

greater disorder and that small deviations from the norm can set into motion a cascade of vandalism and criminality.⁶²⁶

Gladwell's concept, Wilson and Kelling's theory, and Zimbardo's hypothesis are commonly understood as justification for proactively protecting urban public space by cracking down on minor, "quality of life" crimes like public urination,⁶²⁷ public drunkenness, and subway turnstile jumping. Putting their scholarship into practice, William J. Bratton, then-Transit Police Chief of New York City explained that this is the same awareness can be marshaled to reverse crime trends.⁶²⁸ Chief Bratton reasoned that the main reason for the historic and rapid decline in crime and disorder in the subways⁶²⁹ and streets⁶³⁰ of New York City in the early 1990s was the decision of the police to focus their efforts on controlling illegal behavior that many regarded as insignificant,⁶³¹ such as fare-beating on the subways,⁶³² panhandling,⁶³³ graffiti,⁶³⁴ squeegeeing,⁶³⁵ breaking windows, and prostitution. The idea was to make the streets less inviting to criminals. The means employed was called "quality of life enforcement."⁶³⁶

In the opinion of this author, the tipping point and related theories are highly relevant to understanding the burgeoning epidemic of illegal building in Jerusalem. Using Zimbardo's metaphor, the widespread, highly visible manifestations of illegal building in the Arab neighborhoods of Jerusalem entices new, larger waves of illegal construction. Reasoning along the lines of Wilson and Kelling, by leaving most of these illegal structures standing, the City is sending the signal that it tolerates illegal building and the illicit profits generated there from.

If one looks at the chart of the number of building violations cited by Municipal inspectors in the Arab neighborhoods (Appendix 6F), the acceleration in illegal construction has unquestionably crossed the tipping point. To be fair, it is impossible to know precisely when, or for what combination of reasons, the tipping point was passed. It is clear, however, that the current situation is completely out of control. What started small has expanded to virtually swallow up entire neighborhoods such as Beit Hanina.

VII. The Long-term Consequences of Illegal Building

If there is no substance to the 'Judaization' charge, discussed above in Section IV, being fully aware of the negative publicity generated by demolitions, why does the Municipality feel obliged to implement this measure? The consequences of unfettered illegal building are extremely grave for the quality of life, the environment, and public safety not only in the City's Arab neighborhoods, but for the entire region. It retards regional economic development and capital accumulation. Thus, for example, demolitions

⁶²⁶ Gladwell Internet Website, p. 7 (visited Jan. 11, 2002) <<http://gladwell.com>>. The key to combating crime is to prevent the kind of decay that allows the development of a criminal culture. Thus, the existence of broken windows acts as a signal to criminals that they can move in. See generally WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998) see William Bratton and William Andrews, *What We've Learned About Policing*, CITY JOURNAL, Spring 1999, p. 25.

⁶²⁷ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).

⁶²⁸ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 137, 141 (2000).

⁶²⁹ See MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 137-39 (2000).

⁶³⁰ Bratton later became Chief of the New York City Police. WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998).

⁶³¹ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 145 (2000).

⁶³² MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 144-45 (2000).

⁶³³ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 141 (2000).

⁶³⁴ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 144 (2000).

⁶³⁵ MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).

⁶³⁶ WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998); MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).

are carried out in order to safeguard green, red, and brown areas, whose function is either to allow for future development or for the construction of public services. As Senior Deputy Mayor Uri Lupolianski pointed out, "we must, for professional planning reasons alone, prevent the City from becoming a jungle."⁶³⁷ It is for these essential reasons that the Municipality is compelled to issue demolition orders. It must also be noted that, due to these very same reasons, numerous other countries have conducted demolitions. It seems, however, that only Jerusalem has become the focus of media and NGO attention. Ironically, by turning demolitions in the Arab neighborhoods of Jerusalem into a *cause célèbre* and hindering the implementation of coherent urban plans, the critics are actually prejudicing the affordability of infrastructure improvements in the future, and even hastening the erosion of the quality of life for the Arab residents.

A. The Effects of Illegal Building Upon Brown, Red, and Green Areas

Much illegal building in the Arab neighborhoods takes place on land not owned by the builder,⁶³⁸ on land classified as 'brown,'⁶³⁹ or 'red,'⁶⁴⁰ on the planning maps, or on land that is designated as agricultural or open land, known as 'green areas.' The economic consequences of illegal construction are, firstly, savings to the individual who breaks the law. The downside that follows is increased costs to the Municipality when it provides the infrastructure and inconvenience to the neighbors and general public that have to live with the consequences. For example, sometimes illegal construction vitiates the possibility of later providing proper infrastructure, as is the case with structures that violate the setback rules regarding their distance from the street. The likely result is that a street may never again be wide enough to accommodate two-way traffic or to have sidewalks that safeguard pedestrians. Another downside of illegal construction is that it breaks up substantial parcels of land that might some day be used to build a school or other public facility that requires a parcel of substantial size. One more variation on illegal building involves putting up metal shacks and other 'temporary' structures, often in clusters, usually on green land or government owned land.⁶⁴¹ Such 'houses' are often later renovated in stages, as they are improved and expanded both horizontally and vertically.⁶⁴²

B. The Hindrance to Capital Development

Unplanned building hinders the chances of achieving sustainable development. The Peruvian economist Hernando De Soto's acclaimed book *The Other Path: The Invisible Revolution in the Third World* decries the fact that illegal squatting prevents the residents of the squatter settlements in Peru's cities, and elsewhere, from leveraging their houses and land. That is, because they do not own their illegally built structures, they cannot borrow money against them to produce more wealth. This disables the engine of capital development that has made Western countries affluent.⁶⁴³ Likewise, by sinking their limited resources into illegal structures, many of which are built on stolen land, increasing numbers of Arab residents forfeit the chance to develop additional assets because it is generally impossible to borrow money against the uncertain worth of illegal units.

⁶³⁷ Interview with Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

⁶³⁸ It may be owned by other private individuals (such as refugees living abroad), by the State, by religious entities or by charities. Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁶³⁹ 'Brown areas' are those designated for public services of all kinds. This includes social services, community centers, schools, public parks, religious buildings, etc. Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁶⁴⁰ Streets, roadbeds, highways, and parking places are designated as 'red areas' on planners' maps.

⁶⁴¹ See e.g. Appendix 3, images 5, 22, and 34.

⁶⁴² Planning Policy, the Jerusalem Municipality Department for Planning Policy, Inter-Ministerial Committee on Illegal Building, Background, Conclusions and Recommendations, pp. 2-4 (2000).

⁶⁴³ See generally HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (2002).

C. Retarded Regional Development

What municipality would tolerate land theft, particularly if it retards regional development? What city would sanction individuals building illegally on land designated for roadbeds, schoolyards, a ring road, or a playground?⁶⁴⁴ What should Jerusalem do if illegal construction crops up on the roadbed of the forthcoming light rail mass transit system?⁶⁴⁵ In Jerusalem what responsible administration would permit violation of the long-standing principle maintaining a green belt around the walls of the Old City?⁶⁴⁶ What planning authority would look the other way when illegal structures are put up on an archaeological site of significance to three of the world's major religions? These examples illustrate just part of what is at stake in Jerusalem.

VIII. The Global Epidemic of Illegal Building and Demolitions

A. The Global Threat Posed by Illegal Building

Urban areas in developing countries are collapsing as a consequence of population explosion. This results in anarchy, as public services are unable to maintain pace with the demands put on them.⁶⁴⁷ The result is that the cities of the developing world become wastelands, which Claude Levi-Strauss described:

Filth, promiscuity, disorder, physical contact; rooms, shacks, excrement, mud; body moistures, animal droppings, urine, purulence, secretions, suppuration - everything that urban life is organized to defend us against, everything that we loathe, everything we protect ourselves against at great cost - all these by-products of cohabitation never here compose a limit of its spread.⁶⁴⁸

Many cities in developing countries are experiencing rapid and uncontrolled growth with millions of their inhabitants living in slums.⁶⁴⁹ It is now common for 30 to 60 percent of an entire city's population to live in houses and neighborhoods that have been developed illegally.⁶⁵⁰ It is very rare for infrastructure and services essential for health and well-being - piped water, sewers, storm drainage, all-weather roads, public transit, electricity, health care - to be furnished by the government to those who build illegally.⁶⁵¹ Illegal settlements are tolerated when the authorities lack the political and organizational will to dismantle them. Others are simply bulldozed.⁶⁵² Housing in squatter settlements is illegal in two senses. First, land is occupied illegally and the site is developed without regard for zoning and subdivision regulations (i.e., the permitted use of the land, permitted density, water supply, drainage, and access roads).⁶⁵³ Second, many individuals and businesses make money out of the development of illegal settlements or the needs of their inhabitants.⁶⁵⁴ For

⁶⁴⁴ According to one City official, demolition will not, by itself, solve the illegal building epidemic. This major criminal enterprise enables its participants to get rich quickly via illicit conduct including forged documents, intimidation, land theft, construction code violations and the like. Demolition, however, can protect essential urban assets like the ring roads and schools. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Mar. 3, 2002).

⁶⁴⁵ Anat Gezrge, *From Jerusalem to Paris in Three Stages*, HA'ARETZ (Hebrew newspaper), Sept. 23, 2001, p. 13.

⁶⁴⁶ Yadin Roman, *Jerusalem's Wall*, available at Internet Website (visited May 27, 2002) <www.eretz.com>

⁶⁴⁷ RICHARD G. HEERDEGEN, *LAND USE AND PLANNING: READINGS IN REGIONAL DEVELOPMENT* 68 (1967).

⁶⁴⁸ Claude Levi-Strauss, *Crowds*, 15 *NEW LEFT REVIEW* 3-6 (1962)

⁶⁴⁹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 7 (1989).

⁶⁵⁰ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 12 (1989).

⁶⁵¹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵² JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵³ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 26 (1989).

⁶⁵⁴ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).