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Borderline Disorder

The Unauthorized Outposts Reconsidered

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Abstract

Although there has been an increasing amount of academic writing regarding settling policy in the West Bank, little is in fact known regarding the mechanism by which new settlements are built and the motivations of the different players involved in this enterprise. This holds true especially with regard to unauthorized outposts which have been established since the Oslo Agreement. This article aims to fill this gap by offering insights into the micro-level (the reasons why people found an outpost or move to one) as well as into the little noticed meso-level (regional councils), which is in fact the "engine" for the establishment of the unauthorized outposts. Through a qualitative method we show, in a series of interviews, the extent to which the outposts and their inhabitants are tightly linked to existing settlements. This elaborates our claim that the analytical framework in examining these outposts should be expanded: not only the colonial theory should be used - a Neo-Marxist analysis is also necessary. The fact that the local authorities work hand-in-hand with the unauthorized outposts also challenges the theoretical notion of sovereignty. Our contention is that the situation in the West Bank thus requires a new, adapted version of sovereignty, based on Schmitt's notion of "Suspension of the Law".

Introduction

The formal policy of settlement construction in the occupied territories came to a close with the signing of the Oslo Agreements. Nevertheless, some 130 new settlements were since then established in the West Bank. They are usually known as “unauthorized outposts.” Despite great media interest in these outposts, there are hardly any academic studies on the subject: Kaniel (2004) assessed the motivations of youth who take part in the establishment and population of outposts. A significant body of knowledge was added with the publication of the opinion of Talia Sasson (2005) presented to the Prime Minister, in which she pointed out the intense involvement of the authorities in the establishment and maintenance of the outposts (“The Sasson Report”).

In this paper, we attempt to analyze the outpost phenomenon using the classical theoretical framework of colonial occupation and frontier. As part of the discussion of the place of the state in the practice of the frontier, we will examine the significance of the ethno-national ideology and its stance towards territory, both from the perspective of the local authorities involved in outpost development and from the perspective of the settlers themselves. In addition, we will depart from the classical perception and provide further interpretations: a Neo-Marxist interpretation as concerns the motivations for outpost establishment from the settlers’ perspective, and a political-self interest interpretation as concerns the actions of elected officials in the municipal authorities. We chose to analyze the municipal authorities due to the lack of discussion in the Sasson Report of the part of the authorities in the development of the outposts from the middle of the 90’s onwards, despite the fact that the Report explicitly states that the local authorities in the West Bank are the “engine” for outposts development (Sasson 2005).

The local authorities in the West Bank are led by the Yesha Council, an umbrella group uniting all heads of municipalities, local councils and regional councils in the West Bank, which works in full cooperation with the Amana settlement movement. The internet site of the movement does not note which of the settlements has been declared legal and which has not. From their perspective, legal status is inconsequential, as they are all Amana settlements (see also: Interview with Shiri, Amana movement, 03.05.2010). The local authorities have a double role: creating grassroots pressure for political support of outpost establishment, and direct

assistance in outpost establishment and development. The local authorities are active partners in the establishment and provision of services, as they would do in any other settlement in their area of jurisdiction. Through them, funds are transmitted from government ministries to the outposts. They select the first settlers and perform ideological examinations in order to check if they are friends or foes: will they be instrumental in developing the settlement, start a family and be able to live in these conditions? (Interviews with Goldstein, 16.5.2010; Nahliel, 3.5.2010). The settlers pay them for electricity and water, and sometimes also pay rent for a modular home. Furthermore, the local authorities, though the Amana movement, employ land inspectors for guarding state land, mostly through supervision of Palestinian construction and reporting to the Civil Administration.

This paper will try to answer two main research questions regarding the continuing establishment of unauthorized outposts despite the government resolution forbidding it. Our first question - what are the motivations of the different players to promote and take part in the unauthorized outposts? Our main argument is that the development of outposts calls for a deep and multi-layered analysis of the motivations of the various actors – the settlers, the local authorities and the central authorities. Academic discussions so far have focused only on a limited aspect of the question by implementing colonial theory to the settlement movement, although the theory does not facilitate understanding the motivations of the various actors. We found that together with ethno-national logic, economic and political motivations play a role as well, both for the settlers and for the elected officials in the local authorities, with significant impact on the direction and power of the settlement movement. The complex analysis of the ideological, Neo-Marxism and political dimensions of motivation allows us to relate the outpost movement to a broader phenomenon which has already been examined along these lines, the settlement movement (Elgazi 2006). Up to now, the two movements have been differentiated based on the claim that the outposts movement is solely ideologically motivated.

Our second research question examines how the unauthorized outposts phenomenon challenging the concept of sovereignty. In light of the points mentioned, we intend to examine the repercussions of the outpost movement on the character and quality of the sovereign, based on the theories of Schmitt, Weber and Agamben on the concept of sovereignty. The outpost movement exists due to the legal ambiguity of

Israeli rule in the West Bank. This ambiguity is reflected in the intermittent application of the law, institutionalizing a situation of illegality and ambiguity of legal status, originally in order to strengthen the hold on the occupied Palestinians. We argue that the prolongation of the legally ambiguous situation leads to the continual enfeebling of legal enforcement mechanisms and to the adoption of illegal or quasi-legal methods. These methods, originally used against the Palestinians, are now used by the settlers and the elected officials for the advancement of objectives contradicting the decisions and policy of the central government. In practice, the suspension of the law by the sovereign authority and its creation of a continual emergency situation in the West Bank led in the long term to the undermining of sovereignty through the weakening of its mechanisms and the force of the law. This development is an escalation of Sprinzek's description of the illegal political culture characterizing the settlement movement from the beginning (Sprinzek 1986).

The first chapter of this paper presents a short theoretical survey, combining an analysis of the outpost movement with its context of nationalism, territory and colonialism. The second chapter proposes alternative theoretical frameworks to the classical analysis: a Neo-Marxism analysis which will focus on the motivations for settlement, and a political-self interest analysis which examines the actions of heads of regional authorities as tools for expanding their political and electoral power. In the last chapter, we will discuss the concept of sovereignty and examine how the outpost movement affects it. This movement dictates a reality which undermines the stability of the institutional system identified with law, justice and the authority of decision made by democratically elected institutions; a reality in which parts of society arrogate to themselves authorities of the state.

In our fieldwork we utilized qualitative methodology based on semi-structured depth interviews with the subjects of the study: heads of local authorities in the West Bank, settlers in the outposts and various position-holders in the settlement movement. While the Sasson Report focused on the actions of government ministries and other actors on the macro level, this paper takes interest in the role of actors in the micro and meso level. We believe that the examination of these levels will enrich the discussion and deepen the understanding of the outpost movement, adding to what is already known. The interviews were conducted with actors from throughout the West Bank, in order to avoid geopolitical bias. It is important to mention that empirical data

regarding socio-economical measures and public funds invested and allocated by official agencies to the unauthorized outposts, is almost impossible to obtain, as Sasson mentions in her reports. This difficulty is due to the informal methods of allocation that prevent a transparent documentation, and the lack of interest and will of the players involved to share this information. The incomplete data presented in this paper is partially official data published by government agencies or civil organizations, and mostly informal data presented by the subjects during the depth interviews.

Ethno-Nationalism, Colonialism and the Outpost Movement

The connection between ethno-nationalism and territorialism has received broad theoretical attention (Penrose, 2002; Roded, 2005; Tzfadia and Roded, 2006; Yiftachel, 1999 ;Storey, 2001). The connection has been noted especially in questions concerning borders and frontier, which are linked to the discussion of colonialism. The expansion to the frontier is a practice of nation- and state-building, focusing on the expansion of territorial control by states and nations (Turner, 1962). This definition, predicated upon the relationship between territory and nationalism, reflects the ways by which nations and states successfully expand their physical borders, enforcing their political control over territories outside or inside the state, and even define the identities of individuals the state attempts to control (Harris, 2004). Together with methods of land purchase, land confiscation or expulsion of the local population, settlement is considered a central instrument for the implementation of this practice. Settlement advances the expansion of one nation to the living area of a different nation or ethnic group in order to shape the borders of the state and to expand its control to areas inhabited by ethnic minorities (Yiftachel, 2006). Roded refers to this practice as “ethnic spatialism,” i.e., spatial power relations – expressing the competition of nations over the settlement of space through their interpretation of territory. State institutions also take part in this spatialism, as part of the state- and nation-building project. This process is legitimized by various discourses used by the state, such as religious, political or legal discourses (Roded, 2005).

Settlement indicates a close connection between nationalism and territory, or between a nation and its land (Storey, 2001). This connection is expressed in the construction of an ethno-national narrative embodying the joint history of the

community and the territory, a history frequently derived from religious sources (Roded, 2005; Aran, 1987). In the Zionist context, religion draws the borders of the national territory and sanctifies it, and therefore, despite the secularization of the modern national project, it provides moral and historical legitimization to exclusive rights over the territory in the present. (Roded, 2005; Kimmerling, 1999). Moreover, settlement creates ethos: as the bearer of a message of modernization, development and order, settlement exemplifies the national strength and spiritual fortitude of the pioneers, continuously battling the dangers of the frontier: disease, shortage of food and equipment, a difficult climate and of course the opposition of the native inhabitants to the settlement project. The settlement ethos, encoding messages of security, heroism and development, becomes a basic component of national memory and identity of the settling group, and is maintained by the educational system, in festivals and religious rituals which are infused with national content. Furthermore, settlement involves materialist qualities, as it transfers property (mostly land) from the minorities to the members of the dominant nation (Harris, 2004).

Unauthorized outposts – background

To establish a settlement in the occupied territories, four conditions must be met: a government resolution on its establishment; it must be established on state lands; there is a statutory plan for the settlement; and its area of jurisdiction was set out in an order by the local commander (Sasson, 2004). Starting in 1993, the Rabin government significantly reduced the number of permits for settlement establishment – as part of the progress in the negotiations with the Palestinians and in light of growing international pressure on the issue. In 1999, the government prohibited the expansion of settlements as well, rendering illegal the custom of establishing “distant extensions” of existing settlements.

On the background of this policy, groups of settlers began to establish settlements, known as ‘outposts’, by various means: putting up an antenna tower and a residence for a guard next to it, later joined by family and friends; establishing an educational institution, and adjacent to it houses for staff; establishing an outpost as an expansion of an existing settlement, even when it is a few kilometers distance from the legal settlement; agricultural farms with “worker residences” and so on. All these methods are based, according to Sasson, on the “circumvention of procedure and

violation of the law, displaying false pretence towards some of the State authorities, and enjoying the cooperation of other authorities in stark violation of the law.” (Sasson, 2004: 24). The magnitude of the phenomenon is unclear, owing to a lack of uniform and accessible information. Sasson’s maps are also problematic, as each relevant authority has different information on the matter, and each authority tends to adopt independent definitions concerning the outposts. Peace Now attempted to complete the maps, but their attempt is also based on partial information (peacenow.org.il, 24.05.2010). Such lack of clarity is not surprising: it characterizes phenomena of informal development world-wide (Davis, 2004). Thus, while Sasson indicates 105 outposts, Peace Now list 130. A compilation of the data of the Security Ministry, the Sasson Report and Peace Now results in 132 outposts, 79 of them inhabited. The partial data reflects one of the main problems we discuss in this paper: the outposts, planned to enhance spatial control, in practice undermine the spatial control of the state due to their informal character.

The ethno-national logic of the outposts

“In Judea and Samaria the Jewish people was born, here in the southern Hebron Mountains the patriarchs lived, King David lived – the foundations of the Jewish people. After 2000 years we returned, and our role is to restore the settlements destroyed when the Jewish people were exiled. And since the Land of Israel is the “medicine of life” of the Jewish people, we must settle it and strengthen our hold on it – this is what we are doing and will do” (an interview with the head of the Har Hebron Council, Tzviki Bar-Hai, 25.5.2010).

This position, presented by the head of the Har Hebron Council, incorporates the ethno-national logic of territorial control, which justifies the establishment of outposts. This logic is drawn from two central discourses: a religious-messianic discourse and a security discourse.

The religious-messianic discourse originates from the settlement movement put into motion by Gush Emunim, religiously inspired by rabbis identified with Religious Zionism, headed by Rabbi Zvi Yehuda Kook. Their objective was to create an optimal combination between three main tenets: Torah, Land and People; the state, despite its secularity, was considered the central axis supporting the link between people and land. This idea is expressed in the words of Moria Caspi from Givat Assaf:

“the settlement here is motivated by faith in God and the Torah, and from here religious Zionism takes its strength. This Zionism is founded on an absolute value, which makes it eternal... religious Zionism is based on the Torah and its holy values of settlement of the land” (24.5.2010).

As opposed to the Gush Emunim movement, the outposts’ settlers do not have an elaborate religious teaching concerning settlement, but they are motivated by a simplistic interpretation of the commandment of settling the land of Israel (Kaniel, 2004). This commandment, while not providing an elaborate religious teaching, comes up repeatedly in the writings of contemporary rabbis, in sermons in synagogues and *yeshivot*, in articles concerning the land of Israel and its settlement, in newspapers catering to the national-religious sector such as *Besheva*, and in leaflets distributed in synagogues on Sabbath, such as *Our Yesha* – “an ideological platform for strengthening the hold on the land of Israel.” These sources appear in the interviews: Itai Harel, one of the founders of the Migron outpost, says: “I listen to rabbis, read all kinds of things, materials and religion interpretations” (interview with Itai Harel, 19.4.2010), likewise Moria Caspi: “there is religious authority but the religious sector is highly divided. There’s this rabbi and that rabbis... there are differences between the rabbis and there is no common opinion, and I regret there not being one religious authority... most of the rabbis are directed to the settlements, but there are certain points on which they disagree, for example on settlement evacuation, every rabbi rules differently” (Caspi, 24.5.2010).

The simplistic religious interpretation the settlers assign to their actions provides them with a moral dimension based on the biblical affiliations of these places. The names of the outposts are taken from the bible, and so for example Itai Harel claimed that the legitimacy to build an outpost on the site comes from the fact that “King Saul settled here”.

Religious discourse informs ethno-national ideology, and infuses the practice of settlement with an additional logical system, even if the outposts’ settlers are not versed in the writings of Rabbi Kook or in Kimmerling’s (1999) arguments on the connection between religion and nationalism. However, due to the policy of government refusal to approve the building of new settlements, there is a trend among settlers of the outposts of perceiving the state as having no role in settlement, relying

almost completely on the religious commandment of settlement of the land. This trend has been exacerbated since the evacuations of Amona and the Gaza Strip settlements.

The Council heads present a similar tendency: for example, Avi Roeh, head of the Mateh Binyamin Regional Council, who is a legal authority on account of his position, perceives the outposts as a suitable response to the damage inflicted by the Oslo Agreements: “here we hold on to state lands, which were uninhabited, not in use, for agriculture and construction. State lands which should be in the hands of Jews, and Arabs shouldn’t take over them. The objective was to safeguard the lands and to establish new settlements, whether if the law allows it or not. The Oslo Agreements tried to divide us and here there is a message: everything is founded on the faith and tradition that the land of Israel belongs to the Jewish people. But this is not the main reason – the main motivation is the attempt to break through the borders and safeguard state lands” (Roeh, 17.05.2010).

The reliance on religious legitimization gives rabbis an important role concerning outposts. Among the rabbis we can find some who publicly support the outposts: for example, Rabbi Shlomo Aviner, the Rabbi of Beit El, head of the Ateret Cohanim Yeshiva and one of the most prominent and moderate ideologues of religious Zionism today, supports the outposts: “the love of the Land of Israel and the settlement project is an example to everyone. The Land of Israel is settled not from necessity but from the love of the land, the great passion for the land of Israel signifies the first step of redemption” (Aviner, 03.05.2010).

The second discourse informing the ethno-national logic of outpost establishment is the security discourse, stating that establishing outposts is an instrument for controlling the territory and protecting it from the Palestinians. Tzviki Bar-Hai, head of the Har Hebron Council, claims that strategic and security interests are paramount in selecting sites for outposts: “there is an attempt to create settlement blocs, which will ensure security in the settlements... in a situation in which there are two distant settlements with terrorist attacks between them – an outpost is put up, and this provides control... if I establish a settlement situated on the road and controlling it, the army doesn’t come there as much because there’s a permanent community there, and it contributes to security. This is usually the way the army thinks without it saying so” (Bar-Hai, 25.5.2010).

This position comes up in the interviews with rabbis, council heads and settlers. For them, the outposts are the continuation of the practice of Zionist settlement which was aimed at security, both in the day-to-day meaning of defending the area, and in the wider sense of ensuring the security and well-being of the Jewish people in the land of Israel. Their statements indicate that the army commanders acquiesce to the exact location of some of the outposts, which are integrated into the strategy of spatial control.

The utilization of security discourse is not self-evident, and it is usually secondary to the religious discourse. In the Alon Moreh deny, Menahem Felix, one of the leaders of Gush Emunim, opposed the opinion that security considerations justify settlement. For him, “settlement itself... does not originate from security reasons... but from the destiny of Israel’s return to its land... settlement in the Land of Israel which is the destiny of the nation and state of Israel, must be the security, good and well-being of the people and the state (High Court of Justice case 390/79, Duikat et al. vs. the Government of Israel). Likewise Avi Roeh, the head of the Mateh Binyamin Council, concurs: “we did not establish settlements because of security problems. The main reason for their establishment is to keep the land in Jewish hands – it doesn’t matter if it serves a security purpose. We want the land to remain in Jewish hands and that Arabs won’t live there.”

However, despite the secondary status of this discourse, due to the lack of public legitimacy for the outposts their supporters utilize the security discourse in order to explain the need to deviate from legal frameworks in order to develop outposts. Thus, they create a bridge between the security ethos, which has a hold in the Zionist left and the myth of the promise (of the larger land of Israel), which has a hold in the religious-national right (Greenberg, 2007), by highlighting “secular” values inherent in the link between ethno-nationalism and territory.

The conceptual framework with which we have worked up to now, both theoretically and empirically, supports the assumption that settlement in the outposts is ideologically motivated, drawing from the security and the religious-messianic discourses, and from the ethnic conflict over territory. This interpretation is somewhat simplistic, and ignores the complexity characterizing the motivations of those who come to live in the outposts and those who choose to support them. In the next chapter of this paper, we will present a complementing analytic framework, affording an

additional perspective and proposing a more complex understanding of the phenomenon. The analysis in the next chapter will focus upon the economic motivations, as opposed to the ethno-national motivations we presented till now. Such an interpretation allows us situate the phenomenon in relation to the general settlement project, which economic motivations were already made clear (Greenberg, 2007; Elgazi, 2006). In addition, we will present political-self interest motivations, as evidenced in the interviews, which lead heads of regional councils to support the outposts, despite long-term damage to the rule of law and the interests of the councils they lead.

Economic motivations and political opportunism in the outposts

Continuing the first chapter, we propose an additional theoretical framework for the outpost movement. The reasons are mainly a lack of discussion of the various levels of actors involved in outpost development, the settlers (the micro level) on the one hand and the heads of the regional authorities (the meso level) on the other, who were identified in the Sasson Report as the engine for outpost development, but were not discussed further. As will be shown in this chapter, when moving from the macro to lower levels, the explanatory framework for the outposts presented in the interviewees' statements also change. While in the macro level the emphasis is on colonialism of controlling space and expanding to the frontier, in the meso level we find political motivations of the local authorities to assist in outpost development, while in the micro level Neo-Marxism considerations play a central role in the motivation of settlers and activists to establish unauthorized outposts. We do not claim that the ideological element has no place in the micro level, but that cultural elements, such as religion and nation building, and economic elements, such as deepening control over resources, work together in the acceleration of the settlement project of the nation (Turner, 1962).

As demonstrated in the first chapter, heads of regional councils emphasize the ideological role of unauthorized outposts as a continuation of the settlement enterprise they themselves initiated a few decades ago. However, further interviews with the heads of councils paint a more complex picture. Their statements indicate that there were additional motivations, connected to the political structure of the local authorities, which compelled them to harmonize the obligation to enforce the law as

the representatives of the authorities with their need to concur with the wishes of the voters. Shamgar, in a survey of the characteristics of local authorities in Israel, notes “two main dimensions: between the citizen and the local authority and between the local authority and the central authority... the role of the citizen does not end when the votes are tallied – his influence is continually in effect... and the local authorities are under his influence” (Shamgar, 2003). Heads of councils recognize the fact that outpost establishment is to a certain extent a challenge to their formal leadership and to their control of the territory of the council. Avi Roeh, the head of the Binyamin Council, for example, says that “some of the new settlements are established in cooperation with the council and some without it, as a fact, perhaps as a kind of rebellion of youth.” However, he adds, “there is no settlement that isn’t suitable for the council”. Heads of council are aware of the broad support the outposts have among the settler population in the West Bank, and therefore demonstrate material and ideological support of them, despite the relinquishment of their control over the creation and implementation of policy. On the other hand, although the settlers want to explode the accustomed frameworks of settlement, and in light of past experience, they are cognizant of their dependence on the authorities and the impossibility of maintaining the settlements in the long term without political legitimacy and public funds (Newman 1984).

An example for the political pressure which the heads of councils are under concerning outpost policy is present in Avi Roeh’s answer to our question about possible opposition of settlers to the transfer of council funds to unauthorized outposts: “On the contrary, they (the older settlers) say that we don’t give enough to the younger settlements” (17.5.2010). Indeed, this answer strengthens the claim that the authorities are frequently between a rock and a hard place, and that their conduct does not necessarily reflect their professional preferences. Saul Goldstein on the one hand tears down illegal construction inside the settlement, “I have three dismantling injunctions that are going to be executed” (16.5.2010), and on the other hand assists in establishing unauthorized outposts which do not meet planning and construction laws, violating and enforcing the law at the same time. In order to resolve this dissonance, Goldstein explains that “the objective of building regulations is to regularize relations between neighbors and the local authority, between you and the public sphere. But outposts are different, it’s like war” (ibid). Another motivation of the heads of local

councils in establishing unauthorized outposts is the strengthening of the council in aspects of funds, number of settlements and public image. With more settlements included in a regional council it receives more government funds, and becomes stronger in the umbrella organization of the Yesha Council. Answering a question on the willingness of the regional council to support outposts, Zviki Bar-Hai said that it “expands the council in all kinds of ways, including budgetary ways. It makes the council forward-looking” (25.5.2010).

There are differences in outpost policy between various heads of regional councils. In our opinion, these differences are a result of general ideological variation and especially socioeconomic variation between settlers in different areas of the West Bank. The conclusion is that also in this aspect the divergent policies of heads of regional councils are directed at meeting the expectations of their voters and are not the result of basic differences between the heads of regional councils themselves. “Binyamin and Gush Etzion are different in perception, ideologically as well. They (Gush Etzion) say that they support settlement... but that it should be done in a certain way. We think that we should be more dynamic, significant, to make an effort and not to rest on our laurels” (Roeh, 17.5.2010).

“It’s not like the 80’s, when the motto was “just come” (Eldad, 9.5.2010)

Concerning the settlers in the outposts, a more complex picture emerges as to their motivations. Their testimonies indicate a mixture of considerations, both ideological and practical. In addition to the ideological motivations noted by the heads of councils, the settlers apparently have also social and economic motivations which are responsible in practice for the establishment of outposts and their development. Economic considerations led ultra-orthodox population to move from their traditional centers, such as Jerusalem and Bnei-Brak, to new ultra-orthodox settlements across the green line such as Modi’in Elit and Beitar Elit (Elgazi, 2006). In addition, the living costs in the outposts are significantly cheaper than in the existing settlements in the West Bank, a significant point especially for a young population with limited means. We found support for this in the interviewees’ statements (Shiri, 3.5.2010); Neil, 11.5.2010; Eldad, 9.5.2010), that the cost of a modular home in an outpost is about NIS 1000 a month. Neil rents half a modular home and pays NIS 920 a month, including settlement taxes, electricity, water and satellite television. These are low prices as compared to settlements which are suburbs of Jerusalem, such as Alon

Shvut, where the average monthly rent for a 150 sqm house is NIS 5500, and also compared to more peripheral settlements such as Itzhar, where rent for a similar house is about NIS 3000 (Levinson, 21.5.2010). Eldad (9.5.2010) says that one of the reasons for moving to the outpost is her family's lack of means to pay for housing in settlements near Jerusalem, where prices are similar to those in Jerusalem itself. Also Shiri, who is a part of the Amana movement, said that she is soon getting married, and although she would prefer to remain in Jerusalem, "rent and living costs are very high here... so I think I'll go live in one of these settlements (outposts) because it's much cheaper, and if I go to such a place it would be for economic reasons." Shiri's testimony is especially interesting, because when she was asked an identical question about other people's motivation according to her experience in the Amana movement, she answered that "I can say with certainty that settlers who go to the outposts are solely ideologically motivated" (3.5.2010). This duality underlines the great distance between the stated ideological consciousness of the professional and political position-holders and the practice of the settlers.

Economic welfare is not expressed only in material terms, such as size of the plot, income sources and the like, but also in quality of life measures such as low population density, lack of air pollution, closeness to the land, communal atmosphere etc. The establishment of the outposts suited the inclination of part of the younger generation of the settlers to return to nature, as opposed to the older generation of West Bank settlers. In the name of the same ideology, the settlers enjoy quality of life and relatively low housing costs compared to older settlements. This is expressed, among other things, in special community life, organic agriculture etc. these young people wanted to establish settlements with an ecological/natural bent, and found it in the outposts. "In the beginning they had to build as fast as they could; now we have the time for an ecological settlement – a luxury, we can build houses from local stone, solar energy, water recycling..." (Eldad, 9/5/2010). In these cases, the importance ascribed to maintaining the desirable character of the outpost is greater than the strategic importance of absorbing as many settlers as possible. Therefore we find a ubiquitous phenomenon of admission committees, which examine the suitability of the candidates to the "agenda" of the outpost, and an unwillingness of the outposts to grow beyond a certain critical threshold which will undermine its communal character. Eldad, who is in the midst of a move to an outpost, describes the admission

committees: “there are admission committees everywhere... their objective is to filter out unwanted people – criminals, anti-social people. Each modular home has a waiting list. Not every place wants to grow, some want to stay small, a dunam and a half for each family, no more than 30 families.” Neil adds to her description: “the ideal is that the place remains small, in my opinion no more than 40-50 people... I don’t want people like Russians, Ethiopians or ultra-orthodox. I wouldn’t admit ultra-orthodox people at all” (11.05.2010). The opportunities to maintain an ecological/agricultural way of life are very limited in Israel, and therefore joining an outpost is one of the only ways to do so. A parallel option inside Israel, such as a farm or land in a moshav, is very costly and requires complex bureaucracy, which does not always bring the result sought for.

“People are willing to invest quite a lot of money, on the assumption that they’ll see profits” (Roeh, 17.5.2010)

Tzfadia (2001) argues that there are two forces forming space – ideological planning forces and economic forces. Ideological planning forces are part of the project of state and nation building through settlement and expansion in space by the dominant group. This ideology concerns nationalism, emphasizing the territorial part of nationalism. Settlement is motivated also by economic considerations, in order to promote the economic development of space for the dominant national group. The settlement in space has the power to fortify the economic control of the dominant national group over land and natural resources. Through this control, the members of this nation receive additional value of ownership of capital originating from the land and its capital-producing ability, by operating industry or agriculture on the land, a wider labor market, and raw resources. The importance of the economic discourse and the awareness of it are also reflected in the statements of the heads of the regional councils, and testify to the growing legitimacy of economic considerations and motivations as part of the settlement ideology. “On the contrary, among the settler’s leaders, some see the multiplicity of motives as a sign of the maturity and soundness of the settlement enterprise.” (Roeh, 17.5.2010). The possibility of economic benefit is an aspect of the “normalization” of the settlement enterprise, by harnessing the power of the free market for the settlements. We mean to say that the value of the unauthorized outposts for the settlers, as it is expressed in the area of land or the proximity to the city, creates a motivation for settlement in addition to the ideological

reason. In other words, in many cases the economic motivation may be the main catalyst for settlement, and the settlers do not perceive it as demeaning or diminishing the ideology behind the establishment of settlements.

Economic considerations are expressed also in the spatial distribution of outposts in the West Bank. Most of the outposts are built in the area around Jerusalem (as we said, for reasons of cost of living) or they are agricultural farms in which employment is found inside the settlement itself, mostly in the center of the Samaria Mountains and in the Southern Hebron Mountains. The head of Gush Etzion council says that “today in Gush Etzion all the houses are full, there’s no place to live. The prices here are draconian and they only go up... so we just put up outposts” (Goldstein, 16.5.2010). Examination of the outposts map reveals that the northern Samaria area, in which Jewish settlement is sparse (and became even sparser following the evacuation of four settlements in the disengagement plan of 2005: Sannur, Homesh, Ganim and Kadim), is not a popular area for outpost building. This is somewhat paradoxical, as it would be expected that there would be redoubled efforts for strengthening the Jewish hold in this area. The importance ascribed to proximity to older, well established settlements, is another kind of economic motivation, reminiscent of global suburban phenomena, an attempt to enjoy rural life and at the same time to be in proximity to municipal services (Rabinovitz & Lamara 1971 , Lewis & Mound 1976 ,Johansen & Fuguitt, 1984). This fact leads us to return to questions on the quality and role of ideology. Marx claimed that “not the consciousness of people determines their being, but vice-versa: their social being determines their consciousness” (Marx, 1906). Ideology is the ideas, values and beliefs reflecting the interests of a certain class. In this aspect the ideology which seemingly directs the building of outposts is an instrument for attaining and justifying the economic benefits accruing from this action.

Unauthorized Outposts and the Question of Sovereignty

The Sasson Report demonstrated how the outposts’ enterprise is founded upon systematic violation of the law and on informal activities, including the establishment of outposts on private land, establishing them without the agreement of the political echelon, transferring government funds to the outposts without formal and transparent reports, and so on. This method of action was discussed in the study of Sprinzek

(1986) which discusses legalism in the cultural-political context of respect towards the rule of law. Such a political culture is defined by him as a culture which assumes that in a proper state with a legal system, which was legislated by a legitimate authority, the citizens and the authorities must obey the law and behave according to its guidance. Illegalism is defined in this context as a culture in which respect towards the law is not perceived to be a basic value, but rather a certain kind of behavior which can be followed when it is expedient to do so. This culture does not challenge the legal system as a whole, but rather perceives the question of obeying the law in an instrumental fashion, both among citizens and among the leaders and high-ranking politicians (Sprinzek, 1986).

It would seem that the unauthorized outposts could be included in the same analytic framework of a political culture of illegalism. However, we believe that on a number of counts, this movement indicates a fundamental shift which entails the examination of the condition of sovereignty. We argue that in the case of the unauthorized outposts, use is made of legal incoherence, that is, legality and illegality and the same time. This includes a challenge for the idea of the sovereignty of the state: on the one hand, the outposts enjoy services provided and funded by the state, usually indirectly, through the regional councils; while on the other hand, their establishment was not agreed upon by the state and therefore they remain in a gray area in all that has to do with obeying the state's laws, from planning the buildings to paying taxes. This is an absurd situation in which the very illegality of the outposts leads the settlers to see themselves as exempt from obeying the law, and renounce the sovereignty of the state. "There are a small number of youth who live in the outposts, that do not settle there for ideological reasons but because they feel that the outposts are a never-never land, a land that is not arrived at in any organized way...Life itself may also be conducted lawlessly and without clear borders. For some of these youth, the limits of which air or smoke should be inhaled and which drinks should be drunk and how many, are about as clear as the limits of the outpost they set up" (rabbi Ya'akov Meidan, in: Blau, 23.02.08).

In this chapter we will present a theoretical survey of the development of the term sovereignty, and examine how the unauthorized outposts affect the character and quality of the sovereign in the West Bank. The academic literature on the concept of sovereignty is large, and it interfaces with many disciplines: political science and

international relations, economics and political philosophy. In spite of the theoretical dimension, it can be boiled down to the actor which makes the decisions and is responsible for implementing them, or in other words: who has the authority? Two classical definitions of the sovereign will assist us in this paper: Max Weber's and Carl Schmitt. Max Weber's definition of the sovereign as the one who has a monopoly over violence (Weber 1947) assumes the ability of implementing this power continuously. Therefore, undermining the monopoly over violence entails undermining the sovereignty. Schmitt's definition examines the sovereign from a different perspective: "a sovereign is that who declares an emergency" (Schmitt 2004:13). That is, the sovereign is the actor that has the ability to suspend existing order. These definitions are not conflicting but rather complementing. The sovereign can suspend existing order, both through a monopoly on violence and through its cancellation; it will remain sovereign to the extent that it will succeed in attaining the monopoly over violence. The definition we use is intentionally general, and does not find any autonomic unit to be the perfect expression of sovereignty.

In this point we are partly diverging from existing literature which focused on the state. Starting from the seventeenth century (since the Westphalia agreement of 1648), the question of sovereignty was limited to questions of state sovereignty, even if in most of the historical cases, the state was not the only player (Krasner 1999:220). Consequently, every contemporary discussion of sovereignty implicitly assumes a discussion of the state. In the past years, theoretical literature has dealt in the threat on the sovereignty of the state due to economic and cultural globalization, which changes the definition of dependence between states and even challenges the question of citizenship. Once physical and economic geography became less significant, the sovereignty of the state has been significantly compromised (Sassen 1996:5). Another challenge is the attempt to create super-nationalism, for example in the European Union. This case is especially interesting because the state willingly cedes some aspects of sovereignty, mainly economic sovereignty, in exchange for benefits in other fields (Moravcsik 2002: 612 ;Weiler et. al. 1996: 2010). As opposed to those who claim that the nation-state's power is waning, some believe that we should recognize the tension in the state between an internal and external consensus, leading to a continuous struggle over the relation towards the sovereign sphere, both in the geographic and the ideational sense: this process which is sometimes called the

institutionalization of territories (Herb, 1998), exposes a further dimension of sovereignty, the internal one. In some states, there are certain areas in which the state has given up on implementing its sovereignty, as expressed in the lack of any services (welfare, infrastructure, education, policing etc.) provided by state authorities in these areas. In certain cases there is an assumption that if these places will be ignored long enough, they will disappear. A prominent example for this attitude is the favelas throughout South America (Yiftachel, 2009).

While the literature we cited focuses on the relinquishment of geographical sovereignty by the state, beyond the green line in Israel the opposite phenomenon is found – an intensive enforcement of sovereignty. Sovereignty is enforced not only on the surface but also on top and below it – both physically and metaphorically. Weizman's detailed analysis in his book *Hollow Land* shows how infrastructure projects were executed in Palestinian land in order to change the situation above land as well (Weizman, 2007). We may understand these actions through emergency-state laws. In his important interpretation of Schmitt, Agamben argues that the development of an emergency-state practice, especially after 9/11, led to a situation in which the sovereign suspends the law, creating people who at once under and not under law; these are the Homo Sacer, with which the sovereign can do whatever he wishes except for taking their lives, because the state of emergency legally puts them out of the reach of the law (Agamben, 2005). Shenhav expands Agamben's idea and demonstrates its validity in a colonialist regime (Shenhav, 2005). This is apparently the way that the occupied territories function: according to laws such as “state of emergency search authorities”, “land settlement law” and “state of emergency authorities”, the existing order can be suspended and the state can apply its power (Schmitt et al, 2009). The actions are done according to legal definitions of a state of emergency, and therefore the occupied territories are in a continuous state of legal illegality (Ophir, 2009). This reality, which perpetuates legal illegality, has started as a project but has become more institutionalized as can today be seen as a regime system (Azulai and Ophir, 2008).

Although the research dealing with the Israeli occupation of territories beyond the green line provides new insights for the understanding of sovereignty in this area, the main focus is on the Palestinian population and its status and not on the Israeli population in the West Bank in general and on the outposts in particular. For this

population, a number of legal systems are relevant for different spheres of life – Israeli law, Jordanian law and military law, which main import is the suspension of civil law. Each of these legal systems in force in different places, for people of different nationalities and in different aspects of life, creating inevitable overlaps between these systems, which would seem to require resolution. In practice, these overlaps create legal ambiguity, which allows moving between the various legal systems, and in certain cases a lack of law following its suspension. As we said, Schmitt’s definition of the sovereign as that which declares a state of emergency and suspends the law facilitates an analysis of sovereignty in the outposts.

The shortcoming of the existing literature is that while it discusses states of emergency it is still actually in the grip of the state paradigm of sovereignty (an exception is Shenhav 2006). We propose to understand Schmitt’s state of emergency not as a formal state, but rather as a certain situation: the sovereign suspends existing legal order. According to this reading, this is what the outposts’ settlers are doing: they are part of the existing legal order but also beyond it. On the one hand, they are an integral part of the sovereign institutions: they are citizens of Israel and enjoy the services of the regional council. On the other hand, they are outside the legal order: they do not conduct themselves according to Israel law, and the settlements in which they live are not recognized by the state of Israel.

The fact that the outposts are unauthorized provides them with their unique status of sovereignty, as opposed to old settlements or those which are completely illegal. The situation here is not of a breach of the existing order and breaking the law, but its suspension. We can think of three aspects in which there is a suspension of law in the unauthorized outposts: formal, essential and source of authority (Hofnong, 1991).

- a. Suspension of formal order: the conduct in the meso level frequently allows the establishment of outposts outside of the control of the regional councils in the West Bank, and in practice leads to the creation of outposts which do not obey the formal law. While some may claim that this is an essential condition for legality (Hofnong, 1991), we argue, based on our analysis, that this is a special kind of informality, since at the local level the outposts are partly supported by legal institutions. In other words, day-to-day conduct partly accords to formal regulations and partly does not.

- b. Suspension of essential order: Through the law, the legislator intends to maintain certain values. In the case of a liberal democracy, these values include certain rights, such as the right of property. The outposts are situated on lands which weren't given to them by the state, which is seemingly the sovereign. Settlement is also partly based on support on the meso level on some other external support, which can be interpreted as a violation or suspension of the law. According to international law, this is a violation of the law; however, if in the West Bank there is a de-facto regime which is not a state (Azulai and Ophir, 2008), we cannot be certain that in fact there is a violation of the law, because to a certain extent law does not apply there.
- c. Suspension of the source of authority: in a democracy, according to a naïve definition, the source of authority is the demos and the parliament and government represent its will. Elections of secondary order (regions; local councils; European parliament) also represent the people's will to a certain extent and may even indicate trends (Harrisson 1997; Reif and Schmitt 1980). Therefore, the fact that the outposts are not officially recognized by the state but are supported by the regional councils challenges their source of legitimacy. Apparently, they suspend the demos as a legitimate actor, but are at the same time part of it, for example by voting in the elections.

The three dimensions portrayed demonstrate how the residents of outposts suspend existing order and are therefore the sovereign according to Schmitt, at least to a certain extent. However, they are not a complete sovereign of which Schmitt was thinking when he articulated his political theology; rather the outposts obligate us to understand sovereignty not as a dichotomy but as containing different levels. There are certain dimensions in which the outpost settlers suspend the law, while remaining in it, and thereby create a separate autonomic space.

Agamben's "Homo Sacer" is portrayed as a helpless character, which the sovereign state can treat as it will (Agamben, 1998). The analysis of sovereignty in the unauthorized outposts exposes another kind of Homo Sacer, which is indeed beyond the law, but by choice: through the suspension of certain dimensions of the existing order and its adoption in other dimensions, it constructs a new utopian space in which it is the sovereign and at the same time is protected by the law.

Originally, the continuing state of emergency in the West Bank and the legal incoherence which prevails there as a result of the lack of a clear legal system were intended to facilitate the control of the Palestinian population and Israeli expansion in this space. With time, the Jewish settlers apparently started to make use of these tools in order to manipulate the governmental authorities and to advance their control over space. The bifurcation of the relationship with state sovereignty is prominent especially in the statements of the heads of the regional councils, who are both part of the government and work against it, according to their interests. The officials seem to understand that their support of illegal actions in the outposts may start a process of illegal actions of the settlers against the regional authority which they head. Therefore they make an attempt to maintain and justify this duality, as explained by Saul Goldstein, the head of Gush Etzion regional council: “I dismantle illegal construction inside the settlements, I have three dismantling orders that are about to be executed. Illegal construction inside the settlement should be regulated according to construction regulations; but outposts are different, there it’s like war” (Goldstein, 16.5.2010). The situation in which Goldstein on the one hand enforces dismantling orders in the name of construction regulations on the one hand, while violating these same laws on the other hand, is clearly absurd. The understanding that the development of outposts involves the repudiation of state sovereignty and law leads the heads of councils to avoid enforcing the law out of apprehension that they may encounter opposition, even when dealing with sovereign actions such as tax collection. Concerning the relations between the council and the settlers in the outposts, Avi Roeh, head of the Mateh Binyamin Council, says: “usually there’s cooperation. I help them if they want. There are no threats. I propose something, if they think differently they can. I may think they’re wrong but it’s not at the level of saying, if you don’t do what I say you want have a road, education, etc.” (17.5.2010). This statement shows that the subordination of the outposts to the regional councils is feigned, and based on their goodwill. In fact they are independent entities which are outside of the reign of law on the one hand, but dependent on the authorities for informal resource allocation on the other.

The settlers in the outposts adopt these methods of legality and illegality intermittently in their daily life as well. For example, Nil describes the way his

settlement is conducted: the price is NIS 1300 for a whole modular home... but people just don't pay. Each one pays according to what he wants. In principle, someone who doesn't pay can be evicted, but up to now that never happened" (11.5.2010). This example demonstrates the disintegration of modern bureaucracy, caused by the ability of the outpost settlers to move freely from legal to illegal space. This is reflected in Nil's statement concerning the question of the outpost's legality: "the illegality of the place has no significance for me. I do a lot of illegal things – copy on exams, don't give right of way. I don't believe in the definition of illegality of this place" (11.5.2010). A similar perception is offered by Hananiah: "according to the law I'm breaking the law, but law isn't above everything. I obey the law according to my conscience, and if I don't agree to something it's not the law for me" (3.5.2010). These statements of the settlers demonstrate how the weapon of the sovereign, the suspension of law, is actually turned against him. Although these statements confirm Sprinzek's claims of a political culture of illegalism, they are in fact an escalation, as they are a general challenge to the conception of a regime of law.

The continuing suspension of law in the West Bank created a regime model of legal illegalism. The continuation of the state of emergency led to the gradual weakening of systems of law and order, which stopped working in a logical and routine fashion, as the lack of legality undermines their validity. In time, the regional council, and after them the settlers, started to imitate the methods of the sovereign, and to use legal incoherence and the lack of law in order to enhance their control over space. This demonstrates how in this situation sovereignty gradually destroys itself, since every modern sovereign system is dependent on maintaining the hierarchy of the bureaucratic systems comprising it. The enforcement of law in the West Bank is emerging as a significant challenge to the State of Israel, in face of the conception of sovereignty created among the settlers and the significant erosion of the operative abilities of systems of law and order.

Conclusion

This article examined the phenomenon of the unauthorized outposts in Israel through analyzing the motives of the different players (central authority; local authority;

settlers etc.) to settle or allow settlement in unauthorized outposts in the West Bank. This multi-layered analysis suggests new theoretical innovations such as the focus on the meso-level. The macro-level was indeed analyzed in recent theoretical literature but the last chapter in this article shows the inherent connection between the analysis of unauthorized outposts and the broader theoretical question of sovereignty and the danger implied in constant suspension of the law which creates a state of “legal illegality”. The series of interviews conducted shows that there is a mixture of forces which together construct the spatial space in the West Bank. Among these forces are the ideological one (messianic belief); the Neo-Marxist force; concerns regarding security; and social factors. The interviews also show that there is a gap between the practical and the theoretical justifications. Settlers and council heads alike claimed ideological goals on the one hand but when posed with questions concerning their choices showed a rather pragmatic approach – which implies to heterogeneity of motivations. In addition, as we assumed, the meso-level plays indeed a crucial role in the building and maintaining unauthorized outposts. Our research showed the double function of the local authorities: a. toward upward - meaning the connection to the central state-based authorities (funding; demanding approvals etc.), connection which sometimes leads to the turning of blind eye thus fostering the above mentioned “legal illegality”. b. toward downwards – meaning the relationship between the local authority and the settlers. In this case similar phenomena were observed – on the one hand sympathy for the settlers and their needs and on the other hand a desire to follow the law (including demolishing houses), i.e enforcing the status of the local authority.

The second part of our research examined the theoretical implication of the above mentioned suspension of the law. Our thesis is that this continuous situation leads to the weakening of the law and order system in the West Bank. The empowerment of the illegality, by settlers as well as local authorities, is used to create new means of spatial control. A solution to this situation is possible in our opinion in two ways: either a dismissal of the territory, meaning a complete loss of state-sovereignty in the West Bank, or by imposing the Israeli law system anew in this area in a way which will take full care of the rights and obligations of the inhabitants living in the area under state-sovereignty.

Our research examined this subject by means of qualitative research – in-depth interviews. Further research should focus on the quantitative aspect of the subject in

order to support the Neo-Marxism interpretation concerning living-costs and other financial factors in the unauthorized posts enterprise. In this aspect there are several documents to be viewed such as budget-reports from the government to the local authorities and from there to the outposts. Another revealing piece of data might be the annual benefit that the local authorities receive from the unauthorized outposts.

The definition of "legal illegalism" mentioned earlier brings to mind a psychological phenomenon, seemingly unconnected – borderline personality disorder. According to the DSM, the American psychiatric diagnostic book, the defining line of this disorder is “stable instability.” Beyond the clear similarity of definitions, there is also a deeper identity. Borderline personality disorder leads people to clear destructive behavior of self-damage sometimes leading to suicidal tendencies. A state in a state of emergency is a disordered state, which is transformed from a supervising state that protects its citizens from disasters to a catastrophic state, which creates the disasters itself. This analogy highlights the nihilistic and destructive dimension of sovereignty in a state of emergency.

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