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ARTICLE

Israel, Annexation, and Sovereignty: Within the Green Line and Across It

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Abstract

From the early years of Israel's occupation of the West Bank and Gaza Strip, observers predicted that their de facto annexation might occur. Fifty-seven years later, it has happened. Although governed differently than other zones within the Israeli state, neither territory can be separated from Israel. Yet, the territories' official status is that they are not part of the state. We offer four reinforcing analyses—legal, historical, discursive, and political—of this sustained discrepancy between what is and what is officially said to be. By analyzing Israel's juridical techniques for regularizing the incorporation of territories occupied beginning in 1948, we show that de facto annexation has been Israel's predominant form of territorial expansion. This helps account for the failure to implement de jure annexation, the intensity of conflict over attempts to overhaul the Israeli judiciary, and debates over the future of postwar Gaza.

Keywords: Israel; Palestine; Zionism; International Law; Occupation; Annexation

The half-century struggle in Israel over whether to absorb or relinquish control over the West Bank has effectively ended. Processes of de facto annexation, including the transfer of three-quarters of a million Israeli citizens into areas east of the green line and the rejection or sabotage of all opportunities to negotiate a political settlement, have resulted in Israel as the effective ruler of all territory east of the Mediterranean Sea and west of the Jordan River.[1] Despite vast differences, the Gaza Strip is treated in the same way. Although talks about negotiations over some kind of land for peace settlement are likely to begin in the wake of the Gaza War, not even their initiators will believe in their success. Indeed, they will not succeed, and are not even likely to get to the point of substantive discussion.

In this respect it does not matter whether the Hamas and Islamic Jihad attack on Israeli towns and villages on October 7, 2023 is seen as a secessionist rebellion or a suicidal act of desperation and fantasy. Gaza may secede from Israel in the future, but not as the result of this war. Yahya Sinwar, leader of Hamas's military wing in Gaza who was killed by Israel in October 2024, may have believed Israel's destruction was at hand. If so, he was wrong. If anything, the course of the war corroborates the usefulness of understanding the Gaza Strip as a large open-air Israeli prison and the October 7 attack as a characteristically brutal

[1] Elliott Colla, "On the History, Meaning, and Power of 'From the River To the Sea'," Mondoweiss, 16 November 2023, https://mondoweiss.net/2023/11/on-the-history-meaning-and-power-of-from-the-river-to-the-sea.

prison revolt. The pulverization of Gaza and the grossly disproportionate casualty ratio that has resulted also are typical of how prison revolts are dealt with. In essence, the war demonstrates more ferociously than ever that the Israeli state encompasses Gaza, especially its ability to enforce or deny property rights. In September 2024, the United Nations Satellite Centre reported that Israel had damaged or destroyed 163,778 buildings in Gaza, 66 percent of all structures.[2] Just as it does in many other prisons within its territory—based on fraught relationships of cooperation and antagonism with prisoner organizations—Israel dominates the lives of Gaza Palestinians, who enjoy only the property Israel allows them to have.

These are realities. But much of what has become real has not been explicitly codified, producing a wide gap between political and legal realities—a gap that has massive but underappreciated implications for both the present and future of the territory and all its inhabitants, Arab and non-Arab alike. Against a background of contestation, confusion, and failures to enforce international norms and conventions with respect to the meaning of "annexation" and "sovereignty," we offer four reinforcing explanations to account for this gap—this striking discrepancy between political realities and legal formalizations. The four explanations are, (1) it is the consequence of strategies of fact-creation designed to evade the legal prohibition against de jure annexation in international law; (2) it is the by-product of legislative initiatives designed to secure permanent control and absorption of territory beyond the green line without triggering international legal challenges or exposing discriminatory policies toward non-Israeli inhabitants to legal or political scrutiny; (3) it reflects a strong shift within the Israeli settler movement in favor of sovereignty defined as Jewish supremacy as opposed to versions of state sovereignty that could imply equality for all inhabitants; and (4) it signifies efforts to prevent the eventual political emancipation and mobilization of Palestinians within Israel. Although our methods for making these arguments differ, shifting from international legal analysis to dissection of existing and proposed Israeli legislation, patterns within the discourse of those pushing the Israeli settler agenda of "sovereignty now," and the political dynamics of long-term processes of democratization, the point of each is the same—to explain the glaring but stubborn gap between what is true and what is said to be true about the status of the West Bank and Gaza Strip.

Based on this analysis we conclude that the current disjunction between reality and what officials claim to be reality will continue, despite fervent demands by some groups in Israel to officially "annex" the West Bank and/or Gaza or declare Israeli sovereignty; despite prolonged consideration by Israeli legislators, politicians, and government officials of how that could or should be accomplished; and despite recurring international pressures for Israeli withdrawal. We will argue as well that Israeli debates over annexation are consequential, not for the actual status of targeted areas, but for the constraints and opportunities they highlight with respect to coming struggles for democratization.

In the course of our analysis of sovereignty and annexation as legal and political concepts, we will be noting variation and patterns in the ways each is expressed and achieved—historically, internationally, and in Israeli jurisprudence and political discourse. Doing so requires us to stipulate ex ante definitions of these terms, definitions that leave open questions of what types of sovereignty or annexation there might be, or how each might be achieved or lost. Accordingly, we define sovereignty as the freedom to act at will in and over a territory. Note that this does not mean actions will succeed or will be honored by others, only that actions are taken without reference to whether they conform to the will of any other actor.[3] We define annexation as the addition of territory to the space claimed by a sovereign as subject to the unappealable application of its decisions. It will be important to

[2] "66% of the Total Structures in the Gaza Strip have Sustained Damage, UNOSAT's Analysis Reveals," United Nations Institute for Training and Research, 30 September 2024, https://unitar.org/about/news-stories/press/66percent-total-structures-gaza-strip-have-sustained-damage-unosats-analysis-reveals.

[3] Kenneth Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979), 96.

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keep these definitions in mind as we discuss international and Israeli approaches to codifying, claiming, achieving, and concealing sovereignty and annexation.

Israel's Occupied Territories and the Imposition of Local Sovereignty

The emergence of the international law of belligerent occupation (LBO) at the close of the 19th century, signified by the adoption of the Hague Convention of 1899, ushered in a major change in dominant conceptions of state sovereignty and territory. Until then, in international jurisprudence, a key legal prerogative of state sovereignty was the right of conquest, that is, the right to wage war against another state, conquer all or part of its territory, and annex that territory.[4] The convention changed that. Henceforth, a conquered territory was to remain under the perpetual ownership of the vanquished sovereign, and the conqueror was to be regarded a temporary administrator of an "occupied" territory belonging to the ousted sovereign until an "agreement in favor of the victim of aggression" had been concluded between the warring parties.[5] Twenty years later the right of conquest itself was abolished under international law, thereby imposing upon states a legal prohibition against forcible territorial acquisition and a legal obligation of nonrecognition of an occupied territory as the sovereign territory of an occupier, should it choose to illegally annex it.[6]

Consequently, states that sought to disregard the LBO and annex occupied territories could do so de facto, through the creation of "facts on the ground," but not de jure, through a formal declaration of annexation, thereby asserting state sovereignty locally but not internationally.[7] Importantly, de facto annexations, although illegal under international law, are not treated as such under the domestic laws of the occupier, as the creation of facts on the ground (e.g., the construction of settlements, access roads, etc.) depends on the existence of enabling legislation. These laws, however, must refrain from using the terminology of de jure annexation (e.g., referring to a territory the state de facto annexed as its sovereign territory) to avoid self-incrimination and maintain deniability.

Since the inception of the LBO in 1899, no state has continuously possessed occupied territories longer than Israel. According to the conventional narrative, "it all began in six days in June 1967," when Israel conquered the West Bank, East Jerusalem, the Gaza Strip, the Golan Heights, and the Sinai Peninsula, relinquishing only the latter in 1982 and occupying the remainder ever since.[8] In fact, Israel's possession of occupied territories did not start in 1967 but in 1948, when it acquired by force 23 percent of the territory of Mandatory

[4] Herbert Briggs, "Non-Recognition of Title by Conquest and Limitations on the Doctrine," *Proceedings of the American Society of International Law at Its Annual Meeting (1921–1969)* 34 (1940): 72; Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (New York: Oxford University Press, 2003), 27; Douglas Howland, "State Title to Territory: The Historical Conjunction of Sovereignty and Property," *Beijing Law Review* 11, no. 4 (2020): 862.

[5] Hague Convention of 1899, Articles 42 and 53, Convention (II) with Respect to the Laws and Customs of War on Land, 29 July 1899; Yoram Dinstein, *The International Law of Belligerent Occupation* (New York: Cambridge University Press, 2009), 51.

[6] Hague Convention of 1899, Article 10, The Covenant of the League of Nations; Briggs, "Non-Recognition," 73; Korman, *Conquest*, 189.

[7] Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 3–4; Ilias Kouskouvelis and Kalliopi Chainoglou, "Against the Law: Turkey's Annexation Efforts in Occupied Cyprus," *Hague Yearbook of International Law* 29 (2016): 58–60, 71–73; Juan Soroeta, "The Conflict in Western Sahara after Forty Years of Occupation: International Law versus Realpolitik," *German Yearbook of International Law* 59 (2016): 196–97.

[8] Dinstein, *Belligerent Occupation*, 13; Aeyal Gross, "Close Control, Remote Control: The Legal Status of Gaza and the Functional Approach to Occupation," *Tel Aviv University Law Review* 43, no. 2 (2020): 398–401.

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Palestine allocated under the 1947 UN Partition Plan for the Arab state and, in the case of West Jerusalem, for the international community.[9]

Using the strategies outlined above, Israel managed to transform the occupied territories of the Arab state so that they came to be viewed as existing within the "permanent and legitimate frontiers" of Israel.[10] This meant treating the armistice lines of 1949 as permanent borders even though they were explicitly described as "armistice lines" so as not to be understood as permanent, as marking sovereignty or agreed-upon borders, or as signifying acceptance of the transfer of ownership over the territories of the Arab state. Nevertheless, through the prolonged imposition of sovereignty locally, these occupied territories (Lod and Ramle, the western Galilee, the northern Negev, etc.) became part of what is generally taken to be the sovereign territory of Israel. The de facto annexation of these territories shows how prolonged possession and the local imposition of sovereignty, in conjunction with the creation of facts on the ground, can defy the international prohibition against the acquisition of territory by force and facilitate illegal transformation of an occupied territory into a portion of a state's sovereign domain.

An additional feature of the LBO contributed to Israel's capacity to extralegally annex the territories it occupied in 1947 and 1948.[11] Because the LBO is premised on the notion that the ousted sovereign would eventually regain possession of its occupied territories, the continued subjugation of their sovereign owner, the Arab state (now the State of Palestine), and the UN's inability or unwillingness to assume possession of Jerusalem have enabled Israel to continue treating the territories as its own.[12] Nonetheless, Israel, like other occupiers, has understood that its ability to retain these territories depended on refraining from declaring internationally that it regards them as part of its sovereign territory, even while imposing state sovereignty locally.[13] The discussion that follows focuses on the juridical mechanics of the de facto annexation of these occupied territories, meaning the ways in which Israel utilized state law to assert its sovereignty locally while refraining from employing the terminology of de jure annexation.[14]

On March 19, 1948, Warren Austin, the second US Ambassador to the UN, shocked the Zionist leadership when he stated before the Security Council that "a temporary trusteeship for Palestine should be established. . . to afford the Jews and Arabs of Palestine, who must live together, further opportunity to reach an agreement regarding the future government of that country."[15] Although President Harry Truman quickly changed course and supported Israeli independence following a potent propaganda campaign launched against him by American Zionists, Austin's statement was the occasion for David Ben-Gurion, Israel's

[9] Benny Morris, 1948: *A History of the First Arab-Israeli War* (New Haven, CT: Yale University Press, 2008), 63.

[10] Tom Segev, 1949: *The First Israelis* (New York: Owl Books, 1998), 353.

[11] John Quigley, *The Case for Palestine: An International Law Perspective* (Durham, NC: Duke University Press, 2005), 57–65.

[12] UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, "The Status of Jerusalem," 1997, 9–11, https://www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-Engish-199708.pdf; Dinstein, *Belligerent Occupation*, 2; John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (New York: Cambridge University Press, 2010), 248–52.

[13] Following the conquests of these territories during the Palestine War, Israel, while refraining from stating that it regarded them as part of its sovereign territories, contended before the UN General Assembly that the state "was free to continue its occupations resulting from the [war] . . . and in any case it would not withdraw from the parts of Jerusalem it had occupied nor accept the internationalization of that city." Quincy Wright, "Legal Aspects of the Middle East Situation," *Law and Contemporary Problems* 33, no. 1 (1968): 7.

[14] Ian Lustick, "Israel and the West Bank after Elon Moreh: The Mechanics of De Facto Annexation," *Middle East Journal* 35, no. 4 (1981): 558.

[15] "Statement Made by the United States Representative [Warren Austin] at the United Nations before the Security Council on March 19, 1948," US Department of State, Office of the Historian, https://history.state.gov/historicaldocuments/frus1948v05p2/d105.

powerful first premier and defense minister, to make public his theory of sovereignty and Israel's authority to rule whatever areas of Palestine came under its control.[16]

Indeed, Ben-Gurion not only rejected the idea of the continued international trusteeship of Palestine, but also denied that the Partition Plan was the legal basis of the Jewish state's sovereignty over any of its territory: "The establishment of the Jewish state was not in fact sanctioned by the UN Partition Plan of November 29, although that decision had a significant moral and stately value, but [was sanctioned by] our capacity to [establish a state in Palestine] by force. By our own force—if we will be willing and able to muster our full [strength]—the state will be established even now."[17]

Ben-Gurion's response therefore corresponded to the conceptualization of sovereignty that existed before the emergence of the LBO, the idea that any international legal constraints on the acquisition of territory by force could be disregarded as long as a state is able to enforce its domination of an area. As early as May 30, 1948, a mere two weeks after Israel declared independence, the first government bill for the local imposition of sovereignty over territories conquered up to that point was drafted, titled unambiguously Occupied Territory Ordinance (Pkudat Shetah Nikhbash).[18] By the time the bill had been submitted to the legislature for approval, however, its title was changed to Abandoned Territory Order (Pkudat Shetah Natush), as the government explained that the bill's official purpose was "regulat[ing] the legal status in abandoned territory" generally, as well as regulating "Arab property in towns and the many tens of villages that were largely abandoned by their residents" specifically.[19] Both the new and the old titles of the ordinance indicated an awareness of the applicability of the LBO: the first explicit, signified by the use of the word "occupied"; the second implicit, signified by the portrayal of the territory as "abandoned," i.e., a territory ostensibly devoid of a sovereign owner or recognized trustee.

The bill became law on June 30, 1948. It authorized the Israeli government to declare any conquered territory "abandoned," granting it the power to make law for any such abandoned territory and to apply any portion of Israeli law therein, as well as authorization to build schools, hospitals, prisons, police stations, and courts. Crucially, the law also enabled the government to carry out the "expropriation and confiscation of movable and immovable property within the entire abandoned area."[20] Through this law, the state asserted itself as the definer and enforcer of property rights in the conquered territories, disregarding the LBO's prohibition against the acquisition of territory by force.[21] A few days prior to the submission of the bill to the legislature, Ben-Gurion documented his awareness that the conquest of territories allocated for the Arab state and UN trusteeship was a key objective of the Palestine War. A late June entry in his diary reads that "until now we built an army and carried out a war not in accordance with common military principles [because] territorial conquest was the objective, not the annihilation of the enemy."[22] One week after the

[16] Bruce Evensen, "The Limits of Presidential Leadership: Truman at War with Zionists, the Press, Public Opinion and His Own State Department over Palestine," *Presidential Studies Quarterly* 23, no. 2 (1993): 276.

[17] David Ben-Gurion, "Hamedinah Hayehudit Kayemet Vetitkayem im Neda' aykh Lehagen 'Aleyha," *Davar*, 21 March 1948.

[18] Provisional Government, 30 May 1948, 31, Israel State Archives.

[19] Provisional State Council, 24 June 1948, 25, Israel State Archives.

[20] Abandoned Territory Ordinance, Articles 1 and 2, Official Gazette no. 7, Supplement A, 30 June 1948.

[21] Chagai Vinizky, "Hahalat Hamishpat, Hashipoot, ve Haminhal Hayisraeliyim al Bik'at Hayarden ve Ezorim Mesuyamim Beyehudah ve Shomron: Hebetim Nishpatiyim," Shiloh Policy Forum, Position Paper 2, June 2020: 10–12, https://www.shiloh.org.il/_files/ugd/e93e5c_04985db522b740c994ec9c91887d45ad.pdf.

[22] David Ben-Gurion, *Yoman Hamilhamah: Milhemet Ha'atsmaut, 1948–1949*, vol. 2, ed. Gershon Rivlin and Elhanan Oren (Tel Aviv: Ministry of Defense, 1982), 520.

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enactment of the law, Ben-Gurion was ready to utilize his new powers within the occupied territories, now that he had, in his words, "a map with different colors that emphasize the conquests."[23]

The next major step toward the legal conceptualization of local sovereignty was taken after the conquest of West Jerusalem had been completed. As Ben-Gurion gleefully asserted, "no place in the country had larger and more important conquests than those that took place in Jerusalem."[24] On August 2, 1948, he used his authority under the Abandoned Territory Order to issue a proclamation titled "Rule of the Israel Defense Forces in Jerusalem," stating that "the laws of the state of Israel apply to the possessed territory."[25] One month later, on September 2, Ben-Gurion went on to issue a similar proclamation, this time for the imposition of local sovereignty within occupied Arab state territories, titled "Rule of the Israel Defense Forces in the Land of Israel," which prescribed that "the laws of the state of Israel apply over possessed territories," both those it occupied at the time of the issuance of the proclamation and those it would come to occupy in the future.[26]

Later that month the imposition of Israeli law over Arab state territories and West Jerusalem was prescribed in primary legislation when a government bill titled Jurisdiction and Authority Ordinance, 1948, was adopted by the legislature. The ordinance applied Israeli law automatically to any territory Defense Minister Ben-Gurion proclaimed to be possessed by the Israeli military and empowered state officials to employ their authority within it, creating "administrative unity" between Israel's sovereign territories and the occupied territories it possessed.[27] On December 5, 1949, Ben-Gurion stated before the Knesset that the Israeli government found it "inconceivable that the UN will attempt to seize [West] Jerusalem from the state of Israel or harm Israel's sovereignty in the eternal capital of Israel."[28] One week later Ben-Gurion announced the "transfer of the Knesset and the government to Jerusalem," noting that "Israel had and will always have one capital—eternal Jerusalem."[29] Therefore, shortly after the establishment of Israel, the legal framework for the assertion of sovereignty locally over occupied territories via state law was already in place. As Howard Grief noted, the Jurisdiction and Authority Ordinance, "Ben-Gurion's law," introduced the "basic norm" that Israeli law applied to all possessed territories, including occupied territories, irrespective of the LBO. Had Ben-Gurion not done so, Grief continued, Beersheba, Nazareth, Ramla, Lod, Ashdod, Ashkelon, and other cities located in occupied Arab state territories would not have come to be regarded as existing within Israel's sovereign territories.[30]

[23] Provisional Government, 27 June 1948, 7, Israel State Archives.

[24] Ibid.

[25] Rule of the Israel Defense Forces in Jerusalem, Proclamation no. 1, Article 2, Official Gazette no. 12, 2 August 1948.

[26] Rule of the Israel Defense Forces in the Land of Israel, Proclamation no. 1, Articles 2 and 5, 2 September 1948.

[27] Provisional State Council, 16 September 1948, 7, Israel State Archives; Jurisdiction and Authority Ordinance, Articles 1 and 2, Official Gazette no. 23, Supplement A, 22 September 1948; Shahar Eisner, "Drom Levanon Bere'i Diney Hakibus: 1948–1949," *Bar-Ilan Law Studies* 31, no. 3 (2018): 804–6.

[28] Divrei Haknesset, *The 93rd Meeting of the First Knesset*, 5 December 1949, 5.

[29] Divrei Haknesset, *The 96th Meeting of the First Knesset*, 13 December 1949, 6. Ben-Gurion's announcement that Jerusalem was the capital of Israel was accompanied neither by an enactment of a law designating Jerusalem as such nor by a formal declaration of annexation and so signified an assertion of sovereignty locally, rather than internationally, over occupied West Jerusalem. When Basic Law: Jerusalem Capital of Israel was enacted in 1980 it, too, refrained from claiming that Jerusalem had been officially annexed by the state or that the occupied territory was under Israeli sovereignty.

[30] Howard Grief, "Haminshar Hanishkah Shel David Ben-Gurion me-1948 'al Sipuah Yehuda ve Shomron," *Nativ* 6, no. 119 (2007): 54, www.acpr.org.il/nativ/articles/2007_6_grief.pdf.

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The juridical framework of local sovereignty took its final form twenty years later, shortly after the 1967 War, when the Law for the Amendment of the Law and Administration Ordinance (No. 11), 1967, was adopted by the Knesset.[31] The amendment prescribed that "the law, jurisdiction and administration of the state will apply in all areas of the Land of Israel that the government has determined in an order," thereby at once empowering the government to assert local sovereignty over any occupied territory possessed by the State of Israel while categorically classifying all occupied territories as "Land of Israel" under state law.[32] On the following day the government utilized the amendment to issue the Law and Administration Order (No. 1), 1967, which imposed Israeli "law, jurisdiction, and administration" (LJA) to "the territory of the Land of Israel" specified therein.[33] The occupied territory upon which Israeli LJA had been imposed was East Jerusalem, whose municipal borders were redrawn. Immediately after its conquest, Israel expanded Jerusalem's boundaries tenfold, from 6.5 square kilometers to 71 square kilometers.[34] In this way, Israel severed a portion of the occupied territory of the Arab state and incorporated it into the occupied territory of Jerusalem, thereby imposing its sovereignty locally over the entire enlarged city, disregarding the UN's repudiation of its conduct as "invalid."[35] Nevertheless, and in accordance with the preceding discussion, the expansion of the city's municipal borders, the imposition of LJA upon it, and even the subsequent 1980 declaration that Jerusalem was the capital of Israel were never accompanied by a formal declaration of annexation.

In 1981 the LJA formula was again utilized by Israel to impose sovereignty locally in the Golan Heights, Syria's sovereign territory. In his presentation of the Golan Heights Law to the legislature, Prime Minister Menachem Begin asserted that "for many generations the Golan Heights was an integral part of the country [and] it is therefore just that the northern border of the Land of Israel. . . will go through the Golan Heights."[36] In keeping with the LJA formula, neither Begin nor the law itself used the words *sipuaḥ* (annexation) or *ribonut* (sovereignty), terms that would have indicated to other states an official act of permanent territorial acquisition, i.e., of de jure annexation. When member of the Knesset Amnon Rubinstein objected to the law's enactment, characterizing it as "extreme" and as signifying an "annexation" of the territory, Begin immediately denied that the imposition of Israeli LJA amounted to annexation.[37] "You are using the word 'annexation' [but] I do not use it. . . . We [decided] in 1967, when you were not in the Knesset, that the government is permitted to apply in an order the law, jurisdiction, and administration of the state on any territory of the Land of Israel in the manner specified in that order."[38]

Israel took two additional measures to entrench its rule of occupied territories. In 1999, the Knesset adopted the Law and Administration (Termination of Imposition of the Law, Jurisdiction, and Administration) Law, 1999, which forbade termination of Israeli LJA in any

[31] John Quigley, *The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventative War* (New York: Cambridge University Press, 2013), 71–72.

[32] Law for the Amendment of the Law and Administration Ordinance (no. 11), Article 1, 27 June 1967.

[33] Law and Administration Order (no. 1), Article 1, 28 June 1967.

[34] Ian Lustick, "Reinventing Jerusalem," *Foreign Policy* 93 (1993–94): 51–59; Ian Lustick, "Has Israel Annexed East Jerusalem?" *Middle East Policy* 5, no. 1 (1997): 36–37; Ian Lustick, "Yerushalayim and al-Quds: Political Catechism and Political Realities," *Journal of Palestine Studies* 30, no. 1 (2000): 6–12.

[35] United Nations General Assembly, Resolution 2253, 4 July 1967, https://documents.un.org/access.nsf/get%3FOpenAgent%26DS%3DA/RES/2257(es-v)%26Lang%3DE.

[36] Divrei Haknesset, *The 32nd Meeting of the Tenth Knesset*, 14 December 1981, 764.

[37] Ibid., 781; MK Tawfiq Tubi presented an even fiercer repudiation of the Golan Heights Law, explicitly stating that the law amounted to an "annexation of Syrian territory," representing "parliamentary terrorism" by the Knesset. Ibid., 767.

[38] Ibid., 782.

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territory unless approved by the Knesset and a state-wide referendum.[39] This was achieved by amending an earlier prohibition against any territorial withdrawal, a treasonous offense that had been introduced by Ben-Gurion in the government bill that became the Law for the Amendment of the Penal Code (State Defense), 1957. Therein, "death or life imprisonment" was prescribed as punishment for anyone acting intentionally to "make Israel" relinquish a territory that had come under its sovereignty or "control."[40] The final draft of the prohibition that was adopted by the Knesset, however, dropped "or control," likely due to its terminological proximity to the LBO, and only criminalized an attempt to bring about the relinquishment of territories that were under Israeli sovereignty.[41] The word "sovereignty" (*ribonut*), however, was left undefined by the law—and by all other Israeli laws and precedents since its enactment. Doing otherwise could have revealed that the Israeli conceptualization of *ribonut* encompasses the unlawful assertion of sovereignty upon occupied territories through the imposition of the state's LJA, thereby exposing the juridical mechanics of de facto annexation and risking international condemnation.

This policy of deliberate legislative ambiguity concerning the prohibition against withdrawing from occupied territories gives rise to a crucial question: Is it legal under state law for the Israeli government to negotiate peace agreements in which it would commit itself to relinquishing occupied territories, or would such conduct amount to a treasonous offense punishable by death?

The Israeli High Court of Justice was petitioned to answer this question twice, first in 1993 and again in 2008. Both petitions were submitted by the Temple Mount and Land of Israel Faithful Movement (TMF), and in both cases the TMF accused a sitting prime minister of treason for merely considering the relinquishment of an occupied territory during peace negotiations.[42] In 1993 it was Yitzhak Rabin, the TMF alleged, who committed treason when negotiating peace with Syria and entertaining the possibility of returning the occupied territory of the Golan Heights to the country from which it was taken.[43] Then, in 2008, the TMF contended that Ehud Olmert committed treason when he considered relinquishing part of the occupied territory of East Jerusalem during peace negotiations with the Palestinian Authority.[44]

Although both TMF petitions were denied by the court, the legal reasoning upon which they were rejected, presented in 1993 by Deputy Chief Justice Menachem Elon, elucidated the workings of the prohibition against the relinquishment of occupied territories. As Elon asserted:

> [The TMF] argued that the executive branch is not authorized to carry out political negotiations regarding the future of the Golan Heights. Should the executive be interested in carrying out these negotiations, [the TMF contended,] it must first approach the Knesset and ask it to amend the [prohibition]. And since [the executive

[39] Law and Administration (Termination of Imposition of the Law, Jurisdiction, and Administration) Law, Articles 1–3, 1999; Law and Administration (Termination of Applying the Law, Jurisdiction, and Administration) (Amendment) Law, 2010; Basic Law: Referendum [2014].

[40] Government Bill Law for the Amendment of the Penal Code (Treason and Espionage), Article 8, 1956, https://fs.knesset.gov.il//3/law/3_ls1_289802.pdf [URL accessible only within Israel].

[41] Law for the Amendment of the Penal Code (State Defense), Article 7, 1957; Penal Code, Article 97, 1977.

[42] The TMF describes the organization's mission on its website as follows: "The goal of the Temple Mount and Land of Israel Faithful Movement is the building of the Third Temple on the Temple Mount in Jerusalem in our lifetime in accordance with the Word of G-d and all the Hebrew prophets and the liberation of the Temple Mount from Arab (Islamic) occupation so that it may be consecrated to the Name of G-d," https://web.archive.org/web/20231223221632if_/https://templemountfaithful.org/.

[43] Temple Mount Faithful v. Rabin (1993), HCJ 4354/92, IsrSC 37(1): 37–45.

[44] Temple Mount Faithful v. Olmert (2008), HCJ 638/08, IsrSC unreported, 1–6.

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> branch] did not do so the Court must prevent [the executive] from violating the law as it presently exists. . . . [The judges] were not convinced by [TMF's] argument. . . . [This argument] is incompatible with foundational presumptions involving the authority of a government in a free democracy, . . . [meaning that an elected Israeli government] negotiating a peace agreement with a different country. . . would have committed the crime of treason [for carrying out these negotiations]. The mind cannot tolerate such [an understanding of the prohibition].[45]

As Elon's ruling makes plain, although Israeli law does not exempt peace negotiations from the prohibition, compelling the government to obey the law would be contrary to the principles of democratic governance, an outcome that the "mind [could not] tolerate." Elon therefore felt compelled to exempt peace negotiations by government officials from the prohibition, as he in fact did. But what neither Elon's decision nor the precedents that followed it did was to define what conduct constitutes an attempt to bring about the relinquishment of occupied territories. Israeli law therefore remains vague on this issue, leaving the door open, potentially, for the prosecution of citizens and residents who call on Israel to relinquish occupied territories in exchange for peace, including territories that were recently brought under Israel's direct control during the Gaza War.

Pending Israeli Legislation Regarding Annexation and Sovereignty

As we have seen, Israel's prime ministers from David Ben-Gurion to Benjamin Netanyahu have refrained from asserting Israel's sovereignty over occupied territories internationally by avoiding the terminology of de jure annexation. Instead, Israeli governments have focused on the establishment of facts on the ground to achieve what we have termed "local sovereignty." At the time of this writing, with Netanyahu leading the "most right-wing government in [Israel's] history," the prospect of the formal annexation of the West Bank (and, increasingly, of portions of the Gaza Strip) by the state has been widely discussed. The relevant draft bills pending before the Knesset, however, suggest that the *ribonut* "word game" continues, including studied avoidance of any clear move to annex or declare sovereignty over occupied territories.[46]

The reason even an ultra–right-wing government has refrained from formally annexing any of the state's occupied territories is the same reason Israel's left-wing governments, under whose authority these territories were conquered in the first place, also refrained from doing so with respect to portions of the area those governments declared as destined for permanent incorporation. Annexation would be costly to the state. Any formal annexation of the West Bank, Gaza Strip, or portions thereof, would result in broad international condemnation, drawing attention to the state's "silent apartheid policies of ghettoization and disenfranchisement" of Palestinians, and spotlighting de facto annexation processes.[47] Even the most ambitious *ribonut* government bills, the ones that have been described by

[45] Temple Mount Faithful v. Rabin, 41.

[46] Maya Rosen, "Annexation Apologists' Most Misleading Claims—and How to Debunk Them," *Haaretz*, 3 July 2020, https://www.haaretz.com/middle-east-news/2020-07-03/ty-article-opinion/.premium/annexation-apologists-most-misleading-claims-and-how-to-debunk-them/0000017f-db22-df9c-a17f-ff3abc590000; Aluf Benn, "Netanyahu Unbound: Israel Gets Its Most Right-Wing Government in History," *Foreign Affairs*, 3 January 2023, https://www.foreignaffairs.com/israel/netanyahu-unbound.

[47] Ian Lustick, "The One-State Reality and the Real Meaning of Annexation," *The Link* 53, no. 4 (2020): 7, https://ameu.org/2020/08/23/the-one-state-reality-and-the-real-meaning-of-annexation; "Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity," Amnesty International, 1 February 2022, https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity.

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their authors as seeking to make West Bank settlements an "inseparable part of sovereign Israel [Yisrael *haribonit*]," still limit the actual language of the bills to the imposition of Israeli LJA within them, albeit to a fuller extent.[48]

Several additional bills propose measures that enhance prerogatives of Israelis living within targeted zones of the West Bank without officially changing the legal status of the territory as a whole. For instance, one bill seeks to make it permissible for Israeli Jews to purchase land in the West Bank directly, rather than through a company registered there, as has been the case since the early 1970s.[49] Another bill seeks to prohibit Israeli settlements built on private Palestinian land from being demolished if, within four years after their construction, the Palestinian owner of the land is not able to prove that ownership in an authorized Israeli court.[50] Of particular note is a private bill seeking to impose Israeli LJA in the Jordan Valley, as it is the only bill that proposes granting citizenship to the Palestinians residing therein, albeit only after a long, onerous, and condition-filled process.[51] As for Jerusalem, one bill seeks to compel all government agencies that provide services to the entire country (rather than to a specific region) to move their offices to the occupied city by beginning to charge them the annual property tax they would pay had they moved to Jerusalem, regardless of whether they actually did so.[52]

In sum, the key feature shared by all *ribonut* bills currently pending before the Knesset, as well as of past legislation regarding the same, is Israel's effort to "tak[e] the land without the people."[53] Indeed, one of the first bills submitted to the Knesset in response to the 7 October attack sought to empower the Israeli government to deport Gaza Palestinians to any country that would be willing to accept $10,000 per individual deportee.[54] Nevertheless, considering the successful extralegal annexation of Arab state and UN territories following the Palestine War and the continued avoidance of de jure annexation of other occupied territories, it appears that Israel remains focused on the imposition of its sovereignty locally, calculating that their prolonged possession and the establishment of facts on the ground will ensure permanent incorporation and the eventual recognition of Israeli sovereignty over them.

Israeli Sovereignty vs. Jewish Supremacy

As we have noted, the Hebrew word used to translate "sovereignty" is *ribonut.* However, as we shall discuss, the connotations of that word in Hebrew, combined with the contested meaning of "sovereignty" in English and French (*la souveraineté*), means that appreciating the political and rhetorical strategies adopted by Israel in its approach to asserting *ribonut* requires careful analysis. The word "sovereignty" originated in France in the 13th century and was initially used to describe the tallest objects in one's surroundings, both natural (e.g., mountains) and manmade (e.g., towers). That understanding of the word then evolved to mean "supremacy," first of God's powers over all else, and then of the authority of the

[48] Private Bills 211/25 (12 December 2022); 3156/25 (3 March 2023); 2974/25 (27 March 2023). Pending Knesset bills are available at https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawSuggestionsSearch.aspx?t=LawSuggestionsSearch&st=AllSuggestions [URL accessible only within Israel]; Yotam Eyal, "Legislative Difference between Israel and the Judea and Samaria," The Legal Forum for the Land of Israel, n.d., https://fs.knesset.gov.il/20/Committees/20_cs_bg_365460.pdf [URL accessible only within Israel].

[49] Private Bill 3683/24 (9 March 2022).

[50] Private Bill 3291/24 (14 February 2022).

[51] Private Bill 237/25 (12 December 2022).

[52] Private Bill 145/25 (12 December 2022).

[53] Noura Erakat, "Taking the Land without the People: The 1967 Story As Told by the Law," *Journal of Palestine Studies* 47, no. 1 (2017): 29–30; Ian Lustick, "The Red Thread of Israel's 'Demographic Problem,'" *Middle East Policy* 26, no. 1 (2019): 141–49.

[54] Private Bill 4118/25 (4 December 2023).

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monarchal ruler atop the "medieval feudal pyramid," as well as that of the lords who stood below the monarch within their allotted territories.[55]

Beginning in the 16th century, the decline of feudalism and the intensification of wars of religion throughout Europe brought about a significant change in the conceptualization of sovereignty, especially insofar as it pertained to the legal and political powers of the French monarch. Jean Bodin, credited with laying the modern foundations of the concept, argued in his 1576 *Les Six Livres de la République* in favor of a new understanding of sovereignty, one that viewed the king's sovereign power as absolute, enabling him to preserve the peace domestically and curtail France's involvement in interstate wars.[56] Bodin contended, inter alia, that the sovereign power of the monarch, if properly understood, consisted of the "power to make law for everyone—that is, to command or forbid whatever [he] pleases without anyone else being able to appeal from, or even oppose [his] commands," as well as the "power to make peace or war" as he saw fit.[57] Within thirty years of its publication, Bodin's theory of sovereignty had been translated into multiple languages, becoming "the model" for European monarchs.[58]

Bodin's absolutist conceptualization of monarchal sovereignty popularized the notion that monarchs ought to enjoy "political and legal independence" within their "geographically separate[d]" states, an idea that was ultimately codified into international law with the signing of the Peace of Westphalia in 1648.[59] Although the word "sovereignty" did not appear in the treaties, they nonetheless transformed its meaning and its relationship with international law.[60] The treaties limited the sovereign power of the Holy Roman Emperor, regarded until that point in time as "the power to state what is lawful for the whole world," by recognizing the territorial superiority of states regarding all political and religious matters within their respective territories, including the right to declare war and refrain from waging war against another state.[61]

Rather than curtailing interstate violence, however, Europe's monarchs came to view their "sovereignty" as the "right to do whatever they wanted, whenever they pleased, wherever they could," and that they were free to wage wars of conquest to enlarge the territories of *their* states.[62] Indeed, the emergence of the absolutist conceptualization of territorial sovereignty led to the juridical crystallization of the concept of "property" and the notion that monarchs held absolute property rights over state territory from which all other qualified property rights derived, the predecessor of the idea that states are the ultimate owners of their sovereign territories.[63] Under such a conceptualization of sovereignty, the right to acquire territory by force was treated as an inherent prerogative of

[55] Dieter Grimm, *Sovereignty: The Origin and Future of a Political and Legal Concept*, trans. Belinda Cooper (New York: Columbia University Press, 2015), 13, 20.

[56] Daniel Lee, *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations* (Oxford, UK: Oxford University Press, 2021), 7–8, 199–200.

[57] Jean Bodin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, trans. and ed. Julian Franklin (New York: Cambridge University Press, 1992), xvi–xx, 55.

[58] Allen Boyer, Law, *Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke* (Indianapolis, IN: Liberty Fund, 2004), 40–41.

[59] Robert Jackson, *Sovereignty: Evolution of an Idea* (Cambridge, UK: Polity Press, 2007), x, 9.

[60] Derek Croxton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *International History Review* 21, no. 3 (1999): 577.

[61] Anne Orford, "Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect," *Michigan Journal of International Law* 30, no. 3 (2009): 989.

[62] Quincy Wright, *Mandates under the League of Nations* (Chicago: University of Chicago Press, 1930), 277–78.

[63] Mary Greene, "The Evolution of the American Fee Simple," *American Law Review* 31, no. 2 (1897): 232; Christopher Newman, "Using Things, Defining Property," in *Property Theory: Legal and Political Perspectives*, ed. James Penner and Michael Otsuka (Cambridge, UK: Cambridge University Press, 2018), 71–72.

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states, victory in war was viewed as divine sanction of the winning state's right to possess the conquered territory, and the transfer of ownership over said territory was regarded as final upon the conclusion of a peace treaty between the victor and the vanquished.[64] Conquest thereby became "an institution of international law," a doctrine allowing for the recognition of a title-producing right of conquest, for the legal acquisition of territory through the "naked use of force."[65] This state of affairs, as noted, persisted until the emergence of the law of belligerent occupation in 1899.

The genealogy of the concept of "sovereignty" reveals a tension between the principle that a particular authority within a territory has an unappealable right to determine what is and is not lawful for all inhabitants, and having the right to do whatever it wants, whenever it wants, to whomsoever it wants. The first principle focuses on the extension of a uniformity of laws over a territory by a state and over individuals and populations within it. The second principle focuses on the unconstrained expression of the will of the leaders of the state (or their agents) within its territory. We can think of this as a tension between sovereignty as the ultimate arbiter of disputes as to what behavior is allowable or legal vs. sovereignty as the exercise of supremacy or domination by state officials or by those who command the state.

For the last ten years the most visible and active organizational expression of Israelis committed to transforming the official status of the West Bank in Israeli law and politics has been the *ribonut* movement. Its campaign to extend state sovereignty over all the Land of Israel, and most pertinently over the West Bank (Judea, Samaria, and the Jordan Valley, in the movement's parlance) is most importantly advanced in its widely distributed journal by the same name. But close analysis of all sixteen issues of *Ribonut* published between 2013 and 2022 reveals a challenging and unresolved contradiction.[66]

Despite the movement's official goal, the activists, editors, authors, and interviewees whose views fill the journal's pages do not explicitly favor full and immediate realization of Israeli sovereignty, in the sense of extending the prerogative of the Israeli state to determine what is and what is not lawful anywhere in the Land of Israel. Rather, what animates the movement is a desire to achieve circumstances and transform behaviors in territories to be incorporated into the Israeli state so as to enforce and express the supremacy of Jews over non-Jews, and, in particular, the supremacy of Jews over Palestinian Arabs. The difficulty facing the movement is the fear that by taking official steps to implement sovereignty as equality before Israeli law for all inhabitants of annexed territories, opportunities would be created for Palestinian Arabs to prevent realization of sovereignty imagined as establishment and entrenchment of Jewish supremacy over non-Jews.

We can frame the problem in Wittgensteinian terms. "Israeli state sovereignty" over all the (western) Land of Israel is what the *Ribonut* movement advocates "grammatically"; that is how its demands are formally and officially presented. But the natural and commonsense meaning of the term is very different. Reflected in the "ordinary language" of commentary, argument, and desire, is not the sovereignty of Medinat Yisrael (the State of Israel) but of rule of 'Am Yisrael (the People of Israel). The object of the movement's struggle, in other words, and the test of its success, is not establishment of the unappealable authority of the state over life and property within it, but of Jewish supremacy—the mastery of Jews over the land and its non-Jewish inhabitants.

[64] Korman, *Conquest*, 27.

[65] Briggs, "Non-Recognition," 72; Howland, "State Title," 862.

[66] Ian Lustick, "Annexation in Right-Wing Israeli Discourse—The Case of *Ribonut*," *Frontiers in Political Science*, 19 September 2022, https://www.frontiersin.org/articles/10.3389/fpos.2022.963682/full. No issue of the journal appeared in 2023, although a blog established by the journal's website has featured a stream of dozens of interviews and essays through 2023 and into 2024. According to the editors, more issues of the journal will appear.

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A somewhat analogous tension attends meanings of the Hebrew word *ribonut*, used to translate "sovereignty." *Ribonut* comes from the verb meaning "to become great." Indeed, the most common usage in Jewish liturgy of *ribon* is in reference to God as *Ribono shel 'Olam*—usually translated as Master of the Universe. So whereas the term sovereignty in English connotes recognition of a state's claim to superordinate authority in a territory, the Hebrew term connotes, and clearly communicates, domination, rule, or mastery of and over a territory and its inhabitants, evoking the proprietary meaning that sovereignty has had in English and French, more naturally than its use to communicate the uniformity of laws applied within a territory and for its inhabitants.

The extent to which the enforcement of Jewish supremacy is what *Ribonut*'s editors and contributors cherish, and not the imposition of Israeli state sovereignty as that principle is recognized internationally, is evident from the casual way in which the Golan Heights and Jerusalem models are advanced as legal formulas. As noted above, neither territory has been officially annexed or been the subject of an official extension of the sovereignty of the State of Israel. That is of relatively little moment to the writers and interviewees whose views appear in *Ribonut.* What is of real consequence is whether or not Jews have the power to determine what will and will not be done, and by whom, within the territories targeted for "sovereignty," and whether Jews *feel* themselves to have and to be exercising that power.

Sovereignty as domination by Jews is apparent in the point made often in *Ribonut* interviews and essays, that "sovereignty" in the Galilee or the Negev has been lost, is being lost, or is threatened, by increasing Arab presence in those areas, by lack of full Jewish control over land and other resources, or by Arab behavior in those areas that suggests that they feel secure and self-confident. "Sovereignty," explains Shlomo Ne'eman, head of the Gush Etzion Council, and subsequently head of YESHA, the Organization of Local Councils of Judea, Samaria and Gaza, "is two processes. One is the legal-statutory process. . . (but) the official decision is not always enough." In the West Bank, he declares, "a half million Jews make de facto sovereignty." In the Golan Heights, on the other hand, "there is sovereignty [meaning full application of Israeli LJA], but where are the Jews?" And, he continues, "in Shuafat and the eastern neighborhoods of [Jerusalem], you don't feel that you are the sovereign."[67] The "dismal reality" in the Negev and the Galilee, write the *Ribonut* editors, "does not assure our full possession of the Land."[68]

The regular use of first-person plural pronouns, apparent in the quotations appearing above, is also revealing. The prominent appearance of "we," "us," and "our" in the ordinary language of annexation advocates, referring to that which either does, or does not, have or exercise sovereignty, indicates clearly that it is Jews as a group, or the people of Israel, who are to be in positions of mastery, not the state (to which are attached both Jewish and non-Jewish citizens). The fact that Arab landownership, even if within the sovereign state of Israel, is taken as evidence of sovereignty's absence or incompleteness indicates clearly that what is aspired to is not state sovereignty, per se, but Jewish mastery over people, land, and resources. In his interview with *Ribonut*, Shlomo Riskin called for establishing "sovereignty facts on the ground," while not taking land that is provably Arab owned. But most lands, he said, are "state lands" and "over that territory, the state must proclaim sovereignty. It belongs to us and we will live here with all the connotations of our right to live here.

[67] "The Reality Is Creating De Facto Sovereignty, But There Must Be a Governmental Decision to Emerge from It," Shlomo Ne'eman interview, *Ribonut* 15 (2022): 7. The journal *Ribonut* is published in Hebrew and English editions. Approximately 90 percent of the articles and interviews appearing in the Hebrew edition also are published in the English edition, and about the same percentage of material appearing in the English version is published in the Hebrew edition. Where possible we have cited the English versions of articles and interviews in this journal.

[68] "A Word from the Editors," *Ribonut* 2 (2014): 2.

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Although the Master of the Universe gave *us* everything, we are also commanded not to rob private land. Robbing gentiles is prohibited."[69]

The point was made explicitly by Rabbi Haim Druckman, one of the historic leaders of Gush Emunim (The Bloc of the Faithful—the leading organization of Jewish settlers in the 1970s and 1980s committed to the settlement and "redemption" of the "whole Land of Israel"). In an interview published by *Ribonut* in its May 2014 issue, Druckman said, "We must take care that the Land will be under the control of the Jewish people and not only that we should be here. This is sovereignty."[70] Condemning a government of Israel that contains Arabs and therefore "is fundamentally not of the People of Israel," Orit Struk—a leading settler advocate and, as of this writing, Minister of "National Missions"—asks, "What is the idea of sovereignty?" And answers: "That the People of Israel will go forward to apply sovereignty over more and more parts of its Land."[71] Again we see in this formulation that the agent of sovereignty is not the State of Israel, but 'Am Yisrael (the People of Israel, i.e., the Jews).

The Implications of Annexation for the Citizenship of Palestinians

If Israel, as a "Jewish state," were officially an autocracy or featured an explicitly discriminatory regime that excluded portions of the population from politics as a matter of law, then the tension we have identified between two different meanings of sovereignty would not matter for those advocating annexation of territories with large Palestinian populations. But Israel, however discriminatory its practices regarding non-Jews may be, and no matter that it calls itself a "Jewish state," advances itself as a democracy in which citizenship and political rights are not coterminous with ethnonational identity. Therefore, annexation, in the sense of extending Israeli procedures for making laws and choosing governments to include the inhabitants of annexed areas, unavoidably, if not immediately or explicitly, poses the question of whether by adding five million Palestinians to the territorial scope of its sovereignty as lawmaker Israel will undermine its sovereignty, understood as the expression of Jewish supremacy.

Indeed, this problem is the most difficult challenge faced by Israeli advocates of West Bank (and eventually Gaza Strip) annexation. Israel has for years exercised "local sovereignty," that is, control over all the territory and its inhabitants between the river and the sea. That this control is not as complete or psychologically satisfying as it could, or, in the eyes of the *Ribonut* movement, should be, is a problem—the main problem advocates of "annexation" want to solve. Ultimately, to achieve the satisfactions of sovereignty as Jewish supremacy over the whole land, more will be required than the reality of Israeli governance over it. It, the reality of one (Jewish) state extending from the sea to the river, must be declared and recognized internationally. But formalizing the one-state reality by the simple and explicit extension of Israeli sovereignty over the territories occupied in 1967 immediately raises the problem of what to do with their Palestinian inhabitants who, together with Palestinian citizens of Israel living within the green line, outnumber Jewish inhabitants of the state.

[69] "I Believed in Two States: Now, I've Changed My Position," Shlomo Riskin interview, *Ribonut* 11 (2019): 25 (emphasis added).

[70] "Rabbi Druckman: Application of Sovereignty is a Positive Commandment," Haim Druckman interview, *Ribonut* 3 (2014): 11.

[71] Orit Struk, "Do Not Allow the Rug to Be Pulled from under Sovereignty," *Ribonut* 5 (2022): 6.

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This is the conundrum that Prime Minister Levi Eshkol so aptly characterized after the 1967 war—what to do with the bride, when all you really want is the dowry.[72] Eshkol's decision about what to do with the occupied territories was famously known as the "decision not to decide." But now, after more than half a century of absorption, settlement, and political change, a decision has, effectively, been made. Israel will not relinquish its domination of the West Bank or of the "coastal enclave," which is how the Gaza Strip is standardly described. Under these circumstances advocates of translating local sovereignty into official and thorough-going Jewish mastery are forced to grapple in unprecedentedly detailed ways with the question of how to solve the "Arab problem."

Because few annexationists regard the possibility of exterminating or expelling five million people as feasible, the debate among them turns on whether access to the Israeli political arena will be granted to Palestinian inhabitants of annexed areas and if so how that access should be limited. In the pages of *Ribonut* this problem is often treated as the equivalent of the "elephant in the room." The movement's official and detailed plan for how, after annexation, Israel will look in twenty-five years entirely avoids the issue. Developed under the auspices of *Ribonut* by planners at the university located in the West Bank settlement of Ariel, the otherwise elaborate "National Outline Plan, TAMA 100," still the most detailed description by Israelis committed to Jewish control of the entire country, simply promises "no change in the status of the Arabs," imagining an Israel in 2048 with "a solid Jewish majority and an Arab minority loyal to the state." Although some mention is made of a "non-Jewish minority loyal to the State with resident status, with the option to apply for citizenship in the future," another sentence simply promises, eventually, that a "clear policy regarding citizenship/residency status" will be developed.[73]

It is no wonder then that the question that the editors most regularly press upon their interviewees is how they suggest coping with what is called either the "Arab problem" or the "demographic problem." All share the sentiment of an icon of Israel's extreme right, the late Geula Cohen, that "there is no doubt that the demographic problem is a headache, but if a person has a headache, he does not cut off his head."[74] On one side of the debate about how to cope with the headache are those who favor or accept as inevitable the eventual extension of equal citizenship to all who live within the borders of sovereign Israel. Expressions of this position even go so far as to view a "binational" Israel with equanimity based on faith in Jewish solidarity, high rates of Jewish immigration and natural increase, and constitutional entrenchments of the Jewish character of the state. As former President Reuven Rivlin and others have pointed out, unless all who live under Israeli sovereignty live as equals under the same laws, then, in fact, Israeli sovereignty will not have been implemented, will not be legitimate, and will not be recognized as such by the international community.[75]

[72] Avi Raz, *The Bride and the Dowry: Israel, Jordan, and the Palestinians in the Aftermath of the June 1967 War* (New Haven, CT: Yale University Press, 2012).

[73] Yoram Ginsburg, "TAMA 100: The Strategic Outline Plan for the Land of Israel 1948–2048," Ribonut, no. 11 (March 2019): 9. Little has been heard of this plan since the eruption of the Gaza War, which prompted widespread genocidal rhetoric in Israel (portraying Palestinians as "Amalekites"—a tribe which in the Bible God orders the Israelites to annihilate) and proposals to encourage the mass emigration of Gaza Palestinians. Despite more than 44,000 killed, 106,000 injured, and a year of destruction, displacement, famine, and disease, depopulating either the West Bank or the Gaza Strip on a scale comparable to 1948's reduction in the number of Palestinian Arabs living within the pre-1967 borders of Israel remains improbable. Bethan McKernan, "Israeli Ministers Attend Conference Calling for 'Voluntary Migration' of Palestinians," 29 January 2024, The Guardian, https://www.theguardian.com/world/2024/jan/29/israeli-ministers-attend-conference-calling-for-voluntarymigration-of-palestinians.

[74] "We Are Commanded Not Only to Settle the Land but [to] Apply Sovereignty to It," David Stav interview, *Ribonut* 10 (2018): 11.

[75] Marissa Newman, "Rivlin Backs Annexation with Full Rights for Palestinians," *Times of Israel*, 13 February 2017, https://www.timesofisrael.com/rivlin-backs-annexation-with-full-rights-for-palestinians.

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But by far the most popular view is what the current minister of finance, and effective "Minister for the Settlements," Bezalel Smotrich, offered as the "Joshua bin Nun Plan," referencing the three choices given by Joshua in the Bible to the Canaanites whose lands he had conquered: fight (and die), leave in peace, or accept subjugation to Jewish rule as individuals prepared to humble themselves before their rulers. Whatever residency rights might be offered to Arabs, no matter what powers and responsibilities might be allowed to village, tribal, or municipal councils, and no matter what strained and difficult opportunities to apply for citizenship some annexationists might eventually offer, the key point is to forbid any "Arab collective with national aspirations."

Caught between the Scylla of securing Israeli sovereignty by extending equality before the law to all inhabitants, and the Charybdis of protecting Jewish mastery over the state, its territory, and its populations by erecting an explicitly racist regime of domination, Israeli annexationists prefer to preserve ambiguity. Although the language of sovereignty and annexation permeates their discourse, it is this dilemma that prevents them from insisting on declaring annexation or sovereignty over occupied areas densely populated by Palestinians. During the Gaza War, for example, *Ribonut* writers and interviewers have stressed the imperative of permanent Israeli rule, the need to return Jewish settlers to the area, and the importance of reducing its Palestinian population through compensated emigration. The editors of *Ribonut* even likened Gaza and its fate to Sodom, to be treated as if "not a single righteous person" is to be found there, and then to be inseparably ruled by Israel.[76] Little to no attention, however, is given to how millions of Palestinians will be enabled or induced to leave, nor to the long-term political status of Palestinians who will remain in Gaza, reflecting the still unresolved struggle over how to preserve the satisfactions of mastery without the political dangers of sovereignty based on equality before the law of all inhabitants over whom that sovereignty is exercised.

It is worth noting that in the absence of any agreed upon or publicly advanced formula for addressing the question of the citizenship or political rights of West Bank and Gaza Palestinians, right-wing legislators have offered a number of bills designed to limit the ability of those Palestinians with some political rights to exercise them. For example, one bill introduced in the Knesset in 2022 seeks to disqualify anyone who has visited Iran, Iraq, Syria, or Lebanon, classified as enemy states under Israeli law, in the past seven years, from submitting their candidacy for the Jerusalem City Council.[77] Palestinian Jerusalemites holding permanent residency permits (numbering about 350,000 and representing approximately 40 percent of the total population of the city) are eligible to vote in the municipal elections but have largely refrained from doing so. The bill therefore seeks to curtail participation should it increase in the future.[78] Another bill, enjoying the broadest support among Knesset members, seeks to attain a "demographic balance" in Jerusalem (meaning ensuring a clear Jewish majority in municipal elections) by further expanding the municipality. This expansion would entail the addition of five settlements existing beyond the West Bank barrier (Beitar Illit, Ma'ale Adumim, Giv'at Ze'ev, Gush Etzion, and Efrat) to Jerusalem's jurisdiction as "subsidiary municipalities," thereby vastly increasing the number of eligible Jewish voters.[79]

[76] Yehudit Katsover and Nadia Matar, "This Is Not a Battle over the Gaza Envelope: It Is a Battle over the Entire Land." 19 October 2023, https://www.ribonut.co.il/BlogPostID.aspx?BlogPostId=836&lang=2.

[77] Private Bill 233/25 (12 December 2022).

[78] Ian Lustick, *Paradigm Lost: From Two-State Solution to One-State Reality* (Philadelphia: University of Pennsylvania Press, 2019), 123, 130–31.

[79] Private Bill 3060/24 (17 January 2022).

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Conclusion

We have offered four explanations for the wide and persistent gap between the reality of Israeli domination of the West Bank and Gaza Strip and prevailing official depictions of those territories as temporarily held by an Israeli state that does not include them within the ambit of its authority and control. Taken together, they account for the gap between the political reality of one state ruling all of Palestine-Israel and official labels for that reality as used by Israel and most of the world, for the discrepancy between what exists and what is said to exist. In fact, they show this increasingly gross discrepancy to be overdetermined. That in turn suggests that despite all the talk about possible "annexation," despite the position of Israeli governments in favor of formalizing Israel's permanent incorporation of territories occupied in 1967, despite the flood of legislative and administrative initiatives under consideration by the Israeli government, and despite the shocks of the Gaza War that might have been expected to produce some significant change in Israeli public opinion, no definitive and explicit declarative change will be made in Israel's characterization of the status of those territories or their populations.

As is normally the case, political realities change much faster than accurate understandings or widespread appreciation of those realities. Nevertheless, the one-state reality is having a massive impact on what Israelis, Palestinians, and the international community are doing and thinking. With laws and policies fashioned by governments chosen only by Israeli citizens, the Israeli state is transforming the West Bank into an archipelago of Jewish and Palestinian communities with radically different arrays of resources, rights, and restrictions applied to each. Politically, de facto annexation has led Palestinian Authority leaders, most Israeli politicians, and the vast majority of world diplomats, to endorse or entertain two-state solution–type diplomatic initiatives to camouflage the interests they protect by a "peace process" known to have no prospect of success. Indeed, it is the gap between the reality of one state, within which five million Palestinians reside with no voting rights, and the fact that governments are formed in that state by only 65 percent of its inhabitants, that explains the bitter struggle in Israel, in the first half of 2023, over the Netanyahu government's proposals to overhaul the judicial system. Although not presented in this way, this attempted "judicial coup" was in large measure driven by ultranationalist and religious proponents seeking to bar millions of Palestinian inhabitants from inclusion within the Israeli electoral process by institutionalizing Jewish majoritarianism. Secular-liberal Israelis who opposed the overhaul were equally aware, and equally silent, about the need to preserve elements of "liberal" democracy in order to preserve opportunities for the kind of Jewish-Palestinian political alliances that alone have the promise of bringing the parties they vote for back to power.[80]

Eventually, of course, what is said and argued about in politics will catch up with reality. But how long that will take in Israel-Palestine is not only a function of decisions that Israelis will make. It also is a function of decisions West Bank Palestinians will make. For it is not just Israelis and Israeli governments that have interests in pretending that Israel is not one state from the river to the sea. The elites associated with the Palestinian Authority's status in the West Bank, and with whatever administrative proxy for Israeli control is established in the postwar Gaza Strip, do and will also benefit from the pretense that they are struggling to achieve Israeli withdrawal from territories that would then become some sort of independent Palestinian state and society. The PA receives more than $400 million per year in

[80] On the implicit but decisive importance of this looming issue, see Carolina Landsmann, "A Judicial Coup for Jewish Supremacy," *Haaretz*, 23 February 2023, https://www.haaretz.com/opinion/2023-02-23/ty-article-opinion/.premium/a-judicial-coup-for-jewish-supremacy/00000186-7fe3-de2d-afff-ffeb01c40000; and Ian S. Lustick, "Israel on the Cusp: Democracy in Peril or an Opportunity for Regime Change?" *Israel Studies Review* 39, no. 1 (2024): 83–102.

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international subsidies based entirely on the myth that a negotiated two-state solution is still attainable. At a similar scale, inflows of cash from the Gulf poured into the coffers of Hamas in Gaza.

It is at least partly in the hands of Palestinians to trade the short-term gains that Palestinian elites make from the myths they live by for the long-term opportunities to transform Palestinian life by exploiting the fact that seven million of them are now living within the ambit of the State of Israel. Politics and time make strange bedfellows. Indeed, however strange it may seem, the politics of change in Palestine-Israel may ultimately mean that most Israeli Jews, and most Palestinian Arabs, come to see each other as the only way to achieve, not all that each wants, but enough of what they each need, if the absolutely horrible problems they now have are to be traded for the lousy problems life and politics normally pose.

With the Gaza War in mind, American history is a useful reminder that the unintended and unanticipated consequences of war can be fundamentally different from the goals of the combatants. The bloody and traumatic American Civil War was fought over slavery, but even northern abolitionists shrunk from imagining blacks as equal citizens who might vote and share power with whites. Yet that war laid the foundation for generations of change that led from slavery, through failed reconstruction, to Jim Crow and the civil rights movement, to a flawed but multiracial democracy in the United States—an outcome that no one imagined and to which no party to the Civil War ever committed itself. Such processes of struggle and change, and such an outcome, are certainly not guaranteed in the Israeli-Palestinian case, but they may be more plausible than permanent domination punctuated by explosions of mass violence.

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