11. Some sources suggest there are in fact about 175 settlements. In addition to 140 recognized settlements, there are at least 105 others, sometimes called “outposts,” that are not officially recognized by the Israeli government. See *id.*

13. Ultra-Orthodox settlers have been the fastest-growing group of settlers in the last few years. In 2002, 50% of new settlers were from this group. See Nadav Shragai, *Settler numbers are approaching the 220,000 mark*, HAARETZ, Apr. 10, 2004, at <http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=190545&conrassID=2&subConrassID=1&sbSubConrassID=0&listSrc=Y>.

State of Israel; as a rule Haredim are exempt from military service. For these Haredim, the settlements provide a way to create new, low-cost, segregated communities. Living in the West Bank, at least initially, carried no special significance for them. Over time, however, some of those whose original motivation was primarily economic have become more ideologically committed to the settlement project, at least in nationalistic terms. While the political affiliations of these three groups vary, a higher proportion of settlers vote for right-wing parties than is true for Israel as whole.<sup>14</sup>

### *B. The Nature of the Conflict*

The core internal conflict over the future of the Jewish settlements has two dimensions. First, the settlements pose a concrete political question: what should Israel do with the occupied territories of the West Bank and Gaza? The conflict over this question has profoundly affected Israel's internal politics. It also illustrates the interaction between internal politics "behind the table" and negotiations "across the table" because its outcome will obviously affect any future negotiations between Israelis and Palestinians. It is safe to assume that all three groups of settlers would strongly prefer that their own settlement ultimately become part of Israel proper—few would vote to support their own forced evacuation.

The second dimension goes to the nature of Israel and the meaning of a Jewish state. It implicates the core identity of some of, but not all of, the protagonists. This dimension raises the following sorts of questions: What role should religion play in public life? In a democracy, can the "sacred" override state sovereignty? By what process should decisions over these issues be made?

In a brilliant essay written two decades ago, Amos Oz suggested that the internal conflict among Israelis over the settlement project implicated these sorts of issues. He wrote, in words that ring true to us today:

Hundreds of thousands of Israelis are convinced, intellectually and emotionally, that if Israel keeps hold of the occupied territories it will cease to exist—nothing less than that. Hundreds of thousands of other Israelis are convinced that if Israel pulls out, it will cease to exist—nothing less than that . . . Both sides are armed with precedents and expert opinions, indications that appear to them infallible. Both sides sense an imminent catastrophe. Both sides share a sense of emergency.<sup>15</sup>

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14. If one were creating a typology of settlements, rather than types of settlers, one might use three categories: (1) "Political Settlements" created for ideological reasons where national religious settlers live; (2) "Residential Settlements" inhabited by either by "quality of life" settlers or the Haredim; and (3) "Security Settlements" created for purposes of Israeli security. These would include the settlements in the Jordan Valley that were part of the Alon plan (discussed *infra* Part IV.A) and those on the Golan Heights. For the most part the settlers living in these settlements are not religious nationalists.

15. Amos Oz, *Whose Holy Land? Divided Israel in Palestine*, in ISRAEL, PALESTINE, AND PEACE: ESSAYS 78-82 (1995).

*1. The West Bank, Gaza and Israel's Future Borders*

The settlement project goes to the question at the heart of the most significant internal Israeli political conflict of the last three decades: What should be the permanent status of the occupied territories of West Bank and Gaza? Although Israel has controlled the West Bank and Gaza since 1967, their final status has not been decided and they have never legally been made a part of Israel proper. Deciding how to answer this question has created an internal fault-line between the Israeli right and the left since the 1970s. The right has traditionally supported retaining the territories for a combination of national security, cultural and religious reasons. In their view Israel needs to expand eastwards in order to create a more defensible border as well as protect the country's water supplies.<sup>16</sup> The West Bank is also viewed as the historical cradle of Jewish civilization and an essential part of the Promised Land. Despite these views, however, the right never annexed the territories when it was in power.

Left-wing Israelis believe that Israel should aim to relinquish control over these areas for strategic, demographic and moral reasons. Strategically, the left has argued that the occupied territories should ultimately be traded in return for peace with the Palestinians and Israel's Arab neighbors.<sup>17</sup> The left has also emphasized the adverse long-term demographic consequences of annexing the occupied territories: Israel could not remain a democracy with a Jewish majority. The left has further argued that Israel's continuing domination over Palestinian areas is immoral and would in the long run corrupt and coarsen Israel itself.

Since the late 1970s, on the Israeli left, Peace Now has led the efforts to halt the expansion of settlements.<sup>18</sup> Dror Etkes, a Peace Now staffer, indicated in 2003:

[P]eace Now has always thought that settlements in the occupied territories threaten our existence as a Jewish, democratic state, weaken the security of Israel, drain our economic resources, undermine our society's moral fiber, and serve to perpetuate Israeli rule over another people in a way that prevents Israel from reaching peace with the Palestinians. The settlements today pose an existential threat to the future of Israel. Let me be very clear: it is in Israel's own best interests to separate itself from settlements and the occupied territories that the settlers would have us bind to the state.<sup>19</sup>

The settlement project was designed to affect the outcome of this territorial conflict through the creation of "facts on the ground." The vision of the national religious settlers was to create a thick network of Jewish settlements in the West

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16. We will discuss these claims in greater detail later in the paper, as they are part of the resonance of the settlers' appeal in the eyes of the Israeli public.

17. Initially, most Israelis thought the West Bank would be returned to Jordan.

18. Peace Now, which claims to be Israel's largest non-governmental movement, was founded in 1978 and currently runs a "Settlement Watch" project to both monitor and protest the building of settlements in the West Bank and East Jerusalem. For more information, see the Peace Now website, at <http://www.peacenow.org.il/site/en/peace.asp?pi=43> (last visited Mar. 15, 2005).

19. Etkes, *supra* note 11.

Bank and Gaza in order to prevent the possibility of an Israeli withdrawal from these areas. Once there were a sufficiently large number of settlers, it would become impossible for any Israeli government to require massive numbers of ordinary Israelis to relocate. Meir Harnoi, a dominant figure in the early years of the settlement movement, explicitly admitted as much. Harnoi stated that, "The renewal of the Jewish settlements in the complete land of Israel was a move with one goal in mind: keep Eretz Yisrael from foreign rule."<sup>20</sup>

## 2. *The Settlements and the Nature of the Jewish State*

The conflict over the settlements implicates more than the concrete internal debate about territorial expansion. It raises profound issues about the nature of the Jewish state, and the personal identities of some of the protagonists. One such issue relates to Israel's national identity as a democratic Jewish state. Since Israel's birth in 1948 there has been an inherent but manageable tension between the nation's universalistic, democratic norms and its particularistic affiliation with Judaism and Zionism. In its fifty seven year history, Israel accommodated this tension by encouraging the development of both a democratic culture and one where Jewish holidays and symbols had a preferred status. In addition, there were special immigration rules, the "Law of Return," that gave every Jew the right to immigrate to Israel and become an Israeli citizen.<sup>21</sup> Because Jews represent about 80% of Israel's total population, they are a dominant majority in the state.<sup>22</sup> Although 20% of Israel citizens are Palestinians, the "Jewishness" of the public sphere and national culture has been maintained while according its Arab citizens full right to participate in Israeli political life.

If the settlement project leads to the annexation of the occupied territories, Israel will be faced with hard choices. What is to be the status of the millions of Palestinians who reside in the West Bank and Gaza? Resolving this issue implicates the tension between maintaining Israel as a Jewish state and as a democratic state. In order to maintain a Jewish electoral majority, even in the short run, Palestinians in the occupied territories cannot be given full voting rights. This would obviously undermine Israel's democratic character. But if Palestinians in the West Bank and Gaza become equal members in the Israeli body politic, Israel would soon lose its Jewish majority,<sup>23</sup> and as a result its Jewish national identity would be jeopardized.

The conflict over the settlements also implicates contentious issues about the role of religion in the public life. The national religious settlers base their determination to annex the occupied territories on a religious claim that the land is sacred, and that their project involves a religious calling to populate the Promised Land and redeem God's promise to the Jewish people. Many national religious

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20. MEIR HARNOI, *THE SETTLERS* 225 (1994) (Hebrew).

21. In its present form, the Law of Return has a very expansive definition of who is counted as a Jew. LAWS OF SPECIAL INTEREST: THE LAW OF RETURN (Isr.), at <http://www.knesset.gov.il/laws/special/eng/return.htm> (last visited Mar. 16, 2005).

22. Central Intelligence Agency, *Israel*, WORLD FACTBOOK, at <http://www.cia.gov/cia/publications/factbook/geos/is.html> (last visited Feb. 18, 2005).

23. Arnon Sofer, *Demographics in the Israeli-Palestinian Dispute*, Washington Institute: Special Policy Forum, Mar. 22, 2002, available at <http://www.washingtoninstitute.org>.



settlers broadly call for the infusion and imposition of traditional religious norms (as opposed to Jewish cultural norms) throughout Israeli public life. One settler suggested recently that Israel should develop a “third temple culture” that fuses religion with all aspects of the modern state.<sup>24</sup> For Israeli Jews with a secular, non-religious orientation, such notions are profoundly repugnant.

For some protagonists, the internal conflict over the settlements poses profound issues of personal identity. For the first generation of national religious settlers, the project gave their life meaning by defining their role in the chain of Jewish history and representing their unique generational contribution to Judaism and Zionism. For such settlers, dismantling their settlements would be a direct challenge to their personal identities. Some scholars have suggested that a collapse of the settlement project might push some settlers to relinquish their religious fervor or even turn suicidal.<sup>25</sup>

As evident from the Amos Oz quote above,<sup>26</sup> this conflict also poses profound issues of identity for liberal Israelis (whether secular or religious) who are committed to Israel’s democratic nature. One observant Israeli academic summed up his concerns quite vividly:

If the map of the settlements will establish the border of the sovereignty of the State of Israel, this will bring about a situation for the next generation in which a Jewish minority will oppress and will go on oppressing an Arab majority with everything that entails in daily life. For me this would mean that Israel is a state that wasn’t worth establishing; a state that is a disgrace for the Jewish people and for the Bible.<sup>27</sup>

Finally, the conflict over the settlements poses process issues, relating to political legitimacy. By what process should decisions about the future of the settlements be made? Religious nationalists base the legitimacy of their claims in part on the sacred; some suggest this gives them the right to disregard, in effect, the secular political process. Some have suggested that even if the vast majority of Israeli Jews agree to abandon the territories, it will be an illegitimate act because of the sacred nature of the land of Israel and the obligations of Jews to occupy it.<sup>28</sup> The left, on the other hand, believes that the state has complete sovereignty to make these kinds of decisions through ordinary political processes. Their commitment reflects a belief in both democratic and rational decision-making. Most see Zionism as a national, *secular* movement; they reject using religious rituals or beliefs as the basis for government policy. They believe that modern secular, not ancient religious, norms should determine the fate of the Jew-

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24. MOTI KARPEL, THE EMUNIC REVOLUTION: THE DECLINE OF ZIONISM AND THE RISE OF THE EMUNIC ALTERNATIVE, LEHATHILA: ALON SHVUT 73 (2003) (Hebrew).

25. Gideon Aran, Anthropological-Historical Notes on the Hard Core Israeli Settlers in the Territories Towards Possible Evacuation, Presentation at Harvard Law School’s Past, Present, and Future of the Israeli Settlements in the West Bank and Gaza Settlements: The Internal Israeli Conflict (Oct. 14-15, 2004).

26. See *infra* Part IV.B.

27. Meeting with Moshe Halbertal, Professor, Hebrew University of Jerusalem (Apr. 14, 2004).

28. Elyakim Haetzni, *Mishal Am*, NFC, Sept. 24, 2004, at <http://www.nfc.co.il/archive/003-D-7425-00.html?tag=8-10-01> (Hebrew).

ish people. A leading Israeli philosopher, Moshe Halbertal, summed this up when he suggested that the current debate about Prime Minister Sharon's proposal is:

[n]ot typically cast by the settler movement in terms of whether it is right or wrong as a matter of policy or wise politics, but instead is cast in terms of jurisdiction: whether Israel as a state has the sovereign power to decide it? Is there a legitimate process that can adjudicate the conflict?<sup>29</sup>

In Halbertal's view the settlers suggest that "elected government officials lack the jurisdiction to decide these issues and that relocation of settlers poses issues of religious law beyond the capacity of the state to decide."<sup>30</sup>

### III. THE GROWTH OF THE SETTLEMENTS AND THE INTERNAL ISRAELI DEBATE

Before Israel's surprising victory in the Six Day War in 1967, there was no domestic political pressure to expand the boundaries of the state. In the years following the establishment of Israel in 1948, one right wing party—Herut—voiced the rhetorical aspiration that the Jewish state should someday extend to the "two banks" of the Jordan River, but this notion was viewed by an overwhelming majority of Israelis as implausible and foolish. Immediately after the 1956 war, Prime Minister Ben-Gurion initially staked out a claim for the Sinai and Gaza, but under international pressure the Israeli government relinquished its occupation and control within a matter of weeks. The impetus to claim and settle the West Bank and Gaza arose only after Israel's surprising victory in the Six Day War.

The Six Day War's outcome elated Israelis, and laid the foundation for a fundamental change in territorial attitudes. Israel suddenly found itself occupying a vast, unexpectedly enlarged territory that carried emotional significance for some Israelis. The years that followed saw the emergence of various political and religious movements that called for expansion into these occupied territories.

The first expansionist step involved Jerusalem. Immediately after the war, Israel annexed East Jerusalem and thereafter steps were taken to encourage Jews to move into these newly annexed neighborhoods. There was a broad consensus among Israeli Jews that an *undivided* Jerusalem should be the capital of Israel. By 1977—less than a decade later—50,000 Jews had moved into the newly annexed parts of the city; today there are over 150,000. Among Israeli Jews, this annexation and settlement has never been controversial. Today there is a widely shared belief that these new Jewish neighborhoods would remain part of Israel in any "two-state" deal.<sup>31</sup>

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29. Moshe Halbertal, National Religious Ideology's Challenge to Israel's Sovereignty, Presentation at Harvard Law School's Past, Present, and Future of the Israeli Settlements in the West Bank and Gaza Settlements: The Internal Israeli Conflict Conference (Oct. 14-15, 2004).

30. *Id.*

31. While the manner in which Jerusalem would be divided was a contentious issue during the 2000-2001 Taba negotiations, it appears that the Palestinians were prepared to accept the reality of Israeli control of Jewish neighborhoods in East Jerusalem. See Miguel Moratinos, European Union Envoy to the Middle East, Description of the Outcome of Permanent Status Talks at Taba (2001), at <http://www.ariga.com/treaties/taaba.shtml> (report was originally published by *Haaretz*).

The internal conflict has always centered on settlement activities in the West Bank and Gaza. These can best be understood by distinguishing three time periods. The first period was between 1967 and 1977 during which the Labor Party was in power and there was limited settlement activity.<sup>32</sup> During this period, the government was generally resistant to settlement, and much of the activity was unauthorized. The second period began in 1977 with the ascendancy of the Likud Party and extended until 1992 when Labor regained power.<sup>33</sup> After a cautious start, the governments during this period became actively involved in promoting the expansion of settlements. The third period has run from 1992 until the present. During this period (which includes the Oslo peace process) under Labor and Likud alike there has been a substantial expansion in the number of settlers with limited creation of new settlements.

### A. 1967-1977 Settlement Activities

During this initial period, the Israeli government essentially viewed the territories as a “bargaining chip” that would some day be traded for recognition and peace.<sup>34</sup> Nonetheless, some limited settlement activities were authorized based primarily on national security considerations. Labor also authorized the “reestablishment” of three settlements on sites populated by Jews earlier in the twentieth century, prior to Israel’s establishment.<sup>35</sup> Some within the government opposed, as a matter of principle, even this limited activity.

In the aftermath of the Six Day War, a Ministerial Committee on the Settlements was formed, chaired by Yigal Alon. He developed what became known as the “Alon Plan” which involved the creation of a string of small settlements along the valley of the Jordan River to provide an eastern line of defense.<sup>36</sup>

Other settlements were begun contrary to government policy, often under false pretenses, by right-wing national-religious activists who claimed to be living in temporary “work camps” or on archaeological excavations.<sup>37</sup> The most influential movement promoting early settlement in the West Bank was Gush Emunim—Bloc of the Faithful—a right-wing national-religious movement formed in 1974.<sup>38</sup>

This movement reflected a fusion of religious and Zionist<sup>39</sup> ideologies, and was based on the theology of two charismatic rabbis, Avram Isaac Kook and his

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32. Labor is Israel’s center-left political party. The party was in power from 1933 (as a pre-state political institution) until 1977 and then again from 1992-1996 and 1999-2001. Since the 1970s, it has supported trading land for peace with regard to the West Bank and Gaza.

33. Likud is Israel’s center-right political party. The party was created in 1973 as a union between a number of opposition parties, the most important one being Herut, a nationalistic right-wing party. Likud rose to power in 1977 when it was able to effectively channel the resentment of many sectors of Israeli society towards the long-ruling Labor Party. Since then it has been continually in power with the exception of 1992-1996 and 1999-2001.

34. Lein, *supra* note 11, at 11.

35. *See generally id.*

36. *Id.* at 12.

37. *Id.* at 13 (discussing tactics used by Gush Emunim).

38. *Id.*

39. Zionism is a political movement established in the late nineteenth century which was aimed at promoting the Jewish people as a nation and establishing a Jewish state. The ideological content and meaning of Zionism has been contested for over 100 years. *See* SHLOMO AVINERI, VARIETIES OF ZIONIST THOUGHT 195-202 (1980) (Hebrew).

son, Tzvi Yehuda Kook.<sup>40</sup> Gush Emunim was comprised largely of politically and religiously energetic youths who belonged to the National Religious Party, but were disappointed by their party's limited role in shaping the Israeli public sphere.<sup>41</sup> This movement aspired to incorporate all of the territories into "Eretz Yisrael" as an expression of its dual mission: devotion to a religious mandate—the Promised Land—that is a necessary condition to the coming of the messiah; as well as a suggestion that the "new frontier" is a way to revive Zionism, a movement that was in the process of decline in their eyes. The settlement project sought to guarantee that all parts of "Eretz Yisrael" will be incorporated as an integral part of the state of Israel. The first set of principles published by Gush Emunim in 1975 states that "we have to make it unequivocally clear to ourselves [Israelis] and the nations of the world that the people of Israel are fully committed to opposing any attempt to force upon them a withdrawal, through political or military means, from parts of Eretz-Yisrael."<sup>42</sup>

The movement's original goals were wider than simply creating "facts on the ground" in order to bring about Israeli territorial expansion. Its original list of principals included expansion of national and religious education, unity of the Jewish people, support for Jewish immigration to Israel, political and economic independence from foreign powers, and an activist foreign policy. Yet, by the late 1970s, the movement essentially focused on a single mission: settling the West Bank and the Gaza Strip. Gush Emunim set up a "settlement department" called Amana (Covenant). By the early 1980s, Gush Emunim disintegrated as a political movement, but its settlement arm—Amana—remained active and has since played a crucial role in the expansion of settlements.

From 1974-1976 successive Labor governments worked to restrain the settlement activities of Gush Emunim. For example, at the same site near Nablus the Gush Emunim activists made seven attempts to establish a settlement, and the government removed them in each instance.<sup>43</sup> But on the eighth try they succeeded—due to internal rift between Yitzhak Rabin and Shimon Peres within the Labor Party, a compromise was struck. The settlers were allowed to reside at a neighboring military base which they subsequently transformed into a civilian settlement.<sup>44</sup>

By 1977, when the Labor government left power, 4500 Israelis lived in 36 settlements—31 in the West Bank and 5 in the Gaza strip—that had been established either on the government's initiative or with its acquiescence.<sup>45</sup>

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40. See Lein, *supra* note 11, at 13. The father, Avram Isaac Kook (1864-1935), was a dominant religious authority who saw Zionism, even when led by non-religious Jews, as a movement that serves religious values. He argued that a secular state is the beginning of Jewish redemption. His son, Tzvi Yehuda Kook (1890-1981), also a rabbi, carried on his work.

41. Gideon Aran, *From Religious Zionism to a Zionist Religion: The Roots of Gush Emunim and Its Culture* (1987) (Ph.D. dissertation, Hebrew University) [hereinafter Aran, *Dissertation*].

42. GERSHON SHAFAT, *GUSH EMUNIM* 360 (1995).

43. See Lein, *supra* note 11, at 13.

44. *Id.*

45. *Id.*

*B. The 1977 Watershed: The Rise of Likud*

In 1977, the Likud Party broke the Labor Party's long-term political monopoly and formed its first government. Likud was committed to an expansionist ideology that suggested that Israel should include not only the West Bank, but also most of Jordan. However, this position was a minority one until 1977.<sup>46</sup> The 1977 elections brought to power people who were sympathetic to Gush Emunim's dream that the Jewish state should include *all* of the Land of Israel. While many in Likud shared an expansionist vision, Prime Minister Menachem Begin's government was initially cautious. Comparatively few Israelis were persuaded by Gush Emunim's religious justification, and many secular Zionists—including some members of Likud—were concerned that the conspicuous expansion of settlements would damage Israel's international standing.

Ariel Sharon championed the expansion of the settlements. In the first Likud government, from 1977-1981, Sharon became Minister of Agriculture and used that post to design his own long-range plan for expansion.<sup>47</sup> Sharon was motivated by a non-religious, expansionist vision. His initial goal was to "erase" the Green Line with settlements.<sup>48</sup> While Gush Emunim and similar organizations were able to attract nationally and religiously motivated settlers, Sharon went to great lengths to attract the general public to the settlement project.<sup>49</sup> By 1981 the number of West Bank settlers had nearly quadrupled to over 16,000.<sup>50</sup>

Likud won a second victory in 1981 and during its second administration (1981-1984) the settlement project greatly expanded and was further institutionalized. Begin's successor as prime minister, Itzhak Shamir, was committed to a vision of greater Israel and was willing, perhaps even more than Begin, to expose Israel to international condemnation in order to expand the settlements. Government agencies were deeply involved in planning and implementing the creation and expansion of settlements. During this period, mainstream non-governmental Zionist organizations such as the Jewish Agency and the World Zionist Organization actively participated.<sup>51</sup> This meant that the expansion of settlements was transformed from an essentially entrepreneurial activity led by a fringe group into a mainstream endeavor that provided substantial subsidies to encourage Israelis to move to settlements. Even more striking is the fact that between 1984 and 1990, although Labor participated with Likud in two successive national unity governments, the expansionist policies persisted. During those years, the number of West Bank settlers increased from 35,000 to more than 78,000.<sup>52</sup>

During this period, the Israeli governments actively sought to erase the distinction between Israel proper and the occupied territories. For example, the Min-

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46. YONATHAN SHAPIRA, *CHOSEN TO COMMAND: THE ROAD TO POWER OF THE HERUT PARTY* 87 (1989) (Hebrew).

47. See Lein, *supra* note 11, at 14.

48. *Id.*

49. *Id.*

50. *Id.* at 18 (Table 2, citing Central Bureau of Statistics).

51. The Jewish Agency and the World Zionist Organization were Zionist organizations created before 1948 that served as the institutional foundation for the state of Israel. Since the state of Israel was established, as quasi-governmental organizations they have remained deeply involved in facilitating Jewish immigration and settlement activities.

52. Lein, *supra* note 11, at 18 (Table 2, citing Central Bureau of Statistics).

istry of the Interior began referring to the territories as “Judea and Samaria.” Once again the Labor Party was complicit.<sup>53</sup> But Labor and Likud, Israel’s two major parties during this period, had different long-term goals regarding the settlements. Labor publicly expressed willingness to trade land for peace, thus implicitly anticipating an offer to remove settlements as a bargaining chip in some future peace negotiations with an Arab partner. Likud, on the other hand, while never prepared to annex the territories, became implicitly committed to a vision of a greater Israel. Likud sought to create “facts on the ground” in the territories through an ambitious government sponsored settlement project so that no future Israeli government would politically be able to withdraw from the West Bank as part of an overall settlement.

### *C. 1992-Present: Settlement Expansion During Oslo and Beyond*

In 1992 Labor came to power again, led by Yitzhak Rabin who promised to reduce significantly the amount of governmental resources going to settlements.<sup>54</sup> In September 1993, after a few months of secret negotiations, Israel and the Palestinian Liberation Organization (PLO) signed a declaration of principles that outlined a process over a period of years that would lead to a two-state resolution of the Israeli-Palestinian conflict. Oslo was premised on the notion of land for peace.<sup>55</sup>

Implicit in this agreement was the notion that Jewish settlements would be dismantled. Moreover, as part of the Oslo process, Israel later officially committed in 1995 not to “initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.”<sup>56</sup> The Labor government also promised to the United States that it would not establish new settlements or expand existing ones, except, if necessary, to accommodate the “natural growth” of the local population.<sup>57</sup> Ironically, during the 1990s—a decade dominated by the Oslo process—the number of West Bank settlers grew from 78,000 to nearly 200,000.<sup>58</sup> Much of this expansion occurred under three Labor governments, none of which stopped the expansion.<sup>59</sup>

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53. Indeed, as early as 1969, no official Israeli maps had the Green Line on them, and the terms “West Bank” and “occupied territory” were not used on state radio.

54. Lein, *supra* note 11, at 15.

55. This principle—that first appeared in the 1967 United Nations Security Council Resolution No. 242—governed the 1979 Israeli-Egyptian peace agreement, underlined the Israeli-Syrian peace negotiations from 1992 onwards, and was to serve as the basis of the final status agreement between Israelis and Palestinians in the Oslo process. UN SCOR, Res. 242, 22d Sess., at 8, UN Doc. S/INF/22/Rev.2 (1967).

56. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), Sept. 28, 1995, Chap. 5, Art. 31(7).

57. Lein, *supra* note 11, at 15-16.

58. *Id.* at 18 (Table 2, citing Central Bureau of Statistics).

59. On March 9, 2005, the Israeli government released a report compiled by Talia Sasson, a former Israeli prosecutor, which confirmed that at least some of the outposts were established, maintained, and grown with government financial support. See Ben Lynfield, *Israel's Aid to Illegal Settlers*, CHRISTIAN SCI. MONITOR, Mar. 10, 2004, at 1. The report claims that the Housing Ministry provided mobile homes and money to outposts, and that the military allowed fifty-four outposts to be constructed on private Palestinian land. *Id.*

During the Rabin period, the government's internal guidelines suggested there would be no new settlements, only "natural growth."<sup>60</sup> But the guidelines made an exception for new settlement construction in "the Greater Jerusalem area and in the Jordan Valley."<sup>61</sup> The Labor government also created semantic loopholes by expansively interpreting all of these terms: "Greater Jerusalem" was construed quite liberally.<sup>62</sup> "Natural growth" was vague enough to allow Israel to build thousands of new housing units without provoking a public rebuke from the United States government.<sup>63</sup> A number of settlements were constructed as "new neighborhoods" of already-existing ones.<sup>64</sup> In fact, between 1993 and 2001, the number of housing units in the Gaza Strip and the West Bank (excluding East Jerusalem) rose from 20,400 to 31,400—54% in 8 years, and the most significant increase took place under Ehud Barak in 2000.<sup>65</sup>

It is interesting to speculate about why the Labor government permitted this expansion. Rabin, Peres and Barak all were prepared to trade land for peace, and they must have recognized that expanding the number of settlers would complicate their domestic challenge in ratifying any deal. The most obvious explanation is that they chose to avoid and defer, until a deal was in the offing, the crisis they knew would ensue when the settlers were confronted. Bureaucratic inertia may have also played a role and there was a substantial apparatus—public and private—involved in the expansion. By avoiding conflict, the government traded long term negotiating flexibility for short term political stability.

There can be little doubt that the expansion of the settlements in general, and the vehement opposition of national religious settlers to the Oslo process, contributed to Oslo's eventual failure. The continued expansion during the process surely contributed to a Palestinian perception that the Israelis were not committed to a two-state solution but were just playing for time while irreversible facts were being created on the ground. This, after all, was the stated goal of Gush Emunim. For many Palestinians ongoing settlement activity was visible evidence that the Zionists intended the continuing expropriation of Palestinian lands. Even those Palestinians who were convinced that many within Israel were prepared to give up the settlements might conclude that the Israeli government lacked the capacity to confront the settlers.

Apart from their impact across the table, the settlers became potent political actors within Israel. The settlers, especially the national religious element, had become one of the most effective forces in Israeli politics regarding the internal debate over the prospects of an Israeli-Palestinian peace. Rabin's death no doubt slowed the Oslo process, and some within Israel blame the inflammatory rhetoric of some settlers as a contributing factor in his assassination, although the assassin himself was not a settler. The settlers also launched a political offensive that led to Prime Minister Benjamin Netanyahu's resignation after he signed an agreement

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60. *Id.* at 15-16. A policy of natural growth would mean that the only new construction would accommodate young settlers choosing to remain in their settlement but who want to leave their parents' homes.

61. *Id.* at 15-16 (citing to the Alon Plan). Greater Jerusalem is an area of 440 square kilometers that comprises the inner metropolitan core around Jerusalem beyond the Green Line.

62. *See id.* at 16.

63. *Id.*

64. *Id.*

65. *Id.* at 16-17.

with the Palestinians—the Wye River memorandum—in late 1998 committing Israel to relinquishing control of additional portions of the West Bank. Moreover, it must be noted that during the Camp David talks in 2000, Prime Minister Barak had lost a governing majority, though the settlers had only a limited direct role in that development.

#### IV. UNDERSTANDING THE EXPANSION OF THE SETTLEMENTS—WHY DO THE SETTLERS HAVE DISPROPORTIONATE POWER?

Less than 5% of the Jewish population of Israel resides in settlements, and the ideologically committed national religious settlers are only about a quarter of those settlers. Nevertheless, the history of the last thirty years has demonstrated that this small group has wielded disproportionate influence on domestic politics and Israel's international relations. The number of settlers has expanded almost continuously under both Labor and Likud governments. Governments have been threatened and even brought down. Within Israel it has been politically risky for a political figure even to *talk* about evacuation of settlements. Taking concrete steps towards this end contributed to the downfall of the Rabin, Netanyahu and Barak governments and now threatens Sharon's government. What is the origin and nature of this influence? Why have settlers in general—and the national religious contingent in particular—succeeded in making the future of the settlements into the third rail of Israeli politics? And more broadly, what factors—unrelated to actions of the settlers—contributed to the successful expansion of the settlements?

In the pages that follow we will identify three sources for the disproportionate influence of the national religious settlers: (a) their ability to sound themes that have religious and ideological resonance with broad appeal within Israel; (b) the institutional structure of the governmental entities representing the settlers and the peculiar influence minority parties can play within Israeli politics; and (c) the fear created within Israel by the settlers' willingness to use hard-bargaining tactics, including civil disobedience and the threat of violent protest. We then go on to suggest four other reasons—not related to actions of the settlers—that contributed to the expansion. These are: (a) considerations relating to national security; (b) the lack of clarity about whether there was an Arab entity with whom to negotiate that was prepared to accept responsibility for the West Bank; (c) a desire to create incentives for possible future negotiations with Arab or Palestinian representatives; and (d) the economic benefits to Israel's economy of retaining the occupied territories.

##### *A. The Settlers Can Sound Themes Having Broad Resonance within Israel*

Ideologically committed settlers have had surprising influence because of their ability to sound themes and create images that have deep resonance among a much broader group of Israeli Jews who may be less religious or nationalist than the settlers. Some of these themes are Biblical, and connect the West Bank to the ancient homeland of the Jewish people; others are more explicitly religious, and suggest redemption through the settlement of the ancient homeland. Many of these themes echo sentiments voiced by secular Jews who laid the foundation for



the modern state. These include the rebirth of the Jewish people through a pioneering spirit; the importance of strong solidarity within communities consisting of mutually supportive members; the primacy of non-materialistic values; the need to value a "serving elite" willing to devote their lives to the creation and survival of Israel; and the importance of "creating facts on the ground" through new communities that would eventually shape the territorial borders of the Jewish state. The broader resonance of these themes creates sympathy and support among many non-settlers; perhaps more importantly, they create ambivalence and even reluctance among those who intellectually object to the settlement project to voice their opposition. Danny Rubinstein, an Israeli author, observed that, "the slogans of Gush Emunim . . . penetrated the hearts of those who were distant from Judaism and the National Religious Party."<sup>66</sup>

### 1. Biblical Themes

The West Bank, included in the ancient Jewish kingdoms of Yehuda and Yisrael, is pervasively believed to be the site of many Biblical stories described in the Old Testament. Thought to be part of the Promised Land, together with Jerusalem this area represents the geographical cradle of the Jewish people. As a result, settling this land resonates not only with religious Israelis, but also with large segments of the secular majority.

For many Jews, secular and religious alike, Israel's stunning victory in the 1967 war led Israelis to rediscover this ancient Biblical connection. As Gideon Aran suggests:

The [1967] war reconnected the State with the Land. The rediscovery of the ancient Promised Land was perhaps no less significant than the rediscovery of Jewishness. The return to the Land of Israel, or, more specifically, to the territories severed from the state at its establishment in 1948 and considered to be the cradle of religion and nationhood, brought secular Zionism closer to Judaism. In the land of the Bible the Israelis met the Israelites. The return to cherished landmarks and longed-for vistas, pregnant with rich cultural associations, reawakened a long-dormant impulse associated with the mystique of the land. The famous photograph of a weeping paratrooper kissing the stones of the Western Wall is a symbol of the unforeseen emergence of religious motifs in contemporary Israel.<sup>67</sup>

#### a. Appeal to Religious Israelis

For religious nationalists, re-establishing a connection with the land that in Biblical times was home to their forefathers has special spiritual and religious meaning. While living anywhere in Israel may minimally satisfy the religious command to reside in the Promised Land, resettling the Biblical areas is special: it fulfills the commandment that the Jews should once again live on *all* parts of the

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66. DANNY RUBINSTEIN, ON THE LORD'S SIDE: GUSH EMUNIM 162 (1982) (Hebrew).

67. Aran, *Dissertation*, *supra* note 41, at 273.

Promised Land. In ancient times few Jews actually resided in the coastal plains that comprise the center of the modern state. Tel Aviv did not exist.

For the minority of religious settlers who are messianic, they believe that settling the ancient land provides an essential foundation necessary for the eventual arrival of the messiah and the commencement of a messianic era. Messianic religious thinkers, most notably Rabbi Kook, saw the return to the land as a first step towards the coming of the Messiah. By returning to the land, these settlers play an active role in inducing their eschatological visions.<sup>68</sup>

### *b. Appeal to Secular Israelis*

Settling the West Bank has cultural appeal that extends to Israel's secular majority. Non-observant Israeli Jews are socialized to understand the importance of Jewish history, and the significance of the historical roots of the Jewish people. Even in the secular schools, the Old Testament is a required part of the curriculum for all Jewish children. Children are taught the Biblical narrative for its national and cultural significance. Zionism, the dominant form of modern Jewish nationalism, was primarily a secular movement. But it always justified its claim for *this* homeland on the ground that it was the cradle of Jewish civilization and a locale where Jews had sovereignty for hundreds of years. Although the modern state draws its international legal legitimacy from League of Nation's recognition of the Balfour Declaration in 1922 and from the United Nations Partition Resolution in 1947, a broader cultural claim based on Biblical heritage has pervasive appeal among Israeli Jews.

## *2. Pioneering Spirit*

Aside from Biblical themes, proponents of settlement in the West Bank and Gaza also appeal to pioneering sentiments. In the Israeli imagination, the Jewish state was created through the actions, commitment, and sacrifice of early pioneers who immigrated to Palestine between the late nineteenth century and mid-twentieth century, settled in hostile lands, and through their actions laid the foundations for the modern state. This narrative, and the admiration of a pioneering spirit, is part of Israeli cultural fabric. Today, Israel is essentially a modern, industrial state. Religious nationalists characterize their settlements as the "last frontier." The pioneering spirit of these settlers reminds many other Israelis of a heroic and much admired earlier generation that chose to live in a hostile environment, endangering their lives for a nation-building project.

For decades, the tiny Kibbutz movement was seen as emblematic of this pioneering spirit. Many Kibbutzim defined the frontier; their locations later sometimes determined what were to become Israel's borders. They lived a simple life, motivated by a strong commitment to the national cause. The national religious settlers thought of themselves as the successors of the Kibbutz movement, which

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68. While the end of their story differs, many evangelical Christians actively support the establishment of Jewish settlements for a similar reason. See Ann LoLordo, *Israeli Settlers Find Staunch Friends in Christians*, JERUSALEM POST, Apr. 15, 2004, at <http://www.cfoic.com/index.asp?mainpage=press&id=116>.

by the 1980s was in decline. Some members of Kibbutzim, even though they were secular, saw national religious settlers in this way. One member of a Kibbutz wrote in the late 1970s to the national religious settlers in Elon Moreh on the West Bank: "You are the true continuation of pioneering settlement."<sup>69</sup> Similarly, a delegation from Kibbutz Ein Harod, a flagship in the Kibbutz movement, came to Elon Moreh, to demonstrate its support to the settlers in December 1976.<sup>70</sup>

### 3. *Serving Elite*

Israeli Jews have always accorded high status to the "serving elite"—those who dedicated their lives, notwithstanding the personal sacrifices involved, to the national cause. Traditionally, Kibbutz members enjoyed this status. Not only were they in the vanguard who pushed back the state's borders, but they were also overrepresented in the military, the union movement, and the Knesset. National religious settlers see themselves as a new serving elite, and some other groups in Israeli society share this view. Many appreciate that at great personal risk, national religious settlers created new communities on "barren land" in a hostile area in order to fulfill a Biblical mandate and build a greater Israel. For those who bemoan the decline of Israel's "old values," these settlers provide a source of inspiration.

### 4. *Communitarian Notions*

Many feel that Israel has lost its earlier commitment to a communitarian ideal, in which there are tightly knit communities based on mutual responsibility where neighbors are committed to each other. These communitarian notions had roots both in traditional Jewish values and collectivist socialist ideals. Few doubt that these values are significant today in modern Israel but many regret their decline. Even opponents of the settlement project must acknowledge, however, that the communities created by national religious settlers retain many of these communitarian values.

### 5. *The Settlement Movement as the Natural Extension of Zionism*

The combination of the pioneer appeal, the notions of a serving elite, and the model of communitarian life all resonate for many Israelis as an extrapolation of traditional Zionism. Zionism is a settler ideology. From the 1920s until at least the 1950s, many thought that the essence of Zionism required the creation of settlements that would reclaim the land and create a new identity for Jews connected to the land. Even today, some Israelis believe that settlements are a crucial manifestation of Zionism. The national religious settlers viewed themselves in this light:

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69. RUBINSTEIN, *supra* note 66, at 126.

70. *Id.*

The people of Gush Emunim embarked on the settlement project out of complete Zionist consciousness . . . they saw their project as a natural continuation of the Zionist move. In their dress, they had copied the original pioneers of Labor Zionism: the hair style, a shirt outside of their pants, sandals to their feet, weapon on their shoulder.<sup>71</sup>

The national religious settlers saw themselves as reviving Zionism and rescuing it from the hands of an aging and debased group of Labor Zionists who were in decline.<sup>72</sup> Traditional Zionism was a secular movement, with socialist overtones, led by many who wished to rebel against traditional Judaism. It was primarily political, and was focused on establishing a Jewish state. Observant Jews had never been at the core of the movement, and felt marginalized. After 1967, religious nationalists saw the settlement project as a means to create a central role in Zionism for themselves through the fusion of religion with old notions of territorial expansion through settlement and national security. From the caboose of the Zionist train, national religious Israelis moved to the front car, and in the eyes of some, seized control of the locomotive.<sup>73</sup> One leader of the settlement movement, Hanan Porat, declared that Labor Zionism “had concluded its mission” and now its leaders should move aside and “stop disrupting” the task of reviving Zionism through new settlements.<sup>74</sup>

By framing their role in terms of Zionism, the settlers characterize any contraction as undermining the entire Zionist endeavor. They suggest that dismantling settlements in the Bank and Gaza would lead inexorably to the end of the Jewish presence in Israel. In the words of the Yesha Council’s former secretary general, “Our message is that the expulsion of the Jews from the Land of Israel will bring about the destruction of Zionism.”<sup>75</sup>

## *B. Institutional Sources of Settler Influence*

### *1. The Israeli Political System—Coalitional Politics*

The settlers enjoy significant influence in the Israeli political system as a result of some institutional features of the system. These are compounded by the internal structure of the settlement movement, which gives the most ideologically committed settlers disproportionate influence among the settlers as a whole.

The Israeli political system allows small, determined, and cohesive minority groups to exert disproportionate power. Israeli voters elect members of the Knesset not directly but by voting for a party. For these purposes there are no geographical subdivisions. The number of seats in the Knesset allocated to each party reflects that party’s proportion of the total vote. The party itself designates its list

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71. KARPEL, *supra* note 24, at 206.

72. Labor Zionists traditionally believed that a Jewish state can be created and maintained through the efforts of the Jewish working class on kibbutzim and in the cities. See AVINERI, *supra* note 39.

73. This metaphor is popularly attributed in Israel to the author Amos Oz.

74. RUBINSTEIN, *supra* note 66, at 162.

75. See Larry Derfner, *Sharon’s Grand Plan Stirs Revolt by Jewish Settlers*, SUNDAY TIMES—WORLD, Dec. 21, 2003, at <http://www.timesonline.co.uk/article/0,,2089-939007,00.html>.

of potential members, prior to the election.<sup>76</sup> Those individuals placed closer to the top of a party's list stand a better chance of being elected. No party has ever received a majority of the total votes. The typical pattern, therefore, involves the leader of the party that receives the most seats attempting to form a coalition with other parties so that his coalition has a majority of seats (61) out of a total of 120. If he succeeds, he becomes Prime Minister.<sup>77</sup>

All of this means that to become Prime Minister and to govern, one must create and retain through negotiation a coalition including several, usually smaller, parties that typically have different policy preferences. Such coalitions typically include one major party—the Prime Minister's party—and a number of smaller parties, each capable of toppling the coalition by leaving it. This state of affairs forces Israeli Prime Ministers to be extremely attentive to the preferences of small parties that are part of their coalition—at the start to form a coalition, and afterwards to retain their support. Since the 1970s, in addition to Likud, smaller parties also supported the maintenance and growth of the settlement project. Indeed, at most times since the mid-1970s one or more of these small parties were part of a governing coalition, and were able to support the settlers' interests from within the government.

In addition to non-settlers who were sympathetic to the settler movement, since 1981 there have been settlers who have served in the Knesset. Most have been members of small, right wing parties such as Hathiya, the National Religious Party (NRP), or the National Union Party (NU). More rarely, settlers became members of the Knesset (MKs) as part of the Likud Party. And as the number of settlers increased over time, their numbers in the Knesset increased disproportionately. Today settlers are substantially overrepresented in the Knesset: by 2003, 9% of the members of the Knesset (11/120) were settlers,<sup>78</sup> even though settlers comprised only 3% of the electorate. The institutional structure of Israeli politics, specifically the fact that a party's Knesset members do not represent geographical areas but are chosen on the basis of a single party list, contributes to this outcome. For most parties, these lists are created and controlled by the party's central committee. These leadership committees, which in some instances may have a few hundred members, are susceptible to highly organized and cohesive groups, such as the settlers.<sup>79</sup>

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76. BASIC LAW: THE KNESSET (Isr.), at [http://www.knesset.gov.il/laws/special/eng/basic2\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm).

77. In 1996, 1999, and 2001, the Prime Minister was elected directly. See BASIC LAW: THE GOVERNMENT (Isr. 1992), at [http://www.knesset.gov.il/laws/special/eng/basic7\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic7_eng.htm). He nonetheless needed to form a coalition, the parties of which represented a majority of the Knesset. Although the purpose of the change was to strengthen the Prime Minister and the authority of the government, that was not the perceived consequence of the change. Because the new regime allowed "ticket-splitting," where people voted for a Prime Minister of one party and another party for the Knesset, the perception was that the Prime Minister's authority was weakened. In 2001, the law was changed so that, as before, the Prime Minister is not directly elected. BASIC LAW: THE GOVERNMENT (Isr. 2001), at [http://www.knesset.gov.il/laws/special/eng/basic14\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic14_eng.htm).

78. *The Price of the Settlements*, HAARETZ (Special Rosh Hashanah Journal), Sept. 26, 2003, at 43.

79. See generally *infra* Part V.

## 2. Regional, Local and the Yesha Councils

Other structural features of the Israeli government and settlement movement itself contribute to the disproportionate influence of ideologically committed settlers. Those settlers who become elected officials, mostly at the local government level, are often willing to commit municipal and regional resources under their control to the settlement movement.

In both Israel and the occupied territories, many significant governmental functions, including planning and zoning, the provision of roads, sewers and water, and many social and educational services are administered by local government entities, not the central government. There are three types of local government entities: “cities” for communities with a population of 20,000 or more; “local councils” for smaller communities of 3000-20,000; and “regional councils” with responsibility for all the small Jewish communities within a geographical region that do not qualify for a local council or city form of government.<sup>80</sup> Most of the recognized settlements in the West Bank and Gaza (125 out of 140) are governed by one of seven regional councils (6 on the West Bank and 1 in Gaza). Fourteen larger settlements have a local council. Three large settlements have a “city” government.

Regional and local councils have command over significant material and human resources that can be translated into political power. They control the local payroll, a source of patronage and control. Indeed, for Jews, government is the largest employer in the territories. Local and regional councils have used their budgetary control to expand settlements and outposts, to finance campaigns against settler relocation during the Oslo process, and most recently to fight the Sharon initiative.<sup>81</sup> Resources are also used directly for political mobilization. For example, during the 2004 mass demonstrations in Israel against Prime Minister Sharon’s relocation plan, settler regional and local councils used their control over the educational and busing systems to transport thousands of schoolchildren and local government employees to protest against the government’s policies. Some regional councils transferred part of their own budgets to the Yesha council, in order to support its political activities. In April 2005, as part of the government’s effort to mitigate settler resistance to Prime Minister Sharon’s plan, the Israeli Minister of the Interior ordered a stop to this policy.<sup>82</sup>

Along with this municipal government structure, the geographic distribution of settler groups accounts for the disproportionate influence of the most ideologically committed settlers. Most national religious settlers reside in, and make up a majority of, smaller settlements with a local or regional council government. Most non-ideological settlers reside in larger communities with a “city” form of local government.

The geographic distribution of settler groups has two consequences. First, national religious settlers are able to control most local and regional councils. Sec-

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80. The Minister of Interior is responsible, under applicable legal standards, for deciding when a community can qualify for a local council or city form of government.

81. The Sasson Report showed Housing Ministry financial support provided to outposts. See Lynfield, *supra* note 59.

82. Yuval Yoaz & Rely Sa’ar, *No Cash to Yesha Protest, West Bank Councils Told*, HAARETZ, Apr. 6, 2005, at <http://www.haaretz.com/hasen/pages/561935.html>.

ond, the national religious settlers are able to control the Yesha Council, an institution composed of settler leaders. Although the Yesha Council has no official governmental status, it has long claimed to speak for those who live in the settlements. The thirty-five seats on the Yesha Council are not elected by popular vote. Rather, twenty-four of the seats are given to the heads of local and regional councils and city governments. The remaining eleven members are selected by an executive committee of Yesha Council members on the basis of "leadership credentials."

This structure produces remarkable results. Although the 4 largest settlements, with a combined population of about 85,000, represent about one-third of the entire settler population, they have only 4 representatives on the Yesha Council.<sup>83</sup> A large, secular city like Ariel (with 17,000) has the same level of representation as Beit El, a national religious settlement with 5000. Further, the council's executive committee is comprised of seven members and presently all seven are national religious settlers. This executive committee selects the eleven members who are not municipal officials. This institutional structure, wherein smaller settlements have disproportionate membership on the Yesha Council and on the executive committee, guarantees that those settlers most ideologically committed to the settlement project will control the formal organization of settlement leadership, even though they account for only 25% of the total settler population.<sup>84</sup>

The settlers further benefit from continuity in their leadership. For example, two of the most dominant movement leaders, Zeev Hever (Zambish) who heads the settlement arm of Gush Emunim (Amana), and Pinchas Vallerstein who runs the regional council of Binyamin, have each held their positions for over twenty years.<sup>85</sup> Other Israeli governmental institutions that directly affect the settlements have had much less continuity in their senior ranks. There has been much more turnover among the top military leaders and the political appointees leading the ministries that deal with settlers. This has worked to the advantage of the settlement movement given the persistence and longevity of its leaders.

### *C. The Settlers' Effective Use of Hard Bargaining Tactics*

The settlers have successfully played on the fear among Israelis at large that any attempt to evacuate settlers would result in a violent confrontation, could create a painful and costly internal rift among Israeli Jews, and may create a crisis that would damage the principle of democratic, majority rule. The leaders of the settlement movement, while typically reluctant to explicitly endorse the use of violent tactics, nevertheless always have been willing to exploit fears of settler

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83. Two of these four settlements are secular while the other two are ultra-orthodox. They are the secular settlements Ariel (population 17,555) and Ma'ale Adumim (28,546), and the ultra-Orthodox settlements Kiryat Sefer/Modin Ilit (27,300) and Beitar Illit (20,000). Rali Saar & Nir Hason, *The Number of Settlers Grew in the Last Year by 6%*, HAARETZ, Jan. 9, 2005 (Hebrew); A Town in Israel (official internet site of Beitar Illit), at <http://www.betar-illit.muni.il/ir.htm> (Hebrew).

84. Public opinion polls suggest that most settlers do not think that the Yesha Council represents their views. In one recent poll, only 26% of settlers in Judea and Samaria said that the council represents them. MARKET WATCH, *Voice of Israel*, Jan. 30, 2005 (reporting on poll results).

85. Pinchas Vallerstein has led Binyamin since 1979, and Zeev Hever (Zambish) has led Amana since the late 1970s.

violence in the face of evacuation.<sup>86</sup> For example, while leaders suggest that most national religious settlers are law-abiding and would never resort to violence, they simultaneously suggest that some extreme elements within their ranks are difficult to constrain.<sup>87</sup> The existence of extreme elements prepared to use violence is doubted by few Israelis, given the plot of the Jewish underground to blow up the Temple Mount and the Rabin assassination.<sup>88</sup>

Israelis are especially sensitive to the risk of internal conflict because of the “lessons” of history. Even secular Jews are taught in school the Talmudic story indicating that Jewish independence was lost to the Romans during the Second Temple era (circa A.D. 70) because of violent rifts and “internal hatred” among the Jews.<sup>89</sup>

Religion aside, Jewish culture has traditionally stressed a tribal notion that Jews throughout the world share a responsibility for each other’s well-being and survival. This cultural theme makes repugnant the prospect of a violent confrontation among Jews. This notion may help to explain the extreme trauma created by Rabin’s assassination.

For Israelis, the “nightmare scenario” of an internal rift would involve widespread insubordination within the military. Today settlers and other religious nationalists are understood to be vastly overrepresented in junior officer corps and combat units.<sup>90</sup> Press reports have suggested that many of these soldiers would disobey orders to evacuate settlements. Nearly all Israeli Jews believe the strength and cohesion of the military is essential for Israel’s survival. No institution within Israel enjoys higher prestige than the armed forces.<sup>91</sup> This is hardly surprising given Israel’s fundamental reliance on its military over a fifty seven year period that has seen six wars and intermittent terrorist attacks. The role of settlers and religious nationalists in the military adds to the credibility of the implicit threat of disunity in the ranks. Indeed, in the past some rabbis have issued

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86. Interview with Moshe Halbertal, Professor, Hebrew University of Jerusalem (Apr. 14, 2004).

87. This suggestion interestingly reflects a similar argument made by leaders of the Palestinian authority who suggest they lack the capacity to control Hamas, Islamic Jihad, and extreme elements with the PLO.

88. NOEMI GAL-OR, *THE JEWISH UNDERGROUND: OUR TERRORISM* 39-48 (1990). Some contemporary analysts have suggested that the youth who have established new hilltop outposts cannot be controlled by the settler leadership. Shlomo Kaniel, *The Hilltop Settlers: Biblical Sabras*, Presentation at Harvard Law School’s Past, Present, and Future of the Israeli Settlements in the West Bank and Gaza Settlements: The Internal Israeli Conflict Conference (Oct. 14-15, 2004).

89. Romans destroyed the Second Temple in A.D. 70. In A.D. 132, the Jews unsuccessfully rebelled again against the Romans. The Romans then expelled most of the Jews from the Holy Land and the second Diaspora began. See FLAVIUS JOSEPHUS, *THE JEWISH WARS* (1959); YEHOASHAFAT HARKABI, *THE BAR KOKHBA SYNDROME: RISK AND REALISM IN INTERNATIONAL POLITICS* (1983). See also Talmud, Yoma, 9B. The Second Temple was destroyed because during that time “sinat Hinam” [baseless hatred] characterized the relationship among Jewish groups. *Id.* The Talmud concludes that “this teaches us that baseless hatred [among Jews] is deemed as grave as the sins of idolatry, immorality and bloodshed combined.” *Id.*

90. In 1998, former Director of Military Intelligence, General (Res.) Shlomo Gazit, warned that the large numbers of religious and settler soldiers is “dangerously politicizing the military.” Tzahi Fanton, *The Motherland of Antisemitism*, NFC, Apr. 19, 2004, at <http://www.nfc.co.il/archive/003-D-5650-00.html?tag=4-57-59> (Hebrew).

91. See YARON EZRAHI, *RUBBER BULLETS: POWER AND CONSCIENCE IN MODERN ISRAEL* 38 (1998) (asserting that service in the military is “the most defining component of Israeli identity”).



edicts saying that soldiers should ignore certain military orders relating to the cession of army bases in the West Bank to the Palestinians.<sup>92</sup>

#### *D. Other Factors Contributing to Settler Power and Settlement Expansion*

Other factors, unrelated to the actions of the settlers themselves, contributed to the remarkable expansion of the settlements.

##### *1. National Security Arguments*

###### *a. Border*

Over the years many believed that settlements in the West Bank enhanced Israel's security. As noted above, among Israelis, the old Green Line border between Israel and the West Bank was deemed impossible to defend from an eastern military attack. Israeli Foreign Minister Abba Eban—who had a reputation as a “dove”—labeled it “the Auschwitz Border” because it risked extermination of Israel—the neck of Israel was less than ten miles wide. Many believed that by “creating facts on the ground” settlements might enhance Israel's long-term security by ultimately guaranteeing that any future eastern border would be east of the Green Line.<sup>93</sup>

Whatever the final borders, many Israelis believe that maintaining *control* over portions of the West Bank is essential until there is a stable Palestinian government which could insure that there would be no cross-border terrorist attacks and that the West Bank aquifer would not be contaminated.<sup>94</sup> Even among some leaders of the Labor Party, such as Yigal Alon, settlements were a vital method of insuring control.<sup>95</sup> Settlements could house military units, and could create a continuing presence in a strategic location. However, the effectiveness of civilian settlements in asserting military control is disputed. Many analysts argue that civilian presence in the territory compromises military control, because civilian settlers need extra military protection and divert scarce military resources.

###### *b. The Settlements As a Bargaining Chip*

After Israel took control of the territories, it was widely assumed that Israel would some day trade land for peace in a future negotiated deal with its neighboring Arab states or the Palestinians. However, with the exception of Egypt, between 1967 to 1991, there were no formal negotiations between Israel and its Arab neighbors. Shortly after the Six Day War, the Israeli cabinet suggested that it was

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92. Joel Greenberg, *Hand Over Israeli Bases? No Way, Rabbis Tell Troops*, N.Y. TIMES, July 13, 1995, at 3.

93. Another area where settlements are thought to contribute to Israeli security is the Gush Etzion area, south of Jerusalem. In hostile hands, control of this area would facilitate attacks on Jerusalem.

94. Some security analysts suggest that Israel should control at least part of the West Bank because the West Bank aquifer, if contaminated, would compromise Israel's main water supply.

95. As early as June 19, 1967, Labor Minister Alon stated “we should create facts through settlements . . . if an area is not settled we are not really holding it.” REUVEN PEDATZUR, *THE TRIUMPH OF EMBARRASSMENT: ISRAEL AND THE TERRITORIES, 1967-1969* (1996) (Hebrew).

prepared to trade land for peace with its Arab neighbors. At an Arab League summit at Khartoum in September of 1967, the response was three no's: "No peace with Israel, no recognition of Israel [and] no negotiations with Israel."<sup>96</sup>

Within Israel, many who had no interest in permanently remaining in the territories either supported or acquiesced in the creation of settlements for two reasons. On the one hand, the threat of on-going settlement expansion might create a "fading opportunity" that could induce the Arabs to come to the bargaining table. On the other hand, some believed that at the bargaining table itself, the settlements could serve as a "bargaining chip" that could be traded for an Arab concession. There is an obvious tension between these arguments. The opportunity is "fading" only to the extent that settlement expansion is seen as irreversible. Moreover, the use of the settlements as a bargaining chip in negotiation requires the Israeli government to have the capacity to require evacuation of the settlers. The experience of the last twenty years suggests neither argument has panned out. On the one hand, the constant expansion of settlements appears to have undermined and inhibited negotiations with the Palestinians. On the other hand, the existence of the settlements has in fact made it very difficult for any Israeli leader to create and sustain sufficient domestic support to abandon them. The settlers have not been passive pieces on a strategic chessboard; they have in fact played an active role as spoilers, resisting all internal political efforts to reach an Israeli-Palestinian deal.

## 2. *The Status of the Territories*

The settlers benefited from the unclear status of the West Bank and Gaza, as well as the ongoing inability—until 1993—to determine their future status. Israel occupied both areas in 1967, but never annexed them, and legally ruled them under a temporary military legal system. But even prior to Israeli occupation, sovereignty over these regions was not internationally agreed upon.

The issue goes back to the early days of the state of Israel. Since 1948, with the end of the British Mandate, no state acquired internationally recognized sovereignty over these areas. Though, under the 1947 United Nations Partition Plan, Gaza and the West Bank were supposed to be part of a future Palestinian state, by the end of the 1948-1949 war, they were occupied by Egypt and Jordan respectively. Egypt held Gaza under military rule between the years 1949-1967, and never annexed it. Jordan annexed the West Bank in 1950, but the international community did not recognize the annexation.<sup>97</sup> Though it was widely assumed in Israel that the territories would be handed to an Arab party at some point, for at least twenty-five years, it was not clear whom this party would be. Until 1987 Jordan claimed that the West Bank was part of the Hashemite Kingdom. Following the 1993 Oslo accord it was assumed that a Palestinian state would have sovereignty of the region, but the collapse of the Oslo process in 2000 once again created uncertainty.

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96. Jewish Virtual Library, A Division of the American-Israeli Cooperative Enterprise, The Khartoum Resolutions (Sept. 1, 1967), available at [http://www.jewishvirtuallibrary.org/jsource/History/three\\_noes.html](http://www.jewishvirtuallibrary.org/jsource/History/three_noes.html).

97. Two countries, the United Kingdom and Pakistan, were alone in recognizing this annexation.

The Palestinians, the local residents of these areas, did not articulate a clear and effective demand for self-determination until the 1970s, and even then the demand was deemed unrealistic by many, as it included an undistinguishable claim for both the territories and the state of Israel. These circumstances created a political vacuum in the West Bank and Gaza that both made it easier for settlers to pursue their project and create “facts on the ground” without substantial internal opposition.

### 3. *Absence of a Deal*

The settlers greatly benefited from the absence of a final status deal between Israelis and Palestinians. At no point in time was the Israeli public faced directly with a choice between the settlements in the West Bank and Gaza and a peace agreement with the Palestinians; they did not have to evaluate the trade-offs between the two. For the first twenty-five years of the settlement project, neither Israelis nor Palestinians accepted the legitimacy of the other’s right of self-determination, let alone a negotiated deal. Though both sides negotiated and signed a set of agreements in the 1993-2000 Oslo peace process period, it was only in 2000, in the Camp David and Taba negotiations, that Israel and the PLO got closer to discussing a comprehensive final deal which would have crystallized the choice between land and peace. Even then, as we discussed above, a deal was not reached and the public was not asked to make a choice between peace and the settlement project.

Although the Israeli public was not asked to choose between the settlements and peace during the Oslo peace process, Israel’s short history provides one vivid example of majority support for halting or uprooting a settlement project when a concrete peace plan was on the table. In 1982, the Israeli Knesset authorized the relocation of 6000 Israeli settlers in Sinai, as part of an Israeli-Egyptian peace agreement. Yet the public has never had to make a direct choice between settlements and peace in the West Bank and Gaza, and they did not have a strong incentive to halt the settlement project.<sup>98</sup>

Many Israelis, as well as Palestinians, warned that the continuation of the settlement project would create enormous difficulties for a future peace agreement. But with the lack a final status agreement, their warnings were ignored.

## V. THE SHARON PLAN

### A. *What Is the Plan?*

Although a withdrawal from settlements was not negotiated with the Palestinians as part of a peace agreement, on December 18, 2003, Israeli Prime Minis-

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98. Moreover, public opinion data provide inconclusive evidence of the Israeli public’s appetite for other land-for-peace deals. Polling data shows that withdrawing from the Golan Heights in exchange for peace with Syria has not mustered the support of a majority of Israelis. See Ephraim Yaar & Tamar Hermann, Tami Steinmetz Center for Peace Research Report, *Peace Index* (Dec. 1999) (stating that the “Jewish public at this time lacks a majority in favor of full withdrawal from the Golan in return for a full peace agreement with Syria”), at <http://spirit.tau.ac.il/socant/peace/peaceindex/1999/files/dec99e.pdf>.

ter Ariel Sharon suggested, without being specific, that Israel should “unilaterally disengage” from some occupied areas that were presently under Israeli control but were heavily populated by Palestinians (the “Herzliya Speech”).<sup>99</sup> Sharon made clear that this would require the relocation of some Israeli settlements that in his view would never “be included in the territory of the state of Israel in the framework of any possible future permanent agreement.”<sup>100</sup>

Within weeks Sharon more precisely defined the scope of his initiative to include all of Gaza and a small portion of the West Bank in the northern portion of Samaria. This would require the evacuation of seventeen settlements in Gaza as well as four small settlements in the West Bank.<sup>101</sup> The Prime Minister asked the Israeli National Security Council to initiate a governmental process to plan for relocation. The Ministry of Justice was assigned the task of drafting legislation to authorize the evacuation and provide for compensation of those settlers who would be required to move.

From the outset the proposal was highly controversial. Initially, some on the left objected to its unilateral nature, its limited scope, and the fact that it was tied to the creation of a fence. But the real opposition was from the settlement community and the right.<sup>102</sup> Many settlers had a profound sense of betrayal because Sharon, long their champion, had radically reversed his position without prior consultation or explanation. Settler opponents mounted process objections to the manner in which the proposal was made and to the power of the government to carry it out, and substantive objections to the contents of the plan itself. First, they suggested that Sharon had no right in terms of legitimacy to make such a proposal. He, after all, had been the champion of the settlers since the 1970s, and his election campaigns in both 2001 and 2003 had vehemently and categorically rejected abandoning any settlements.<sup>103</sup> Settlers have argued that no settlement should be evacuated without a prior election or a referendum. They have also argued that evacuating these settlements would jeopardize Israeli security, and profoundly and unfairly disrupt the lives of those who would be required to move. Moreover, they pointed out that for this sacrifice Israel was receiving no quid pro quo from the Palestinians.

To counter this opposition, Sharon tactically decided to ask his own party—the Likud—to hold a referendum in which only Likud Party members could participate. In the meantime, he negotiated with the United States to secure an exchange of letters suggesting that the Americans would not ever require Israel to

99. Prime Minister Ariel Sharon, Speech at the Herzliya Conference (Dec. 20, 2003), at <http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=373673&contrassID=1>.

100. *Id.* Sharon also re-affirmed his intention to construct a fence in the West Bank that he claimed would diminish the risk of Palestinian terrorism. *Id.* Some large settlements would be on the “Israeli side” of the fence, but many smaller settlements would not. Sharon indicated that the placement of the fence would *not* determine the border in any final status agreement that might someday be negotiated. *Id.*

101. There are either seventeen or nineteen settlements in Gaza, depending on whether two small adjacent neighborhoods are counted as a separate settlement.

102. Settler objection to the plan has not been monolithic; poll data from Judea and Samaria settlers who would not have to evacuate show that just under one third support Sharon’s plan. And, among opponents of the plan, 14% said that it must be obeyed. MARKET WATCH, *Voice of Israel*, Jan. 30, 2005 (reporting on poll results).

103. In his 2003 campaign, Sharon had rhetorically claimed he would no sooner evacuate Netzarim, a small Gaza settlement, than Tel Aviv.

abandon certain settlement blocks near the Green Line.<sup>104</sup> Nevertheless, Sharon's plan was soundly defeated on May 2 in the Likud referendum, 60% to 40%. Undaunted, Sharon thereafter suggested he was not bound by the referendum. He made modest modifications, and presented it to his cabinet for approval on June 6, 2004. Realizing that he might not have a majority of his own cabinet, he fired two ministers, both settlers, who opposed the plan. Thereafter, the Israeli Cabinet approved the Prime Minister's plan.<sup>105</sup>

In the fall of 2004, after an initial symbolic vote rejecting Sharon's statement convening the legislative session, the Knesset on October 25 approved in principle the plan by a vote of sixty-seven to forty-five. The left supported the initiative, but some members of Sharon's own party voted against it. Thereafter, the Knesset enacted the necessary legislation authorizing the disengagement and providing compensation to the relocated settlers through the three required votes.<sup>106</sup> In the meantime, it was becoming clear that the coalition that had provided the foundation for Sharon's government was crumbling because two right-wing parties and several Likud ministers who disagreed with the initiative were withdrawing their support for the government. Like a cat with nine lives, Sharon moved to create a "national unity government" with Labor. The Likud Central Committee initially refused to join forces with Labor, but later relented. Opponents of Sharon's plan continued to try to erect legislative roadblocks. They attempted to enact a law that would have made a referendum a precondition to evacuation. In March 2005, Sharon was able to defeat this proposal in the Knesset. The last legislative effort concerned the budget. Under Israeli law, if the Knesset fails to enact a budget by March 31 of any year, the government falls and there must be new elections. Sharon surmounted this final legislative hurdle when the Knesset passed a budget for the coming fiscal year.<sup>107</sup>

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104. Sharon received a letter from President Bush—which was later endorsed by Congress—in which Bush declared, in effect, that the United States recognized that some of the settlements in the West Bank would remain under Israeli control in any final status agreement. Letter from George W. Bush, President, United States of America, to Ariel Sharon, Prime Minister of Israel (Apr. 14, 2004), at <http://www.jewishvirtuallibrary.org/jsource/US-Israel/bushletter.html>. The letter also hints that the United States might assist Israel in some of the costs of relocation. *Id.* Bush's letter for the first time made explicit a possible change in a long-standing United States' policy that had never recognized the legitimacy of Israeli settlement activity. *Id.* It should be noted, however, that former President Clinton's oral suggestions in December of 2000 had implicitly done this by suggesting the possible annexation of some unspecified settlements near the Green Line in exchange for consideration to be negotiated. See Ross, *supra* note 1, at 801-805.

105. In order to appease his opponents in the party, Sharon modified the plan to require a withdrawal in four steps, with each step requiring a further Cabinet approval. He also agreed to leave no Israeli property improvements behind.

106. For enactment, Israeli legislation requires approval in three separate votes. Sharon's plan received this approval. Gideon Alon & Zvi Zerhia, *Relocation and Compensation Law Approved 59:40*, HAARETZ, Feb. 16, 2005, at <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=540551&constrassID=1> (Hebrew).

107. Zvi Zerhia, *Budget Approved, Netanyahu: I Will Continue to Work With Sharon*, HAARETZ, Mar. 29, 2005, at <http://www.haaretz.co.il/hasite/spages/558288.html> (Hebrew).

*B. Why Should It Be Easy?*

One might have thought Sharon's plan could easily be implemented. First, Sharon's plan would require only 8000 of some 230,000 settlers to relocate. The settlers who would be relocated would be compensated in amounts that might exceed their economic loss. Moreover, Sharon primarily proposed to evacuate Gaza, which has no special religious significance. Furthermore, the four West Bank settlements were very small, geographically isolated, and had been inhabited by "non-ideological" settlers.<sup>108</sup> Finally, the American assurance might be seen as making more likely Israel's ability to retain those settlements near the Green Line. Sharon no doubt believed that together these elements would divide the settlers, and limit substantially the resistance from the settler community and those who are sympathetic to them. These features also explain why Sharon has enjoyed overwhelming support in the polls ever since he launched his plan.

Sharon never spelled out how his initiative fit into a broader long-term strategy. He never provided any details of his vision of a "final status" deal with the Palestinians. He may have believed that this ambiguity would permit him to garnish support on both the right, the left, and from the United States. He could appeal to the right by celebrating the American assurance and emphasizing that the Cabinet decision stressed a commitment to retain control of settlements in the West Bank. He was able to appeal to the left because his initiative would demonstrate that Israel was capable of dismantling settlements. Moreover, it would represent an important precedent. Indeed, Ehud Olmert—a minister known to be very close to Sharon—hinted that this initiative might be followed by a far larger withdrawal from the West Bank. In these ways, it could be seen as contributing to the peace process. With the United States, by suggesting that this initiative was consistent with the road map and an eventual two-state solution, Sharon was able to extract a concession from the United States government that would ease Sharon's domestic political opposition. In a letter written by President Bush to Prime Minister Sharon, the American president wrote that:

As part of a final peace settlement, Israel must have secure and recognized borders, which should emerge from negotiations between the parties in accordance with [United Nations Security Council] Resolutions 242 and 338. In light of new realities on the ground, *including already existing major Israeli populations centers*, it is unrealistic to expect that the outcome of final status negotiations *will be a full and complete return to the armistice lines of 1949*, and all previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities.<sup>109</sup>

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108. Two of these West Bank settlements had already suffered substantial declines in population. It should be noted, however, that in an effort to block Sharon's plan, national religious settlers began to move to these four settlements.

109. Letter from George W. Bush, President, United States of America, to Ariel Sharon, Prime Minister of Israel (Apr. 14, 2004) (emphasis added), at <http://www.us-israel.org/jsource/US-Israel/bushletter.html>.

*C. Sharon's Difficulties and Its Relationship to the Settlers*

Because of the settlers' political efficacy, Sharon faced fierce political resistance to his initiative in his coalition government and within Likud. The leadership of the settlement movement mobilized their entire settlement constituency, not just those 8000 that might be required to move. To all the settlers, the leadership indicated that Sharon's initiative was a dangerous precedent, and that it would be a precursor for much more substantial steps. The leadership was able to: (1) recruit tens of thousands of settlers for demonstrations and for door-to-door grass-roots campaigning; (2) create dissent among the Likud MKs; and (3) encourage the withdrawal of two parties from Sharon's original coalition government.

The settlers proved to be highly effective grassroots organizers. Before the May 2, 2004 Likud Party referendum, the settler Yesha Council orchestrated a nationwide effort, in which settlers met in person with tens of thousands of Likud Party members, in order to persuade them to vote against Sharon's plan. The settlers further organized a number of rallies in Israel's biggest cities, in which tens of thousands of Israelis protested against Sharon's plan.

Sharon faced other challenges within Likud from the "Jewish Leadership Group," a small, well-organized group of settlers, led by Moshe Feiglin. This very determined group was highly effective in mobilizing opposition voting. During the referendum process their organizational efforts contributed to the overwhelming vote against the initiative. In September, they succeeded (at least for a while) in persuading the Likud central committee not to form a unity government with Labor. In addition, the settlers were able to organize a "Yesha" lobby of Likud MKs who supported the settler cause.<sup>110</sup>

Two of Sharon's original coalition partners, the National Religious Party, and the National Union Party, represented the interests of the settler community. Several members of the Knesset affiliated with these parties were themselves settlers. When both parties objected to the plan and finally left the coalition, Sharon was forced to turn left in order to secure support for his plan.

As we write, one cannot know for certain whether Sharon's plan will be implemented. While they did not succeed in bringing down Sharon's government, the determination of the settlers cannot be doubted. They believe their backs are "to the wall" and they have demonstrated their willingness to use hard bargaining tactics. Once their ordinary political options are exhausted, the leaders have indicated they will call for massive civil disobedience, and to make the government "fill the jails" with protesters.<sup>111</sup> Many fear a violent confrontation. Concern about insubordination in the army has already had an impact on the specifics of Sharon's plan. Unlike the evacuation of settlers from Sinai in 1982, wherein Sharon himself as Minister of Defense deployed the regular Israeli Army, this

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110. At one point, it appeared that eighteen out of forty Likud MK's were members of this group.

111. Letter from Pinchas Vallerstein, to the settlers of Mate Binyamin Regional Council (Dec. 20, 2004), available at <http://www.ynet.co.il/articles/0,7340,L-3021080,00.html>.

time Sharon the Prime Minister has decided to use the police, backed up by career military personnel, for the evacuation.<sup>112</sup>

In some respects, the internal political game now being played out over the Sharon Plan resembles a game of “Chicken.” In the internal bargaining, each side is saying to the other: “Don’t you realize we risk a disastrous collision unless *you* change direction?” Each wonders how far the other side is willing to go. The national religious settlers have credibly created a reputation for never backing down. But so has Sharon.

## VI. CONCLUSION

The history of the internal conflict over the settlements can be seen as a political contest for the hearts and minds of a reluctant and ambivalent majority where the protagonists are two warring minorities. One minority, led by the national religious settlers, has shaped events to a much greater degree than the second minority, the peace movement led by Peace Now. The settlers have effectively mobilized government resources in their service, especially when Likud was in power; Peace Now was less effective in ever mobilizing Labor governments to block settlement expansion. Indeed, the settlement movement has succeeded in creating “facts on the ground” that profoundly complicate the implementation of a two state solution: 140 settlement communities, home to some 231,000 Jews, now pepper the West Bank and Gaza. Our essay has described the sources of the settlement movement’s remarkable influence. We have suggested that this small, determined and well-organized minority has successfully invoked themes, both cultural and religious, that have broad resonance within Israel. We have also pointed to institutional features of the Israeli political system that have amplified their power.

As we have shown, West Bank and Gaza settlements have expanded steadily since the 1967 war, irrespective of whether Labor or Likud led the Israeli government. However, Israel’s two major political parties responded differently to the conflicts between national religious settlers and the peace movement. As a general proposition, Labor-led governments employed a strategy of avoiding direct confrontation with the settlement movement. These governments demonstrated little understanding or sympathy for the perspective of the national religious settlers, but they were unwilling to firmly halt expansion. Conflict avoidance characterized their response. When Likud-led governments were in power, their posture was one of accommodation of the settlers. Likud demonstrated an empathetic understanding of the settlers’ goals, and actively supported settlement expansion. While territorial expansion was consistent with Likud’s traditional ideology, Likud governments were never assertive enough to implement the settlers’ grand vision and annex the territories to Israel proper.

Prime Minister Sharon, once the champion of the settlers, now directly confronts the movement with a specific proposal to evacuate all the settlements in Gaza as well as four small ones in the West Bank. In doing so, he has been nei-

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112. A conscripted soldier who disobeyed an evacuation order might, as a practical matter, risk a short term in a military jail. The cost for a career soldier would be much higher because such a person might well be discharged, thus jeopardizing his long-term prospects.



ther a conflict avoider nor an accommodator but has been characteristically assertive. We wish to suggest that Israel would be best served in the months to come if its government combined empathy with assertiveness in dealing with the settlers.<sup>113</sup>

In confronting the settlement movement, the need for assertiveness and firmness is obvious if Sharon's plan is to be implemented. The national religious settlers are a small and committed group that stands to suffer a great loss if the relocation plan succeeds. Beyond the 8000 settlers that will be evacuated immediately, implementation of the Sharon plan will set a precedent, making it easier to relocate more settlers from the West Bank. The national religious settlers have proven their effectiveness in blocking threatening political initiatives, and have demonstrated a willingness to employ hard-ball tactics, including calls for massive civil disobedience, proposals that soldiers disobey orders, and even veiled threats of violence.

Less obvious, perhaps, is the need for the government (and the nation as a whole) to demonstrate empathy for the settlers' plight.<sup>114</sup> If only material issues were involved in the conflict over the settlements, economic theory suggests monetary compensation alone might suffice. Presumably a majority of Israelis would benefit from removing the settlements if it contributed to resolution of the Israeli-Palestinian conflict. A few Israelis—the settlers who would be moved—would be materially harmed. If relocation were value creating, then a sufficiently large "side payment" to the settlers by the majority would resolve the internal conflict. While there might well be hard bargaining about the amount of the payment, a negotiation analyst would predict that rational actors would make a deal.

As we have shown, the loss many settlers will suffer cannot be translated into monetary terms. For some settlers, evacuation threatens their life's project and undermines their religious and cultural worldview. It damages their personal, communal, and national identities. Consequently, the government's response should demonstrate an understanding of the profound non-monetary dimensions of their loss as well. The government should acknowledge the sacrifice they are being asked to make, and perhaps later recognize it through public commemoration, possibly through memorials or museums. The spirit of what we are suggesting was partially captured in a remarkable speech given by Ami Ayalon to a peace rally in Tel Aviv. Ayalon, a retired admiral who headed the Israeli navy and served as head of Israel's national security agency, was a principal author of the Ayalon-Nuseibeh Peace Initiative.<sup>115</sup> In explaining that the Israeli peace movement had made an error, Ayalon said:

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113. See Robert H. Mnookin, *Afterword to the Conference Report: Resolving the Behind-the-Table Conflict*, 21 NEGOTIATION J. (forthcoming Apr. 2005). For the full report on the conference, see generally Robert H. Mnookin, *Conference Report: The Internal Israeli Conflict: The Past, Present, and Future of the Jewish West Bank and Gaza Settlements*, 21 NEGOTIATION J. (forthcoming Apr. 2005).

114. The original Sharon coalition included two parties that represent, at least in part, the interests of the national-religious settlers (National Union and National Religious Party). Yet, as the plan progressed, both parties left the coalition, leaving only a few Likud MKs, as a possible institutional platform for empathy. It remains to be seen how much the appointment of a national religious Jew—but not a settler—to head the settlement relocation agency will lead to empathetic treatment by the state.

115. See *supra* note 3 and accompanying text.

We never created a real dialogue. Perhaps we never really wanted to. We turned the settlers of Judea, Samaria, and Gaza into enemies. We arrogantly turned them out. We monopolized the quest for peace. That is why the majority did not come here [today], although I know that today of all days they wanted to come . . . . [The] majority wants to leave Gaza as much as we do. But they want to do so after lowering the national flag to half-mast, observing a minute's silence, and wiping a tear at the shattering of their Zionist dream. [The] majority will feel connected to us only when the pain of those slated to be evacuated drowns out the rejoicing of those who will do the evacuating.<sup>116</sup>

In addition to acknowledgment of the loss, consideration might also be given to what Yair Sheleg has characterized as “ideological compensation.”<sup>117</sup> As we have shown, the settlement project has been driven by a group—national religious settlers—who offer a vision regarding the role of religion in the Israeli public sphere, fused with a modern interpretation of traditional Zionist values. The national religious settlers view the settlement project as an instrument to implement their vision of infusing religious and communitarian values more broadly into Israeli life and moving more purposefully towards a less materialistic, more spiritual, messianic age. It is not clear to us that government policy can contribute much toward the achievement of such goals, although some would value symbolic declarations. The Israeli government could enact laws imposing more strictly traditional religion in the Israeli public sphere. Examples might include eliminating all commercial activity on the Sabbath and imposing strict kosher dietary restrictions in all restaurants and hotels. Such proposals are sure to meet fierce resistance from many secular Jews, however.

Even if ideological compensation does not prove possible, empathy and acknowledgment would serve practical political purposes. While the most committed settlers will never willingly relocate, a combination of monetary compensation and a sympathetic national embrace is more likely to minimize the number of settlers willing to resort to extreme measures in expressing their opposition. Equally important, the government's demonstration of empathy will be valued by the vast number of Israelis for whom the movement has some appeal. Many who favor evacuation have an emotional understanding of the loss the settlers will incur. Empathy can help build and maintain support among the reluctant majority.

At the outset of this essay, we noted the paradoxical quality of the Israeli-Palestinian conflict. While the outline of a deal that would better serve the interest of most Israelis and most Palestinians is clear, the Israeli government and Palestinian representatives have been unable to reach such an agreement. After the collapse of Camp David and the advent of the second intifada, a vast majority of Israelis both blamed the failure to reach a deal on Yasser Arafat, and agreed that he could no longer be a legitimate negotiating “partner” across the table. Since the lecture on which this paper is based was given, Arafat has died. Palestinians successfully held a peaceful election, and Abu Mazen, a moderate, is now the

116. Ami Ayalon, Speech at Peace Rally in Rabin Square, Tel Aviv (May 15, 2004), at <http://www.btvshalom.org/geneva/majority051504.shtml>.

117. YAIR SHELEG, ISRAEL DEMOCRACY INSTITUTE, THE POLITICAL AND SOCIAL RAMIFICATIONS OF EVACUATING SETTLEMENTS IN JUDEA, SAMARIA AND THE GAZA STRIP (2004).

elected head of the Palestinian Authority. These events are widely perceived as creating circumstances that may make across-the-table negotiations genuinely feasible. But our analysis strongly suggests that progress in the resolution of the conflicts “behind the table” remains an important condition for success across the table. In the coming months, the internal Israeli conflict over the settlements is likely to become more conspicuous and more intense. Now, more than ever, conflicts within Israel can stand in the way of substantial agreement between the parties.