



# The Interspersed Nation-State System: A Two-State/One-Land Solution for the Israeli-Palestinian Conflict

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*This article explores the use of non-territorial state structures as a two-state solution to the Israeli-Palestinian conflict. By presenting a nation-state that exists over certain people, and not exclusive territory, this article offers a method for Israelis and Palestinians to each have the self-determination of an independent government while being able to mutually exist over disputed land. While the territorial state structure was designed in the 17<sup>th</sup> century, this new system may better fit modern conditions.*

**A**s a key source of state security and national pride, territory is at the heart of modern international conflicts in which distinct nationalities are tied to one region. The problem in these situations is that while modern governments assert legitimacy and order through an exclusive relationship with an identifiable culture or nation, the current state structure operates over exclusive territories. Because nations of people are linked to exclusive governments and governments are linked to exclusive territories, two nations that have substantial interests in one territory will inevitably clash. And the territorial rules that govern these international and intrastate conflicts produce dynamics such as refugee displacement, zero-sum border disputes, domestic terrorism, and wars of national liberation.

These hostilities occur because the system of territorial division was designed to prevent conflicts between distant monarchs in the 17<sup>th</sup> century. If the state structure was updated to take into account the predominance of cohesive, powerful nations, the state would exist as more of a relationship between government and nationals, rather than government and land. Two such nation-based, non-territorial states would be able to occupy a shared territory while retaining the ability to protect, regulate, tax, and provide for distinct groups of people. Members of both nations would enjoy an independent government, policies tailored to their unique values, and free movement over the shared territory. While this system may have been unthinkable prior to globalization, countries have recently developed practices for retaining control over their increasingly mobile, trans-border nationals, shifting the locus of power away from exclusive territories and allowing governments to float on top of their populations.

This article proposes how a non-territorial state system would operate, how it is already in effect to some degree, and why the current state system inappropriately developed along strictly territorial lines. The second part describes the structure of the “interspersed nation-state” idea along with the basic rules that will allow it to function.

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MIDDLE EAST JOURNAL ★ VOLUME 65, NO. 1, WINTER 2011  
DOI: 10.3751/65.1.12

The third section explains the developing problem of territorial political structures that do not coincide with separate and distinct nations of people, and the fourth part then presents the solution to this problem with recent practices in international relations that bring the state to exist over people more than land. Finally, the fifth section describes the benefits of an interspersed nation-state system and how it would specifically resolve the Israeli-Palestinian conflict, and the concluding section presents recommendations for implementation and the theoretical implications of this structure.

The overall purpose of this proposal is to offer a new tool or perspective in addressing territorial conflict by designing a two-state solution between conflicting nations that would allow each to have an independent state, while providing both with full access to the disputed land. While it would apply to many turbulent regions, this proposal especially aims to address the Israeli-Palestinian conflict and will use this situation to illustrate the contours of the interspersed nation-state system.

### *OUTLINING THE INTERSPERSED NATION-STATE*

Many modern, large-scale conflicts involve exclusive groups of people (“nations”) fighting for territorially-exclusive political structures (“states”).<sup>1</sup> These conflicts have grown and intensified with the rise of nationalism, the dominant political movement of the last century, which brings a community of similar people with shared experiences to seek and assert power as a group.<sup>2</sup> As a result, nationalism commonly brings an ethnic or cultural group to demand an independent national government.<sup>3</sup>

However, because governments exist over exclusive territories, when different nations or cultures are intermixed in one area the two will clash with competing claims of dominance.<sup>4</sup> To deal with the mismatch between territorially-exclusive structures and intermixed populations, the available solutions include division, followed by displacement across the new border, and political unification, in which the nations must constantly compromise their separate identities. These solutions often lead to refugee problems, border disputes, and intrastate revolutions.<sup>5</sup>

Territorial division and political compromise are therefore incomplete, outdated

1. David Moran, *Wars of National Liberation* (New York: HarperCollins Publishers, 2001), p. 18 (stating that the main melody of post-1945 conflicts are revolution and “[a]lways the dominant aim is the violent pursuit of radical political change; war to create or control a national state grounded in some kind of cultural community”); Ernest Gellner, *Nations and Nationalism* (Ithaca: Cornell University Press, 1983), p. 1.

2. John Hutchinson & Anthony D. Smith, “Introduction” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), p. 4 (stating that nationalism was primarily a doctrine that people must be free and sovereign, and must therefore control their government and homeland).

3. John Armstrong, “Nations before Nationalism,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith. (Oxford: Oxford University Press, 1994), pp. 140–141 (stating that nations seek territorial political structures to correspond with their identities).

4. Gellner, *Nations and Nationalism*, pp. 1–2, 4 (“very many of the potential nations of the world live, or until recently have lived, not in compact territorial units but intermixed with each other in complex patterns,” and discussing the problem of nationalism).

5. Gidon Gottlieb, *Nation Against State: A New Approach to Ethnic Conflicts and the Decline of Sovereignty* (New York: Council on Foreign Relations Press, 1993), pp. 2, 15, 26, 44–46.

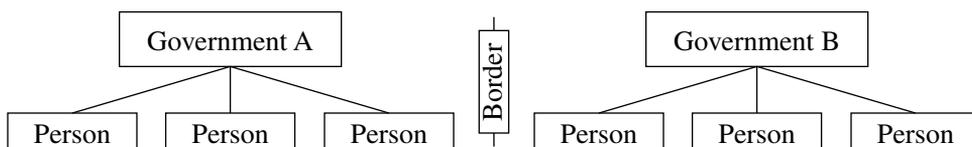
approaches that do not fully resolve nationalistic conflicts.<sup>6</sup> Creating a stable solution will require institutional arrangements that provide the advantages of separate national governments, while avoiding elements that instigate conflict based on claims of exclusive territorial rights.<sup>7</sup>

To meet these conflicting needs, the nation-state must be unbundled and its necessary parts reconfigured into a new structure.<sup>8</sup> This new structure will serve as a two-state solution over conflicting nationalist movements, and will be referred to as the interspersed nation-state system.

### *THE PROGRESSION FROM TERRITORIAL TO INTERSPERSED NATION-STATE*

The interspersed nation-state offers a very basic shift in how the state delineates its power. To present this shift, consider the most basic organization of government: the territorial state (see Figure 1).<sup>9</sup> Under this system, each government controls the people, objects, and events that exist within set borders, and in return, the people within those boundaries pay taxes and allegiance to the government.

**Figure 1: The Territorial State**



The next step in the progression is the territorial nation-state — a territorial government that draws sovereignty and legitimacy from an exclusive relationship with a self-identified group of people (see Figure 2). This system is the modern norm for all governments and the pinnacle of nationalist movements.<sup>10</sup>

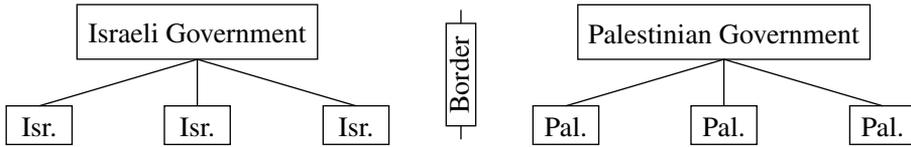
6. Brendan O’Leary, “What States Can Do with Nations: An Iron Law of Nationalism and Federation?,” in *The Nation-State in Question*, ed. T. V. Paul, G. John Ikenberry, and John A. Hall (Princeton, NJ: Princeton University Press, 2003), pp. 57, 77.

7. Adeno Addis, “The Thin State in Thick Globalism: Sovereignty in the Information Age,” *Vanderbilt Journal of Transnational Law*, Vol. 37, No. 1 (2004), p. 13 (“[T]he task becomes one of imagining institutional arrangements that will minimize the sacrifices and violence that are associated with territorial sovereignty without sacrificing the advantages that territorially based communities provide”).

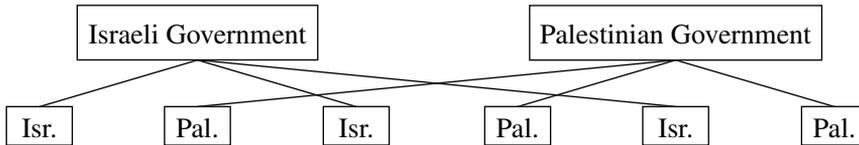
8. Kal Raustiala, “The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law,” *Virginia Journal of International Law*, Vol. 43, No. 1 (2002), p. 11 (“Unbundling the state — and reconnecting the constituent parts across national borders — creates a conceptual reconfiguration of state power that, while markedly new, retains the state as the pivotal actor of the international system.”).

9. Chris Brown and Kirsten Ainley, *Understanding International Relations* (New York: Palgrave Macmillan, 2009), p. 70.

10. Karl W. Deutsch, “Nationalism and Social Communication,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), pp. 28–29 (the main urge of the nation is to acquire and exert power over its members, eventually taking over the state).

**Figure 2: The Territorial Nation-State**

Finally, the shift proposed in this article involves bringing the nation-state to exist primarily over people instead of over land (see Figure 3). By making this shift, distinct nations that claim one territory can each have a separate nation-state, but are able to share and remain interspersed in their shared homeland. The basic result is political differentiation between the nations combined with physical integration of their populations.

**Figure 3: The Interspersed Nation-State**

Under the interspersed nation-state system, each government will serve a distinct nation of people, and each nation will contribute to one government. As a result, each national group will receive the power and permanence of an independent government, policies and services that are designed to fit around their cultural values, and free movement and access over the historic homeland that provides the nation with pride and identity.<sup>11</sup> Because these effects fully accommodate standard nationalist demands, this model will deal with clashing nations better than division/displacement or unification under one shared government.

#### *RULES OF THE INTERSPERSED NATION-STATE*

The interspersed nation-state model is made possible by three basic rules that define the separate spheres of each state and also define how these states and nations interact with each other. These rules are already in practice in modern nation-states and therefore draw from well-developed ideas in international relations. Though these rules are common and intuitive, they are implemented in a slightly altered manner to accommodate the contours of a non-territorial state.

11. Walker Connor, "A Nation is a Nation, is a State, is an Ethnic Group, is a . . ." in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), p. 40 (discussing how territorial governments can use their connection with the land to assert the emotional force of nationalism).

*The Exclusive Relationship between State and Nation*

The first guiding rule for the interspersed nation-state is that each nation of people will pay taxes to and exercise democratic power in one government, and in return, each government will regulate, protect, and serve its nation. This exclusive relationship keeps each state specifically linked to separate people and separate economies, and therefore allows the government to remain the independent and sovereign protector of the nation. This exchange constitutes the apex of the nation-state and is the reason that this form of government is powerful and stable.<sup>12</sup> However, while the territorial nation-state aims to exist over one nation in a delineated region, the non-territorial nation-state aims to exist over one nation that is interspersed with citizens of another state.

This dynamic creates two separate legal regimes in the same territory, allowing one region to house two sets of laws and allowing each nation to control the direction of its own government. Despite being intermixed to the point of having different nationals living on the same street, both states are able to provide the separate services and other benefits of independent statehood. Each state will provide public school systems to educate their youth under their national language and narrative,<sup>13</sup> with citizens of each state attending separate facilities. The states will also provide separate police and judicial systems to enforce their individual laws on their own citizens (extradition will be discussed later). Furthermore, these states will be able to hold themselves out as fully-legitimate members of the international community, raise and deploy separate militaries, and set up social services for their own nationals. The two states will therefore exist within one region, but will set up different schools, judicial systems, and other government services that cater exclusively to separate nationals.

Furthermore, in an interspersed nation-state system, each state will be able to manage a separate economy. Along with taxing separate citizens, each state will be able to print unique currency and regulate the business activities of its nationals. The citizens of each state will interact economically with currency exchanges and work visas. And just as the home state of incorporation provides the regulatory structure and levies taxes on businesses in the territorial system, the state of the citizen that incorporates provides similar control. This means that businesses in the shared region will have a national designation and compete under trade agreements negotiated by the two governments. As a result, citizens of either state can do business with each other and set up businesses in the shared region, while each state can regulate its own economy.

In terms of the distribution of property, members of either group will be able to travel and purchase land anywhere in the shared region. As a model for imagining this dynamic, consider the movement and interaction of distinct racial/social groups in developed countries. People with similar cultures and backgrounds will tend to group together, and economic disparities may prevent the groups from becoming fully integrated across the map. There may still be injustices in the overall relationship between the two nations, but poorer nationals will be free to climb the ladder into wealthier areas, and racial/ethnic tensions are far preferable to violent conflict.

12. O'Leary, "What States Can Do with Nations," pp. 57, 77; Gellner, *Nations and Nationalism*, p. 6 ("Nationalism holds that [the nation and the state] were destined for each other.").

13. Gellner, *Nations and Nationalism*, p. 34 (discussing the importance of the "monopoly of legitimate education" to the power of the state).

The general rule of thumb in dividing up spheres of power in this system is this: the state that a person pays taxes to is the state that regulates them. Thus, even though it shares a region with a separate state, the interspersed nation-state is able to run on the financial support of its citizens and follow the will of its people. The overriding goal of this structure is to allow each group to have a separate national government while the two groups fully intermix within one region.

### *The Consensual Relationship between States*

The second guiding rule for the interspersed nation-state is that the two states will organize how they treat each other's nationals through bilateral treaties. This interaction allows each to remain independent while exerting control over situations where their interests overlap. Once again, this dynamic is the same method by which standard territorial states structure their interactions — governments already use treaties to agree to procedures governing situations in which their nationals cross into the other's territory or sphere of influence.<sup>14</sup>

Each state is fully sovereign in its own sphere of influence; however, the two governments would have to agree on common procedures and forums to regulate the treatment of each other's nationals. These treaties will cover allowable discrimination (civil rights), which judicial system tries a criminal (extradition), how private sectors will interact (economic cooperation), immigration quotas, property acquisition/eminent domain, and any other issue that affects both groups and their interaction.

This web of agreements will be complicated, but as a result of increased transnational mobility, such a system is already in place between nearly any two territorial states that share a border. In the same way that a person who crosses a border and kills a citizen of a separate nation can be extradited for trial in that foreign system, the citizen of one non-territorial state that kills a member of the other interspersed nation can be tried by that other judicial system (per the agreement between the states). The interspersed nation-state system will therefore be able to draw from well-developed practices in international relations.

Critics may argue that nations that have been engaged in long-term territorial conflict are incapable of agreeing on anything, let alone extradition. Palestine presents a valid illustration — any compromise or agreement with Israel acknowledges Israel's exclusive claim to land and thereby surrenders a portion of historic Palestine.<sup>15</sup> By ending the zero-sum fight for land, the interspersed nation-state system should allow both sides to approach the negotiation table without inherently losing anything, allowing them to address their ongoing interactions with bilateral treaties.

This rule would allow both governments to remain separate while their citizens interact within a shared region. Neither state loses any sovereignty by organizing their relationship in this way — they only agree to common procedures for dealing with each

14. Barry E. Carter and Phillip R. Trimble, *International Law* (New York: Aspen, 1999), p. 112 (describing the general law of treaties).

15. Alan Dershowitz, *The Case for Peace* (Hoboken, NJ: John Wiley & Sons, 2005), p. 16 (describing how Palestine rejected a two-state division of land that placed 99.5% of Palestinian nationals in the new Palestinian state. Obviously, if such a compromise is unacceptable, so will be any division of land).

other. The combination of the exclusive nation-state relationship and the consensual state-state relationship thereby allow two federal governments to exist distinctly within one shared region. This leaves the question of common infrastructure such as roads, sewers, and power lines.

### *The Territorial Basis of Local Government*

While the federal governments for each state remain separate and based on nationals, the local governments are territorial. Infrastructure will therefore be controlled by locally-elected members of both nations. This territorial component does not disturb the separate nature of each nation-state, however, because infrastructure is shared and politically-neutral.<sup>16</sup> Each state, therefore, independently controls its own laws, education, naturalization, defense, and socioeconomic health, yet cooperation occurs at the local level.

Citizens of both national governments within a locality will pay local property taxes, run for local offices, and vote in local elections. Using this funding and democratic input, the local government will then provide for and regulate shared, local interests such as roads, utilities, and other infrastructure. These local councils will then interact with national governments through project-specific funding and with private corporations through regulated cooperation and competition. And while the two federal governments may differentiate treatment between nationals, local governments must treat all inhabitants within their jurisdiction equally.

There is a resulting disconnect between the overarching, nation-based federal governments and the territorial-based local governments. However, disconnect is common to the layering of government levels in federal systems. From a system perspective, it should be clear enough that national governments control political aspects of society, such as schools, police, and public services, while local governments control non-political aspects such as utilities and infrastructure.

Thus, the interspersed nation-state model reconfigures existing structures in international relations in order to create a system in which two nation-states can exist independently in one region. The obvious benefits of this system are that it meets nationalist demands for self-rule by two intermixed nations, allows for free movement by each group over the common region, and prevents displacement and refugee problems.

However, before the benefits of this system are fully discussed, the following sections will offer the historical development of the problem being addressed and the emerging solution that identifies the interspersed nation-state as the natural response to modern territorial conflict.

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16. While infrastructure can be “politicized” when one state cuts off another with an exclusively national road, in the interspersed nation-state infrastructure is not exclusive to either separate state government. Subject to agreed-upon restrictions, citizens of either state can freely move across every inch of the shared space. To allow for this and prevent the separate states from fighting over which state funded what, a sharp distinction is made between separate, national governments and bi-national, local governments. Infrastructure tends to be used and maintained at the local level and should be the responsibility of the members of both states that use it. If one state wanted a national rail system, for example, that state would consult with and seek contribution from the other state, because members of both nations would be using it.

## *THE PROBLEM: THE DISCONNECT BETWEEN THE NATION AND THE STATE*

The sovereign power of states consists of power over people and power over territory.<sup>17</sup> Because states function best when these powers are aligned, the current territorial model encounters problems in situations in which two distinct groups of people occupy the same territory. A history of the territorial state structure reveals that it was not designed for this situation. While the proposed interspersed nation-state system aligns power concerning land with power concerning people, the current model of the state does not accommodate clashing nations of people within a bound territory.

Rather, the state developed as a territorially-exclusive structure that later bent around the concept of a ruling public. Though this system functions well when the ruling nation physically coincides with the demarcated territory of the state, occasionally nations and state boundaries do not perfectly overlap. In these situations a new definition of the state may be necessary. This section will discuss the history, rationale, and problems of the current nation-state model.

### *THE CREATION OF THE TERRITORIAL STATE*

Current systems of government primarily reign over a contiguous body of land, demarcated by invisible borders. While it was not the norm for early civilizations and is not clearly necessary today,<sup>18</sup> the origins of this territorial structure can be pinpointed and explained. The historical development of the current system will explain the disputes it was designed to prevent and will provide the basis for arguments supporting a non-territorial state structure.

The model of the state as it exists today was created in Europe nearly 500 years ago and therefore is not tailored to resolve international disputes that are unique to the modern era. Before the creation of the territorial state, medieval Europe was organized into multi-ethnic empires<sup>19</sup> ruled by all-powerful monarchs.<sup>20</sup> These rulers operated under the principle of universal sovereignty — the idea that a leader could potentially rule the entire world.<sup>21</sup> Under this guiding principle, countries were territorially defined by the area that the ruler could control, though they potentially stretched indefinitely.<sup>22</sup>

17. Eric Allen Engle, "The Transformation of the International Legal System: The Post-Westphalian Legal Order," *Quinnipiac Law Review*, Vol. 23, No. 1 (2004), p. 24, Note 5 ("Sovereignty consists of two principle elements: territorial sovereignty [dominium] and personal sovereignty [imperium]. Territorial sovereignty is final authority over all persons objects and acts within the territory of the state. Personal sovereignty is final authority over the state's citizens").

18. Brown and Ainley, *Understanding International Relations*, p. 70.

19. Cornelia Navari, "The Origins of the Nation-State," in *The Nation-State: The Formation of Modern Politics*, ed. Leonard Tivey (Oxford: St. Martin's Press, 1981), p. 14.

20. Navari, "The Origins of the Nation-State," pp. 14–15; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991), p. 19; Elie Kedourie, *Nationalism* (Oxford: Wiley-Blackwell, 1993), p. 8.

21. Ali Khan, "The Extinction of Nation-States," *American University Journal of International Law and Policy*, Vol. 7, No. 2 (1992), pp. 204–205.

22. Andrew George, "We had to Destroy the Country to Save it: On the Use of Partition to Restore Public Order During Occupation," *Virginia Journal of International Law*, Vol. 48, No. 1 (2007), p.

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These governing systems therefore overlapped, shifted, and faded into one another<sup>23</sup> as their monarchs wrestled over land and formed intricate royal alliances.<sup>24</sup> Motivated by the violence and instability created under this anarchic system,<sup>25</sup> in 1648 the kingdoms came together to establish stability under the Treaty of Westphalia.<sup>26</sup>

This negotiation formed the structure that continues to organize international relations and therefore reveals the conditions around which it was shaped. Creating more than just a peace treaty, these leaders set out to develop a uniform system of internal governance for all countries.<sup>27</sup> Because the turbulence of the prior scheme was the result of undefined, overlapping spheres of influence, the architects of the new system sought organizing principles that would partition these countries into distinct and separate entities. Under this system, a ruler would exercise full sovereignty within his distinct sphere and had no power beyond it.<sup>28</sup> The question that was crucial to the shape of the Westphalian system (and to the proposed interspersed system) was on what basis to define the state. As a replacement for universal sovereignty, the choice was between defining countries by their geographical borders and defining countries by their people.<sup>29</sup> While these medieval, centralized powers could be distinguished geographically, their populations were too tribal and nomadic to be stable indicators of distinct countries.<sup>30</sup>

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194 (“Most importantly, territory attached to the sovereigns *contingently* upon their control over it. ... There was no practice of sovereignty permanently attaching to *specific* land. Land was simply acquired for as long as a ruler could shield it from other rulers”) [emphasis in original].

23. George, “We had to Destroy the Country to Save it,” p. 194 (“In the medieval era, international boundaries often overlapped, were ill-defined, and frequently shifted”); Anderson, *Imagined Communities*, p. 19; Franklin G. Snyder, “Sharing Sovereignty: Non-State Associations and the Limits of State Power,” *American University Law Review*, Vol. 54, No. 2 (2004) (stating that “The medieval world was not a world of States and Individuals but a web of overlapping sovereignties, each strictly circumscribed, with no one association capable of controlling the others”).

24. George, “We had to Destroy the Country to Save it,” p. 195 (“This method of controlling territory greatly assisted subjugation on the part of rulers and was therefore of great importance to them”); Kedourie, *Nationalism*, p. 8.

25. Daniel Philpott, “Religious Freedom and the Undoing of the Westphalian State,” *Michigan Journal of International Law*, Vol. 25, No. 4 (2004), p. 981 (“[E]rupting finally into the holy cataclysm of the Thirty Years War, a war that took life on a scale unrepeated in Europe until the Twentieth century”).

26. David Kennedy, “International Law and the Nineteenth Century: History of an Illusion,” *Quinnipiac Law Review*, Vol. 17, No. 1 (1997), p. 112 (“The year 1648 is thought significant because the Treaty of Westphalia, which ended the religious wars in Europe by settling a system of territorial authority over religious questions”); Khan, “The Extinction of Nation-States,” p. 205.

27. Richard L. O’Meara, “Applying the Critical Jurisprudence of International Law to the Case Concerning Military and Paramilitary Activities in and against Nicaragua,” *Virginia Law Review*, Vol. 71, No. 7 (1985), p. 1185, Note 15 (“The Peace of Westphalia brought an end to the religious wars of the seventeenth century and created an international ‘society of equal, sovereign, mutually-tolerating secular states’”).

28. Engle, “The Transformation of the International Legal System,” p. 24 (“Each land would determine its own system of governance but would refrain from interfering in its neighbors’ internal affairs.” “By linking state and religion and separating states from other states it was hoped that the divisive transnational religious and civil wars that tortured Europe would be ended. Peace would be preserved through the mutual independence of sovereign states essentially isolated from each other.”)

29. Khan, “The Extinction of Nation-States,” pp. 202–204.

30. Khan, “The Extinction of Nation-States,” p. 203 (“Grotius repudiated the nomadic implications of popular sovereignty.”); Navari, “The Origins of the Nation-State,” pp. 16–17.

Therefore, to create a definition of the state that would fully circumscribe the existing characteristics of these countries<sup>31</sup> these leaders defined the state in terms of exclusive territories separated by sharply defined boundaries.<sup>32</sup>

Under this system, each state is tied to an explicitly partitioned area and exercises full power over the entire area within those borders. This conception of state sovereignty as “fully, flatly, and evenly operative over each square centimetre of a legally demarcated territory”<sup>33</sup> brought governments to define their jurisdiction in terms of the events that occur on their territory rather than events that involve their subjects.<sup>34</sup> Still in effect today, this arrangement governs international relations and is the reason that governments exclusively control plots of land up to and not beyond their invisible borders.<sup>35</sup> Thus, the basic organization of the modern state was a reaction to anarchy among territorially divisible kingdoms.<sup>36</sup>

### *THE RISE OF THE NATION-STATE*

While the above territorial model continues to govern disputes within and between states, further developments in the contours of countries have complicated the situation. The current system was designed for a time when subjects of each state had little political significance. Since that time, however, people have formed cohesive identities that operate at the apex of the modern state.

When the territorial state came into being, people were largely geographically isolated from each other, leading to extreme diversity in language and customs even

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31. Khan, “The Extinction of Nation-States,” pp. 206–207 (“Grotius pragmatically aspired to build an international legal system ... [w]ithout requiring revolutionary changes in the prevailing legal environment.”).

32. Engle, “The Transformation of the International Legal System,” p. 23–24 (“The treaty of Westphalia promised to end the religious wars of the iron century [1600s]. Ultimately it led to the idea of sovereignty, the unity of territory (eventually nation) and religion.”); Khan, “The Extinction of Nation-States,” p. 205.

33. Anderson, *Imagined Communities*, p. 19.

34. Jan Arno Hessbruegge, “The Historical Development of the Doctrines of Attribution and Due Diligence in International Law,” *N.Y.U. Journal of International Law and Politics*, Vol. 36, No. 2 (2004), p. 287 (“[T]he king was responsible for controlling the actions of his subjects and not the actions occurring within his lands. This differs from the current position, which requires a state to control actions in its territory.”).

35. Christopher J. Borgen, “Triptych: Sectarian Disputes, International Law, and Transnational Tribunals in Drinan’s *Can God and Caesar Coexist?*,” *Journal of Catholic Legal Studies*, Vol. 45, No. 1 (2006), p. 13 (“The Treaty of Westphalia, the seed from which grew today’s systems of international law and international relations, attempted to set out rules to end decades of religious strife and war across the European continent. The treaty replaced empires and feudal holdings with a system of sovereign states”).

36. Antonio F. Perez, “Who Killed Sovereignty? Or: Changing Norms Concerning Sovereignty in International Law,” *Wisconsin International Law Journal*, Vol. 14, No. 2 (1996), pp. 471–472 (the “original rationale in the anarchic pre-Westphalian system that ravaged Europe in civil and international wars during the 16th and 17th centuries. That is, state sovereignty assures order in a world where ‘terrorists, narcotics traffickers, and insurgents,’ among others, will be the chief sources of ‘international turmoil.’”).

within each state.<sup>37</sup> It was not until the printing press opened up far-reaching communication that people were able to write and relate to large groups.<sup>38</sup> Mass communication allowed subjects to overcome the geographic disconnect from the vast numbers of fellow countrymen<sup>39</sup> by responding to common concerns, abandoning regional vernaculars, and eventually developing a national self-consciousness.<sup>40</sup> This cultural and political bonding created nations of people, able to think, feel, and react as a cohesive unit.

As large groups became capable of cohesion and mobilization, the state strove to influence the nation and the nation strove to influence the state. These trends led the state to operate under a common language and brought the people to struggle for control of the government.<sup>41</sup> After the fusion of the nation and state proved to be a reliable, powerful form of government, this idea became modular and spread to other parts of the world.<sup>42</sup> Then, when the instability of colonialism and aspiring empires led to world wars, the nation-state became the declared international norm.<sup>43</sup> Currently, governments must serve a distinct nation of people in order to claim legitimacy and maintain stability.<sup>44</sup> Thus, when the nation and the state develop around each other, they form a compatible, symbiotic relationship. However, the perfect overlap of the state over the nation is not always the case.<sup>45</sup>

### *STRUCTURAL FLAWS IN THE NATION-STATE*

The territorial nation-state developed to bring self-determination to unified nations of people that exist in exclusive regions. But the idea that a distinct culture should control the government that creates its policies is a relatively recent invention.<sup>46</sup> Though

37. Navari, "The Origins of the Nation-State," pp. 16–17.

38. Anderson, *Imagined Communities*, p. 36 (stating that the greatest unifying force was "print capitalism, which made it possible for rapidly growing numbers of people to think about themselves, and relate themselves to others, in profoundly new ways").

39. Anderson, *Imagined Communities*, p. 6.

40. Mark Cammack, "Islam, Nationalism, and the State in Suharto's Indonesia," *Wisconsin International Law Journal*, Vol. 17, No. 1 (1999), p. 36 ("One's national identification is experienced more as an ascribed identity than an assumed ideology. Similar to the 'primordial sentiments' engendered by kinship, religion, linguistic or ethnic identity, national identity carries an *ipso facto* coerciveness").

41. Leonard Tivey, "Introduction," in *The Nation-State: The Formation of Modern Politics*, ed. Leonard Tivey (Oxford: St. Martin's Press, 1981), p. 4.

42. Anderson, *Imagined Communities*, p. 4.

43. George, "We had to Destroy the Country to Save it," p. 195 ("The end of World War I was a major turning point. An idea took hold, promulgated in large part by President Woodrow Wilson, that it was the duty of nations to protect the territorial integrity of other nations. Specifically, Wilson's 'Fourteenth Point' prescribed 'specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.'"); Navari, "The Origins of the Nation-State," p. 14; Tivey, "Introduction," p. 4.

44. O'Leary, "What States Can Do with Nations," pp. 57, 77.

45. Gellner, *Nations and Nationalism*, pp. 1–2.

46. Anderson, *Imagined Communities*, p. 5 (describing the "objective modernity of nations to the historian's eye"); Gellner, *Nations and Nationalism*, pp. 55–58, 34 ("Contrary to popular and even scholarly belief, nationalism does not have any very deep roots in the human psyche.").

nationalistic groups claim to have deep historic roots,<sup>47</sup> the marriage of nation and government did not occur until the 19<sup>th</sup> century.<sup>48</sup> Therefore, areas that housed distinct cultures and peoples at the rise of nationalism have been the site of clashing efforts to establish a state by intermixed nations.<sup>49</sup>

In this situation, the territorial organization of states can cause instability.<sup>50</sup> Both nations wish to be governed by their own people, but both groups occupy the same territory. Rather than be subjected to the control of the other nation, both groups will seek self-determination through independent statehood.<sup>51</sup> Under a system of distinct territorial states, this need creates a zero-sum conflict that must be solved through partition and separation over areas where the two groups are interspersed.<sup>52</sup> Cutting shared land and forcibly separating people does not please either side and leads to latent, ongoing conflict.<sup>53</sup> Thus, territorial states are ill-equipped to deal with issues that place borders between collaborating people and place conflicting people within set borders. The flaws of separation and partition are demonstrated in the conflicts between Hindus and Muslims in India-Pakistan, between ethnic Greeks and Turks in Cyprus-Turkish Republic of Northern Cyprus, and between Protestants and Catholics in Ireland-Northern Ireland.<sup>54</sup> However, a prime example of the dysfunction in this dynamic is the situation in Israel-Palestine.

The Israeli-Palestinian conflict is a struggle between two nations that centers on territory.<sup>55</sup> A deep historical analysis reveals that both Jewish and Arab peoples have oc-

47. Anderson, *Imagined Communities*, p. 5; Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: W. W. Norton & Company, 2000), p. xi (quoting Ernest Renan's definition of "nation" as "a group of people united by a mistaken view about the past and a hatred of their neighbors.").

48. Kedourie, *Nationalism*, p. 1; Tivey, "Introduction," p. 4.

49. Gidon Gottlieb, *Nation Against State: A New Approach to Ethnic Conflicts and the Decline of Sovereignty* (New York: Council on Foreign Relations Press, 1993), pp. 49–50; Gellner, *Nations and Nationalism*, p. 2.

50. O'Leary, "What States Can Do with Nations," p. 77.

51. Gottlieb, *Nation Against State*, p. 32; Gellner, *Nations and Nationalism*, pp. 6, 43 ("Nationalism has been defined, in effect, as the striving to make culture and polity congruent, to endow a culture with its own political roof, and not more than one roof at that.").

52. Gottlieb, *Nation Against State*, pp. 29, 44.

53. Davinia Filza Abdul Aziz, "The Utility of an International Legal Approach to the Jerusalem Question: Camera Obscura or Camera Lucida?," *Singapore Journal of International and Comparative Law*, Vol. 7, No. 2 (2003), p. 540 ("In Jerusalem, a framework for resolution based on prevailing notions of sovereignty, self-determination and title to territory will not accomplish the elusive 'just and lasting peace.' They carry connotations of mutual exclusivity which are incompatible with crafting the future of a city that must be shared to satisfy all claims to it"); Gottlieb, *Nation Against State*, p. 46.

54. Radha Kumar, "The Troubled History of Partition," *Foreign Affairs*, Vol. 76, No. 1 (1997), p. 24 ("Although described as the lesser of two evils, the partitions in Cyprus, India, Palestine, and Ireland, rather than separating irreconcilable ethnic groups, fomented further violence and forced mass migration.").

55. Robert A. Caplen, "Mending the 'Fence': How Treatment of the Israeli-Palestinian Conflict by the International Court of Justice at the Hague has Redefined the Doctrine of Self-Defense," *Florida Law Review*, Vol. 57, No. 3 (2005), p. 728 ("The Israeli-Palestinian conflict 'is one of the most complex of our time.' 65 This reality is due, in part, to the historical importance of the territory for peoples of both Jewish and Muslim faiths"); Hussein Abu Hussein and Fiona McKay, *Access Denied* (London: Zed Books, 2003), p. 1 (opening sentence: "The conflict over land lies at the heart of the conflict between Zionism and the Palestinian national movement.").

cupied this small strip of religiously-significant land at different times.<sup>56</sup> These historic ties to the land shifted into separate nationalist movements in the late 19<sup>th</sup> century (during the world-wide rise of nationalism). As a consolidated Arab consciousness replaced Ottoman hegemony, Arabs already present on this holy land began developing a distinct Palestinian national identity.<sup>57</sup> Around the same time, anti-Semitism in Europe led to a political movement of Jews wishing to establish a centralized state in the historic land of Israel.<sup>58</sup> These national identities therefore consolidated and expressed political ambitions at roughly the same moment in history and then clashed in the 20<sup>th</sup> century with competing claims to statehood.<sup>59</sup> The result of these conflicting movements is two nation-states that have simultaneously emerged in one small territory.<sup>60</sup>

The root of the Israeli-Palestinian problem centers on available governmental structures. By design, the territorial state quells conflict between regions, not within them; creates peace between states, not between nations.<sup>61</sup> This state structure is therefore ill-applied to situations in which two governments attempt to form within the same land.<sup>62</sup> As a result, the modern nation-state has become inherently problematic when addressing the call for self-determination by different peoples that are interspersed in a common territory.

### *THE SOLUTION: THE SHIFT FROM TERRITORIAL-BASED SOVEREIGNTY TO NATIONAL-BASED SOVEREIGNTY*

While the differentiation between power over people and power over territory creates a series of problems, it also opens the way to new solutions. The key to the interspersed nation-state idea is the differentiation and detachment of the two types of sovereignty. If it were possible to detach personal sovereignty from territorial sovereignty, then governments could rule over people in a separate way than they rule over land, thereby allowing two states to exist in one territory.

This system does not seem workable in a paradigm under which the state's sovereignty over people is strictly bound to its territorial aspects. Between two territorial states, the state in which people are located has full sovereignty.<sup>63</sup> However, relatively

56. Alon Ben-Meir, *A Framework for Arab-Israeli Peace* (St. Louis, MO: Robert Publishing Group, 2003), pp. 15–21.

57. Edward A. Said, *The Question of Palestine* (New York: Vintage Books, 1992), pp. xxxv, 12.

58. Caplen, "Mending the 'Fence,'" p. 728 ("In the waning years of the nineteenth century, European Jews founded a political movement designed to re-establish a Jewish homeland in Palestine.")

59. Caplen, "Mending the 'Fence,'" p. 729 (when the Zionist movement emerged, "Palestinian Arabs simultaneously began forging a national identity separate and distinct from other Arabs in the region").

60. Said, *The Question of Palestine*, p. 117; Shlaim, *The Iron Wall*, pp. 1–4.

61. Gottlieb, *Nation Against State*, p. ix ("Current doctrines of statecraft evolved in an age when conflict arose between states rather than within them, and are therefore ill adapted to modern conflict").

62. Gottlieb, *Nation Against State*, p. 15 ("Constructs based on absolute sovereignty and on rigid borders cannot provide the vision for settling difficult problems of self-determination.")

63. Hessbruegge, "The Historical Development of the Doctrines of Attribution and Due Diligence in International Law," p. 287 ("[T]he current position, which requires a state to control actions in its territory. . . . [In contrast] the pre-Westphalian state was a tribal, and not a territorial, unit. Only in the 19th century would these remnants be overcome and the concept of due diligence based on territorial, rather than personal, control emerge.")

recent changes in the international system have allowed the modern state to separate territorial and personal sovereignty.<sup>64</sup> Under these developing practices, detachment occurs when nationals of one state cross into the territory of another state while remaining under the protection and control of their home state. This dynamic is made possible through bilateral treaties — states making reciprocal agreements concerning the treatment of each other's nationals abroad.<sup>65</sup> When two states promise to accommodate each other's traveling nationals and return each other's fleeing criminals, each state is using reciprocal promises to retain power over people outside of its territory.

In the modern international system, this detachment of personal sovereignty through bilateral treaties is an increasing trend among states. As travel, commerce, and crime have increasingly crossed borders,<sup>66</sup> geographical boundaries have become more permeable and states have become transnational to a greater degree.<sup>67</sup> This shift has caused the territorial state to become less effective in managing many aspects of modern society.<sup>68</sup> To expand their powers beyond their borders, many states have therefore developed arrangements such as extradition treaties, economic cooperation agreements, and human rights treaties.<sup>69</sup> These treaties are the reason why corporations can set up shop in foreign countries, why fleeing criminals are exported back to the state in which the crime occurred, and why a network of consulates maintain contact and provide assistance for nationals traveling abroad. Because roaming nationals can remain at the fingertips of their governments,<sup>70</sup> the state can exist as a relationship between government and people rather than only a relationship between government and land. Therefore, in an increasingly globalized world, states are pulled to exert sovereignty over people apart from their power over territory.

This analysis reveals that, under the modern nation-state system, governments can exist over nations of people without a strict territorial component.<sup>71</sup> While these bilateral treaties do not currently exist between every country, in a hypothetical system

64. Snyder, "Sharing Sovereignty: Non-State Associations and the Limits of State Power," p. 388 ("The point of all this is merely to show that the concept of detaching sovereignty from the State is not as far-fetched as it once seemed." When discussing the state, the author is referring to the "old territorial State.").

65. Gottlieb, *Nation Against State*, p. 15.

66. Carter and Trimble, *International Law*, p. 712.

67. Snyder, "Sharing Sovereignty: Non-State Associations and the Limits of State Power," p. 388 ("The sweeping technological and social changes that have made national borders more permeable are also impacting sovereignty").

68. Marc R. Poirier, "The NAFTA Chapter 11 Expropriation Debate Through the Eyes of a Property Theorist," *Environmental Law*, Vol. 33, No. 4 (2003), p. 894, Note 201. ("what has been called 'a states system' — is no longer consistently in control of the global policy process. Territorial sovereignty is being diminished on a spectrum of issues in such a serious manner as to subvert the capacity of states to govern the internal life of society").

69. Carter and Trimble, *International Law*, pp. 116, 795–798, 844 (1953 United States-Japan FCN Treaty, Article VII, stating that "Nationals and companies of either Party shall be ... permitted ... to establish and maintain branches, agencies, offices, factories and other establishments...").

70. Carter and Trimble, *International Law*, p. 735 (states already have the ability to exercise jurisdiction over their nationals that are anywhere in the world).

71. Gottlieb, *Nation Against State*, p. 14 (sovereignty "is a power to be exercised over persons rather than over territory" and "the territorial component of sovereignty was not essential, but the state as an organized community of individuals was of importance.").

that is fully under such treaties, each state exists primarily as a relationship between government and people. Imitating and drawing from this model, two states that share a territory can use bilateral agreements to organize the interaction among the different governments and nationalities. It is therefore feasible for two states to exist in one territory while governing distinct groups of people.

Creating an interspersed nation-state solution for the Israeli-Palestinian conflict is, thus, a matter of both sides developing a series of agreements over how their respective governments and nationals will interact. Leaders on both sides have expressed a clear desire to negotiate peace and have indicated that new, creative solutions will be necessary.<sup>72</sup> If the Israelis and Palestinians were to consider the interspersed nation-state as a possible two-state solution, the two groups would need to sit down and negotiate their interaction under this system. And while such interaction would be complicated, a similar dynamic occurs between all developed countries that share a border, and this dynamic necessitates common procedures that govern overlapping spheres of influence.

These norms in how citizens, economies, and governments currently interact across borders can guide the negotiation process between Israel and Palestine as they implement the interspersed nation-state system. Given the practical and theoretical availability of this idea, the question is then how it would fit around and resolve the Israeli-Palestinian conflict.

### *BENEFITS OF THE INTERSPERSED NATION-STATE SYSTEM*

The basic goal of the interspersed nation-state system is to function as a two-state solution for territories contested by commingled, distinct nationalities. Through its unique, flexible organization, the interspersed nation-state system first resolves seemingly intractable conflict between warring nations by allowing both sides to realize their full nationalistic aspirations. Also, in comparison to divisive, inflexible territorial regimes, this system creates an environment that fosters stable relations among different nationals.

These benefits prove the interspersed nation-state system to be preferable over a territorially-exclusive two-state solution. And, as applied to the Israeli-Palestinian conflict, this system has the capacity to resolve the stated political demands of both sides and quell the violence and instability that have been characteristic of the region for the last century.

### *RESOLVING CONFLICT BY MEETING DEMANDS OF BOTH NATIONS*

The interspersed nation-state system seeks to resolve territorial conflict between clashing nations by offering both sides everything they demand. Many major modern in-

72. Yasser Arafat, "The Palestinian Vision of Peace," *The New York Times*, February 3, 2002 ("We are ready to sit down now with any Israeli leader, regardless of his history, to negotiate freedom for the Palestinians, a complete end of the occupation, security for Israel and creative solutions to the plight of the refugees while respecting Israel's demographic concerns."); "Netanyahu Says Ready to Make Historic Compromise," *Xinhua News Network*, September 6, 2010, [http://www.china.org.cn/world/2010-09/06/content\\_20868355\\_2.htm](http://www.china.org.cn/world/2010-09/06/content_20868355_2.htm), ("We will need to think creatively, and in new ways, about how to resolve complex problems").

trastate struggles derive from conflicting nations,<sup>73</sup> and all nationalist movements share the same aspirations: self-rule through an independent, nationally-run government and sovereignty over a certain land.<sup>74</sup> Because both parties to an interspersed nation-state system will have a modern state and full access to the disputed land, this unique two-state structure may end any call for zero-sum nationalist conflict and pave the way for stable relations between intermixed cultural groups. The benefits of this system will be explored in general and as it would apply specifically to Israelis and Palestinians.

### *Resolving Nationalistic Conflict in General*

Nationalist movements primarily seek self-determination through independent control of the state and establishment over a historic homeland. As groups of similar people, nations provide benefits for members such as community support, a sense of belonging,<sup>75</sup> and a shared history,<sup>76</sup> at the cost of creating divisions and excluding dissimilar people.<sup>77</sup> As a result of their exclusivity, nations seek power in order to sustain their unique characteristics and overcome assimilation into alien groups.<sup>78</sup> The pinnacle of this push is to inject the nation into the state,<sup>79</sup> bringing the group to be governed by policies designed to fit its culture and establishing the permanence and integrity of a legitimate member of the international community.

However, when one nation dominates a powerful, exclusive structure such as the state, minority and neighboring nationalities are forced to also seek the protections of independent statehood in order to sustain their unique communities.<sup>80</sup> As a result, nationalism — the idea that groups of similar people should rule their territorial govern-

73. Moran, *Wars of National Liberation*, p. 18 (the main melody of post-1945 conflicts are revolution and “[a]lways the dominant aim is the violent pursuit of radical political change; war to create or control a national state grounded in some kind of cultural community”).

74. Clifford Geertz, “Primordial and Civic Ties,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), p. 30 (stating that the two motives of a developing nation are recognition and the creation of a modern state); Anthony Giddens, “The Nation as Power-Container,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), pp. 34–35 (defines nation as only existing when controls territory).

75. Elie Kedourie, “Nationalism and Self-Determination,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), p. 55 (nationalism satisfies the need to belong in a coherent community).

76. Gellner, *Nations and Nationalism*, p. 49 (describing nationalism as “using as their raw materials the cultural, historical and other inheritances from the pre-nationalist world.”).

77. Armstrong, “Nations before Nationalism,” p. 142 (arguing that the ethnic group is defined by exclusion); Kedourie, *supra* note 64, at 49 (“What is beyond doubt is that the [nationalist] doctrine divides humanity into separate and distinct nations”).

78. Michael Walzer, *On Tolerance* (New Haven, CT: Yale University Press, 1997), p. 25 (national groups seek statehood to reproduce and maintain their national identity); Karl W. Deutsch, “Nationalism and Social Communication,” in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), pp. 28–29 (nationalities seek to control their own, then spread, then take over the state).

79. Deutsch, “Nationalism and Social Communication,” p. 28–29 (the main urge of the nation is to acquire and exert power over its members, eventually taking over the state).

80. Gottlieb, *Nation Against State*, p. 32.

ment — is now the dominant political doctrine in international relations.<sup>81</sup>

While the standard, territorial state cannot provide self-determination to two national groups within its borders, the interspersed nation-state does not have this structural flaw. In this new system, both groups are able to control the direction of their government, protect their way of life by ingraining it in public institutions, and be free of outside control. While each nation-state exists in close proximity to the cohabiting nation, each is free from the political control of the other and they should therefore be able to exist as equally-sovereign neighbors. Thus, by conceptualizing the state as a relationship primarily between government and people rather than territory, the interspersed nation-state system is able to meet the political aspirations of conflicting nations.

The second major nationalistic aspiration is territorial establishment. Nations naturally strive to assert themselves in certain territories as a result of the integral part that land plays in their identity. Nations meld together around commonalities<sup>82</sup> and evolve through continued interactions over a long period of time.<sup>83</sup> Because of geographically limited transportation and communication, common ethnicity, culture, and shared experiences tend to be tied to one region.<sup>84</sup> Specific territory therefore becomes part of the lifestyle and history of a nation, and association with a particular historic homeland is what distinguishes the nation from other collective identities, such as religion and ethnicity.<sup>85</sup> While any territory can provide a people with exclusivity and security, nations form strong emotional bonds with their historic homelands and derive national pride by possessing them.<sup>86</sup> Nationalistic movements therefore aspire to reign over a particular territory.

While the nationalistic demand for a homeland has thus far been carried out under the territorially exclusive definition of the state, nations do not require exclusive possession of their homeland.<sup>87</sup> Less than half of the world's states that claim a dominant nation actually have an ethnic/cultural group that composes more than 75% of their population, and nearly a third do not even contain a majority nation.<sup>88</sup> We can therefore surmise that access to and official presence in the historic homeland is more important to national identity than the exclusive control that the government exercises over the territory.<sup>89</sup>

81. Armstrong, "Nations before Nationalism," pp. 140–141 (describing the right of individuals to establish territorial political structures that correspond to their group identity).

82. Joseph Stalin, "The Nation," in Karl W. Deutsch, "Nationalism and Social Communication," in *Nationalism*, ed. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), pp. 19–20.

83. Armstrong, "Nations before Nationalism," pp. 141–142 (describing Barth's social interaction model).

84. Armstrong, "Nations before Nationalism," pp. 141–145 (though he argues that territory is not definitive, Armstrong shows that nations tend to exist in certain territories).

85. Jack C. Plano and Roy Olton, *The International Relations Dictionary* (Austin: Holt, Rinehart and Winston, 1969), p. 119 (definition of "nation").

86. Connor, "A Nation is a Nation, is a State, is an Ethnic Group, is a . . .," p. 40; Ben-Meir, *A Framework for Arab-Israeli Peace*, pp. 15–16 (describing the Jewish return to biblical Israel as a "historic dream").

87. Walzer, *On Tolerance*, pp. 24–25.

88. Connor, "A Nation is a Nation, is a State, is an Ethnic Group, is a . . .," p. 39.

89. Anthony D. Smith, *The Ethnic Origins of Nations*, (West Sussex: Blackwell Publishers, 1987), pp. 6–18.

The interspersed nation-state system is capable of satisfying the territorial desires of multiple nations. Under a system of sovereignty that floats on top of groups of people, both sets of nationals may establish themselves and move freely over the shared territory. Because each side has full access to the disputed land, both are afforded the same territorial rights as citizens of most nation-states — full access and official presence, but not exclusion of other groups. The interspersed nation-state system thus meets the nationalistic urge for a homeland by providing the dueling nations with full access to 100% of the disputed land.

### *Resolving the Israeli-Palestinian Conflict*

As applied to the conflict between Israel and Palestine, an interspersed nation-state regime promises to address the major demands of both sides, making it possible to resolve the nationalistic conflict between the two groups. Under this legal structure, both the Israelis and Palestinians will have fully autonomous national governments, but their states will exist in one shared territory with common external borders. This system meets the stated demands, interests, and positions of both parties, and therefore poses a potential resolution to the conflict.

First, and of primary importance, are the basic intentions of each party towards the other and their willingness to reach a resolution to the conflict. It is the stated goal of both the government of Israel and the Palestinian Liberation Organization (PLO) to negotiate a peace agreement, which provides for two nation-states living in close proximity under mutual recognition.<sup>90</sup> The last three Israeli Prime Ministers have stated that Israel does not wish to dominate the Palestinian people, but rather seeks to establish normalized, peaceful relations.<sup>91</sup> And while the rise of the more-extreme Hamas party in the Gaza Strip has undermined efforts of Palestinian Authority President Mahmud ‘Abbas to work towards a two-state solution with Israel, the full access to pre-1948 Palestine offered by the interspersed nation-state system may meet current aspirations of both Hamas and Fatah.<sup>92</sup> Palestinians have demanded a sovereign state and Israel stands ready to discuss a two-state solution that will affect a permanent cessation of violence in the region.<sup>93</sup>

The major issues for these peace talks — borders, free movement, Israeli settle-

90. “Basic Guidelines for the 31<sup>st</sup> Government of Israel,” May 4, 2006, Israel Ministry of Foreign Affairs, <http://www.mfa.gov.il/MFA/Government/Previous+governments/Basic+Guidelines+of+the+31st+Government+of+Israel.htm> (proclaiming a commitment to “negotiations and agreement with the Palestinians — conducted on the basis of mutual recognition, signed agreements, the Roadmap principles, cessation of violence and the disarming of the terror organizations.”); PLO Negotiations Affairs Department, *Palestinian Positions (A Summary)*, [http://www.nad-plo.org/listing.php?view=nego\\_permanent\\_summary](http://www.nad-plo.org/listing.php?view=nego_permanent_summary), (referring to Arafat’s op-ed in *The New York Times*).

91. “PM Sharon Addresses the United Nations General Assembly,” September 15, 2005, Israel Ministry of Foreign Affairs, <http://www.mfa.gov.il/MFA/Peace+Process/Key+Speeches/>; “Address by PM Olmert at the Annapolis Conference,” November 27, 2007, <http://www.mfa.gov.il/MFA/Peace+Process/Key+Speeches/>; “Full Text of Netanyahu’s Foreign Policy Speech at Bar Ilan,” *Haaretz.com*, June 14, 2009, <http://www.haaretz.com/news/full-text-of-netanyahu-s-foreign-policy-speech-at-bar-ilan-1.277922>.

92. “Palestinian Rivals: Fatah & Hamas,” *BBC News*, June 17, 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/5016012.stm](http://news.bbc.co.uk/2/hi/middle_east/5016012.stm).

93. Ben-Meir, *A Framework for Arab-Israeli Peace*, pp. 45–52.

ments, and Palestinian right of return — all involve access to land, a topic that is addressed optimally by the interspersed nation-state. Because of the restrictions of the territorial nation-state, the negotiation over borders has been seen as an intractable, zero-sum division of land that both nations claim and love.<sup>94</sup> Though leaders on both sides have stated a willingness to make painful territorial compromises in the interest of peace,<sup>95</sup> compromise is not necessary.<sup>96</sup> Under the interspersed nation-state system, Israelis and Palestinians could each have a separate, sovereign state that exists over 100% of the disputed land. This means that while external borders would be maintained by both states, there would be no internal borders. Citizens of either state would be able to move freely throughout the shared territory while subject to different laws, social services, and government agencies.

The issues of Israeli settlements and Palestinian right of return — major stumbling blocks to peace talks — would be inherently resolved under the interspersed nation-state system. Israel insists on maintaining settlements in the West Bank and Gaza Strip for security purposes,<sup>97</sup> while Palestinians assert that these settlements and their related infrastructure disrupt territorial contiguity, limit free movement, and constitute an Israeli land-grab within Palestine.<sup>98</sup> Meanwhile, Palestinians demand that their refugees, displaced in hostilities with Israel, have the right to return to their former communities,<sup>99</sup> whereas Israelis see a flood of Palestinians into Israel as destroying the state's Jewish character.<sup>100</sup> However, under the interspersed nation-state system, both sides would achieve their stated goals on these topics without triggering the stated fears of the other side.<sup>101</sup> Citizens of both nations would be able to travel to and purchase land within territory that is currently controlled by the other. Thus, exiled Palestinians would be able to return to their former communities, Israelis would be able to develop a presence throughout the region and guard the shared external border, and both states

94. Caplen, "Mending the 'Fence,'" p. 728 ("The Israeli-Palestinian conflict 'is one of the most complex of our time.' This reality is due, in part, to the historical importance of the territory for peoples of both Jewish and Muslim faiths").

95. "PM Sharon addresses the United Nations General Assembly"; PLO Negotiations Affairs Department, *Palestinian Positions (A Summary)* (stating acceptance of 1967 borders).

96. Each state would be able, through agreement with the other state, to exclude members of the other state from certain areas. This allows each to have exclusive domain over limited areas that the other does not want. The tradeoff is that citizens of each state get full access and free movement over their entire historic homeland and in return they have to share it with citizens of the other state. But because many stable nation-states have ruling national groups that live among people of different ethnic origins, I infer that people prefer having a state over excluding others.

97. Ben-Meir, *A Framework for Arab-Israeli Peace*, p. 33.

98. PLO Negotiations Affairs Department, *Colonies (Settlements)*, [http://www.nad-plo.org/listing.php?view=nego\\_permanent\\_colonies](http://www.nad-plo.org/listing.php?view=nego_permanent_colonies).

99. PLO Negotiations Affairs Department, *Palestinian Refugees*, [http://www.nad-plo.org/listing.php?view=nego\\_permanent\\_refugees](http://www.nad-plo.org/listing.php?view=nego_permanent_refugees).

100. Dershowitz, *The Case for Peace*, p. 47 (describing the right of return as a "plan to return millions of Palestinians to Israel in order to overwhelm the Jewish state with a Palestinian majority").

101. Yasser Arafat, "The Palestinian Vision of Peace," *The New York Times*, February 3, 2002 ("We understand Israel's demographic concerns and understand that the right of return of Palestinian refugees . . . must be implemented in a way that takes into account such concerns"); "Address by FM Livni to the Annapolis Conference," November 27, 2007, Israeli Ministry of Foreign Affairs, <http://www.mfa.gov.il/MFA/Peace+Process/Key+Speeches/>.

would remain politically and economically independent.

Once these fundamental, territorially-rooted issues are resolved, the remaining aspects of a two-state solution should become easier to address.<sup>102</sup> Israeli leaders have expressed the need for a strong Palestinian state that can control domestic terrorism,<sup>103</sup> and Palestinian leaders have stated a commitment to cooperating with Israel on issues of security.<sup>104</sup> Also, Palestinian leaders intend to build an open economy and conduct trade with Israel, and Israel is interested in a healthy, viable Palestinian state.<sup>105</sup> The positions and negotiations concerning Jerusalem indicate that both sides have a stated willingness to share sovereignty over and maintain separate capitals in the city.<sup>106</sup> By resolving the territorial issues, the interspersed nation-state system makes the Israeli-Palestinian conflict less intractable.

A consistent majority of Israelis and Palestinians want a two-state resolution to the conflict, and the violent minorities seek an established homeland on all of their nations' historic birthright.<sup>107</sup> The interspersed nation-state therefore meets the nationalist demands of both sides and appeases both moderates and extremists.<sup>108</sup> By recognizing that both groups have the right to the same land and establishing a legal authority that accounts for this shared coexistence, the interspersed nation-state system meets the criteria for what could be the only viable framework for permanent peace between Israel and Palestine.<sup>109</sup>

#### *CREATING STABILITY BY STRUCTURING A FRAMEWORK FOR COEXISTENCE*

Because two or more cultural groups were able to share a single region before the rise of nationalism, satisfying nationalist demands in an integrated two-state system should herald a peaceful coexistence between distinct groups.<sup>110</sup> However, peace requires more than agreement among national leaders — it takes reconciliation and

102. Dershowitz, *The Case for Peace*, p. 13; Walzer, *On Tolerance*, p. 43 (“If the international conflict were resolved, then toleration within this society might become easier because it would move in different directions and be mediated through different institutional structures”).

103. Israeli Ministry of Foreign Affairs, “The Israeli-Palestinian Peace Process: Two States for Two Peoples,” November 20, 2007, <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Israel-Palestinian+peace+process+Two-state+vision.htm>.

104. PLO Negotiations Affairs Department, *Palestinian Positions (A Summary)*, [http://www.nad-plo.org/listing.php?view=nego\\_permanent\\_summary](http://www.nad-plo.org/listing.php?view=nego_permanent_summary) (section on Security).

105. PLO Negotiations Affairs Department, *Palestinian Positions (A Summary)*, (section on Economic Relations); Israeli Ministry of Foreign Affairs, “The Israeli-Palestinian Peace Process: Two States for Two Peoples,” November 20, 2007.

106. Dershowitz, *The Case for Peace*, pp. 55–56; PLO Negotiations Affairs Department, *Palestinian Positions (A Summary)* (section on Jerusalem).

107. Alan Dershowitz, *The Case for Peace*, pp. 33, 90.

108. The interspersed nation-state system is meant for large, consistent, distinct groups of people (nations) that intractably fight over land and are willing to grant each other statehood. In this framework, smaller minority groups in these territories would fall under the jurisdiction of one of the two proposed states.

109. Ben-Meir, *A Framework for Arab-Israeli Peace*, pp. 44–45.

110. Walker Connor, *Ethnonationalism: The Quest for Understanding* (Princeton: Princeton University Press, 1994), p. 4.

normalized interaction between the people of both nations.<sup>111</sup>

Beyond defusing nationalist conflict, the interspersed nation-state system aims to create an ideal environment for stability in instances of international territorial conflict. Wisdom from international relations suggests that integrating nations territorially while differentiating them politically should avoid problems associated with physical separation while providing the calming effects of political independence. And as specifically applied to the Israeli-Palestinian conflict, this structure should empower the peace-seeking majorities on both sides while isolating violent extremists.

### *Creating Stability in General International Conflict*

By allowing separate peoples to be territorially integrated while maintaining separate political structures, the interspersed nation-state system should promote stability in previously tumultuous regions. As applied to situations where wholly different nationalist groups occupy one region, the territorial rules of international relations often lead to injustices and misperceptions between nations.<sup>112</sup> When two nations are divided territorially, acts of violent minorities and oppressive security forces reflect a violent image of the entire population to the other side.<sup>113</sup> Also, strict territorial separation allows militant factions to target members of the other group with acts of mass destruction. And suppressing terrorist activity in homogenous areas places nonviolent group members under the same treatment as violent ones. As a result, strict separation fuels hostility between members of different nations, which then reinforces the physical separation.<sup>114</sup> Therefore, placing conflicting groups on either side of a line hinders conciliation and allows militant minorities to wage large-scale, long-term conflict.

The environment created by the interspersed nation-state system may foster a different interaction among the different national groups. While political integration of distinct nations — unity under one state — causes the nations to clash,<sup>115</sup> physi-

111. Harold H. Saunders, *A Public Peace Process* (New York: Palgrave Macmillan, 1999), p. 22 (stating that dealing with conflict requires addressing human roots while building civil society and the political structures in which power can be safely shared); Yasser Arafat, “The Palestinian Vision of Peace” (“Peace is not a signed agreement between individuals — it is reconciliation between peoples.”).

112. Despite their shared land, each state is the independent representative of its people, their government, and their economy. Therefore, as much as possible, they act as any member of the international community. They are able to make separate agreements with other countries and have separate seats at the UN. There would, however, be some redundancy with crossing the shared border. Customs officers from both states would be able to check incoming people and items.

113. Khalil Shikaki, “Willing to Compromise: Palestinian Public Opinion and the Peace Process,” Special Report No. 158, *United States Institute of Peace* (2006).

114. Edward F. Sherman, “Applications of Dispute-Resolution Processes in the Israeli-Palestinian Conflict,” in *The Struggle for Peace: Israelis and Palestinians*, ed. Elizabeth Warnock Fernea and Mary Evelyn Hocking (Austin, TX: University of Texas Press, 1992), p. 99 (“Territorial occupation and closed political structures have fostered separation and group injustices that have fueled hostility on an individual level, which, in turn, has reinforced the continuation of the territorial and political arrangements”).

115. Gellner, *Nations and Nationalism*, p. 6.

cal integration of the populations tends to create stability.<sup>116</sup> Whether it results from economic interdependence, the psychological process of humanizing the other side, or the tendency of democracies to not fight each other, higher levels of interaction and integration between distinct peoples tend to reduce the instance of violent conflict.<sup>117</sup> This indicates that non-violent contact between nations will moderate their relations and cause members of each group to better tolerate each other.

The best way to structure this cooperative interaction is through political autonomy. Providing an independent political unit to each side tends to allay intergroup conflict, while ambiguous power relationships often leads to violence between members of these nations.<sup>118</sup> Furthermore, while inequalities between distinct groups within a state reflect unjust distribution functions, class differences between groups are not as problematic when each side is under an autonomous political structure.<sup>119</sup> Because of this, delineating equally-sovereign (if not equally-powerful) political units for distinct communities has been the dominant strategy for organizing relations among different populations for 500 years.<sup>120</sup>

The combination of these strategies — physical integration and political differentiation — would tend to cause the people who make up each nation to interact peacefully. With sovereign states to mediate the interaction between nations and fewer physical barriers between them, fighting between nations would shift the broader intergroup conflict into smaller, more manageable interpersonal conflicts. Because the interspersed nation-state system is able to organize multiple nations that exist in one region into autonomous states, this structure presents an optimal approach to fostering tolerance between the members of these nations.

### *Creating Stability between Israelis and Palestinians*

The interspersed nation-state system also presents a viable framework for normalized relations among Israelis and Palestinians. By providing both groups with independent and equally-sovereign states that allow each to have full access to the disputed territory, this system satisfies the nationalistic demands of both groups. While this should have a calming effect on their respective populations and allow the nations to interact through formal, organized mechanisms,<sup>121</sup> the question remains as to whether

116. Kristian Skrede Gleditsch, *All International Politics is Local* (Ann Arbor: University of Michigan Press, 2002), pp. 31–33 (describing Deutschian Integration Theory in which informal integration of populations creates stability, while formal integration of territorial states (precluding political differentiation) can create conflict).

117. Gleditsch, *All International Politics is Local*, pp. 119–123.

118. Walzer, *On Tolerance*, pp. 46, 52–53.

119. Walzer, *On Tolerance*, p. 56.

120. Michael J. Kelly, “Pulling at the Threads of Westphalia: Involuntary Sovereignty Waiver - Revolutionary International Legal Theory or Return to Rule By the Great Powers?,” *UCLA Journal of International Law*, Vol. 10, No. 2 (2005), p. 378 (“The external legal equality of states doctrine is the foundational theory effectuated by policies ensuring states’ territorial integrity and inviolability of borders.”); Walzer, *On Tolerance*, p. 20.

121. Walzer, *On Tolerance*, p. 43 (“If the international conflict were resolved, then toleration within this society might become easier because it would move in different directions and be mediated through different institutional structures”).

the Israelis and Palestinians would interact well under this structure.

Currently, the most common contacts between Israelis and Palestinians involve rockets fired from camps and armed guards at checkpoints, and this prevents the sides from developing normal interactions.<sup>122</sup> Despite this, both nations and their governments are demanding peace and reconciliation with the other side.<sup>123</sup> Physical integration under the interspersed nation-state system should strengthen Israel's security, improve conditions for the Palestinians, and empower the pro-peace majorities on both sides to overcome their violent minorities.

From the beginnings of the conflict, Israel sought to earn legitimacy with the Palestinians through military force, and this continues to be the method of maintaining order over the occupied territories.<sup>124</sup> However, while the restrictions and measures imposed by Israel on these Palestinian areas have hindered development and led to impoverished living conditions, these measures cannot completely stamp out terrorist activity. As a result, Israelis now recognize that only a strong Palestinian government will be able to suppress violent extremists.<sup>125</sup> Providing the Palestinians with an independent, politically equal state should give them the means and incentive to enforce order and stability among their citizens.

Also, the physical integration of the populations could enhance security and living conditions for both sides. When both groups are physically integrated, terrorist groups would have difficulty targeting only members of the other nation. Terrorist groups would not be able to hide among innocent civilians in their country's exclusive territory because both groups, and their security forces, would have the same free access to the land as citizens of each state. The interspersed nation-state would therefore replace physical occupation and suppression by Israel with physical integration and mutual security measures by both sides. And because Israel's neighbors would have difficulty invading a country that is territorially integrated with a fellow Arab state and because Israel would be free to maintain security at all external borders, this system is an optimal solution to Israel's overriding concern with security.<sup>126</sup> Thus, the mutual access to land offered by the interspersed nation-state system would end the Israeli occupation of Palestine and allow both sides to grow and move freely across their shared area.

This proposed state structure seeks to develop normalized relations in territorially-disputed regions by quelling nationalistic conflict and allowing the distinct populations to interact under optimal conditions for peace and reconciliation. As compared to its predecessor, the exclusive territorial state, the interspersed nation-state is tailored to fit conflicts and differences among nations. The questions that remain are how this system will be put into place and what it means for the concept of the nation-state.

122. Shikaki, "Willing to Compromise" ("Lack of normal personal interaction, because the only Israelis most Palestinians encounter are soldiers or armed settlers, encourages misperception and the desire to portray the other side negatively").

123. Dershowitz, *The Case for Peace*, p. 3; Shikaki, "Willing to Compromise" ("For the first time since the start of the peace process, a majority of Palestinians support a compromise settlement that is acceptable to a majority of Israelis"); Daniel Levy, *New Survey of Israeli Public Opinion*, July 11, 2007, [http://www.prospectsforpeace.com/2007/07/new\\_survey\\_of\\_israeli\\_public\\_o.html](http://www.prospectsforpeace.com/2007/07/new_survey_of_israeli_public_o.html).

124. Shlaim, *The Iron Wall*, pp. 14–15.

125. "Full Text of Netanyahu's Foreign Policy Speech at Bar Ilan," *Haaretz.com*, June 14, 2009, <http://www.haaretz.com/news/full-text-of-netanyahu-s-foreign-policy-speech-at-bar-ilan-1.277922>; Dershowitz, *The Case for Peace*, p. 71.

126. Ben-Meir, *A Framework for Arab-Israeli Peace*, pp. 30–32.

*IMPLEMENTATION AND THEORETICAL IMPLICATIONS*

In implementing the proposed system, a population-based state should by no means come into effect tomorrow — building this structure will require input and negotiation between the conflicting sides as well as commitment from both populations. As applied to Israel and Palestine, implementation would start with a conference of scholars and policymakers on both sides discussing and debating the shape of their interspersed system. Both groups would then begin to publicize these efforts, allowing the populations on both sides to comprehend and react to this plan. Finally, some sort of incremental plan would be put forth, starting with a shared space along a border or in a disputed city such as Jerusalem, and then growing or changing based on the mutual consent of both participating nations.

Instead of laying out the exact solution to be enforced, this proposal only offers a new source of hope and choices, which may reinvigorate negotiation efforts.<sup>127</sup> Any subsequent peace process or negotiation should consider the interspersed nation-state along with other territorial and hybrid structures. Though this paper paints a favorable vision of two states that completely overlap in an interspersed framework, any actual peace plan will be far more complicated. The interspersed nation-state system simply offers an extra tool or a new way of thinking — an idea that can supplement efforts by two conflicting nations to structure their relationship with each other and their relationship with the land.

While the interspersed nation-state system does not aim to have immediate, real effects, its theoretical implications may impact current thought on the modern nation-state. The observation that bilateral extradition and economic cooperation treaties have shifted the locus of sovereignty from territories to populations may herald a new conception of sovereignty for all states. In recent years, a number of political scientists have conducted a significant, yet misguided, debate about the continued sovereignty of the nation-state. Some of these theoreticians argue that, because society is becoming more globalized in movement, power, and interdependence, the nation-state is declining in sovereignty and will eventually fade from importance.<sup>128</sup> Others retort that the nation remains the dominant international force and will be able to reshape its territorial structure around modern conditions.<sup>129</sup>

This debate is misguided because these political scientists are solely evaluating the *territorial* nation-state. While it may be true that international society will become too fluid and interconnected for the territorial state to remain in control, because the state retains sovereignty over its nationals and domestic corporations as they participate in global interactions, this shift in sovereignty will allow the state to remain a distinct and powerful force in the future. Thus, the territorial aspect of the state may fade, but

127. Gottlieb, *Nation Against State*, pp. 51–52 (“The task of statesmanship does involve nurturing that will with a plan that can be acceptable to both sides,” and “[n]ew ideas provide encouragement for negotiations to begin and set the tone once negotiations are underway”).

128. Gottlieb, *Nation Against State*, pp. 6–47; Khan, “The Extinction of Nation-States,” p. 199; Kal Raustiala, “The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law” (describing “more commonplace claims that national borders are being erased, [and] the state is fading in importance”).

129. O’Leary, “What States Can Do with Nations,” pp. 51–55.

the state system will remain a source of self-determination and tailored policies for its nationals and their private organizations.

Though it is in its early stages, the shift in sovereignty identified above is important to recognize now. While most developed countries have one national population that overlaps a contiguous territorial state, recognizing that sovereignty is shifting away from exclusive territories will allow these states to build a more coherent international system. The treaties that allow sovereignty to rest on populations rather than land have so far emerged in an *ad hoc* fashion between pairs of countries. By acknowledging their importance, the community of states may wish to build this system of treaties in a more uniform, integrated manner.

### *CONCLUSION*

The rising number and power of nationalist movements and increasing transnational mobility are trends that undermine territorially-exclusive structures. To address these developing problems, the state must be reconfigured into a more coherent, modern system. The interspersed nation-state aims to provide this framework and serve as a starting point for new ideas and negotiations. While this new structure may not yet exist, its outline is visible in the deficiencies of the territorial state in governing nations that coexist and clash within disputed territories.

The two conclusions drawn in this article are, therefore, that (1) two nation-states can exist over exclusive peoples rather than exclusive lands and thereby share a region while organizing relations among their nationals, and (2) the increasing use of bilateral treaties to retain control of trans-border nationals is shifting the basis of state sovereignty from territory to people.