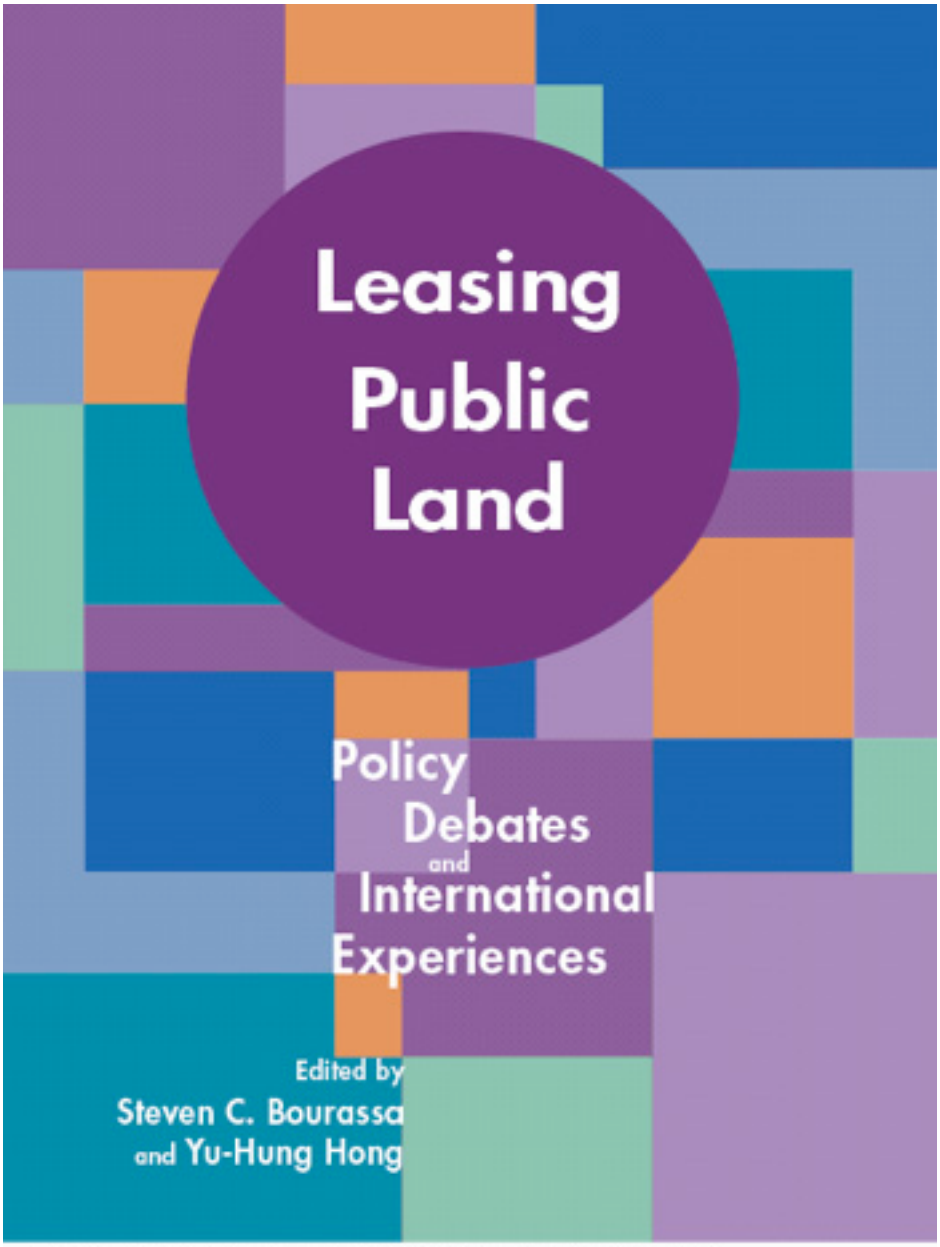

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Rachelle Alterman, Chapter 6: "Land of Leasehodls", pp. 115-149.

The Land of Leaseholds

Israel's Extensive Public Land Ownership in an Era of Privatization

6

Rachelle Alterman

Israel is known to many as The Holy Land. Those interested in land policy may well also call it "Leaseholds Land." Today it is the only democratic, advanced-economy country where state or quasi-state agencies own the vast majority of the land area, and where government leaseholds predominate the land system. An estimated 93 percent of the country's total land area is owned by the state or by quasi-state agencies.[1] (Here and throughout this chapter, *Israel proper* is referred to without the occupied areas of the West Bank and Gaza.) Quantitatively, this percentage of nationally owned land is the largest amount in any nation, outside a few remaining communist countries and city-states such as Singapore and (formerly) Hong Kong. Most formerly communist countries are in the process of privatizing the major part of their publicly owned land (Bonneville 1996; Limonov and Renard 1995; Renard and Acosta 1993; Reiner and Strong 1995). In advanced-economy countries public land usually is allocated for distinctly public purposes. Leasing out public land for private development is the exception not the rule (see for example, Gordon 1997; Kalbro and Mattsson 1995; Needham, Koenders and Kruijt 1993).

This chapter analyzes the Israeli land policy system as it has evolved to its present stage. In view of the breadth of the topic, discussion in this chapter is restricted to *urban* land policy; the currently highly complicated and contentious issues regarding Israel's rural land policy will not be discussed. This chapter's purpose is to view Israel as a unique opportunity to study a land system where public leaseholds are the main form of tenure for the majority of the country's residents. It will be argued that Israel's overwhelmingly large public leasehold system has resulted in special policies tailored to accommodate it to the private market. This has been done incrementally rather than strategi-

[1] In the absence of confirmed data from the Israel Lands Administration, I asked Dr. Nahman Oron, the officer in charge of data there, to verify this widely cited figure. In his April 1996 letter he noted that currently 93.6 percent of Israel's land area is managed by the administration. However, a small area of land still is in dispute and undergoing the legally mandated examination procedure. It is estimated that once the status of such land is resolved the figure will be about 93 percent.

cally, through a process termed *gradual privatization*. This persistent process has gone further than in most other cases covered in this book.

The first section of the chapter presents two introductory sections to provide some background to Israel's demographic, geographic and economic context, and to outline its key urban and regional policies. The second section provides information on Israel's land policy context, to enable the reader to understand the unique circumstances for the evolution of Israel's system of leaseholds. Israel is in many ways an extreme case—what theorists sometimes call an *ideal case*—that holds lessons for other less extreme leasehold systems. The third section is the heart of the chapter. It presents the evolution of the public leasehold system through the prism of property rights. This evolution is viewed as an odyssey along the path of reconciliation between public ownership of land on one hand, and the desire to reduce public intervention in the development market, on the other. The chapter is concluded with the one million dollar question, "What public policy goals are achieved by Israel's public leasehold land system?" This question has many answers, depending on one's ideology and values, so it will be discussed in brief only. It deserves a separate chapter.

Background to Israel and Its Planning Policies

As a background to understanding the reasons for the emergence, change and perseverance of Israel's unique land system, this section looks at several key indicators of Israel's geography and demography, and introduces its key urban and regional policies.

Background Geographic, Demographic and Economic Characteristics

Israel's population in 2001 was 6.4 million, approximately 80 percent Jewish and 20 percent Arab (within Israel proper).[2] At the time of independence in 1948, Israel's Jewish population was approximately 670,000 and the Arab population (that remained in the area after the 1948 war) approximately 160,000 (Israel Central Bureau of Statistics 2001). The rate of growth in over 50 years has been extensive, in the early years through mass immigration, and in later years through a higher natural growth rate than other advanced-economy countries. Israel's population is 92 percent urban (compare with the United States, 74 percent; Canada, 77 percent; Britain 89 percent; Sweden, 84 percent and the Netherlands, 89 percent) (United Nations 1996). Israel's land area is approximately 21,000 square kilometer, meaning that population density is approximately 300 persons per square kilometers. Although this density level is currently not the highest among the advanced-economy countries (the Netherlands and Japan being two of the highest), Israel is expected to overtake most of these countries in the future (for a comparative perspective,

[2] The Golan Heights, a small area in the northeast, has undergone quasi-annexation by Israel from Syria through Israeli domestic legislation, but its international legal status is contentious. In any event, virtually the entire area of the Golan was offered to Syria in 2000 (and possibly earlier) as part of a prospective peace treaty.

see Alterman 2001a.) And since more than 50 percent of Israel's land area is in the inhospitable southern desert, the effective density is much higher. Good land management should therefore be a major national challenge.

Today, Israel is the only country in the West that is ideologically committed to taking in mass immigration (of Jews and family members). Having taken in close to one million former Soviet-block citizens since 1990, Israel has held the western world's record in immigrant intake, proportionate to population size (Alterman 2002). Since 1948 Israel's economy has grown steadily. It began from a level of GDP per person typical of developing countries (not much higher, for example, than Jordan today). By 2001 the GDP per person, despite a deep recession, was up to $17,000, on the lower end of the group of advanced-economy countries. This remarkable economic growth has taken the form of a steep rise in demand for land and built-up space.

To this cocktail of needs and constraints one should add that Israel is the only country represented in this volume which, for most of its history has been at war with its neighbors. Despite the peace treaties with Egypt in 1978 and Jordan in 1994, the 1993 Oslo peace accords with the Palestinians and the pullout from Lebanon in May 2000, hostilities with the Palestinians broke out again in October 2000 and peaceful coexistence has again receded from sight. Issues of security still dominate public policy and probably are the latent underpinning for the perseverance of the large-scale public land ownership system.

This combination of factors—Israel's small geographic size; its demographically growing population; its policy favoring mass immigration; its accelerated economic growth; and its geopolitical and security needs—has encouraged Israeli policymakers to harness urban, regional and land policies in order to achieveme national goals (Alterman 2001a). Like most countries, Israel has marched along the path of decentralization, deregulation and privatization; but its starting point has been different (Shefer 1996; Alterman 2001a; 2001b).

National Urban, Regional and Housing Policies

Before delving into Israel's land policy and the details of the leasehold system, it would be appropriate to provide a brief outline of Israel's key urban, regional and housing policies.

Israeli cities and towns are quite compact and are more typical of cities and towns in Europe than in North America. Most Israelis live in medium or high-density apartment buildings, mostly in condominium tenure. Until the 1980s there was very little construction in urban areas of land-consuming "ground-attached" (Israeli professional jargon for single- or double-family low-rise) housing. This mode of living was reserved for rural and exurban areas. However, since the 1980s consumer demand on the upmarket side has shifted to new construction of ground-attached housing in towns and cities. The 1990s saw the proliferation of land-gobbling shopping malls on the outskirts of urban areas. Yet, the majority of Israelis still live in apartment buildings whose densities and heights have been steeply increasing in recent years. Furthermore, the new ground-attached houses, though viewed by Israelis as low-density, typically are planned at 35 or more to the net hectare (13 to the acre).

This information may be seen as paradoxical: in a small country with a growing economy, a strong natural growth rate and an open-gate policy toward potential immigrants, one would expect a policy of careful stewardship of land reserves. Yet, until the 1990 mass-immigration crisis, the concern with land as a depletable resource was not very strong (Mazor 1993). The reasons for this paradox lie with the nation-building ideology and goals that prevailed during most of Israel's history. These explain the prominence of the ideology of national land ownership, and deserve a closer look.

During Israel's incipient years and still to some extent today, public land ownership was seen as a key instrument for achieving the country's territorial and demographic stabilization (Brutzkus 1988). In the years following the 1948 War of Independence, Israel sought to establish its legitimate standing within its international borders, some of which were (and still are) officially only armistice lines in international law.[3] This geopolitical agenda yielded a strong focus on population distribution as widely as possible to Galilee in the north and the Negev desert in the south. The goal was to create a Jewish presence in most areas of the country (Yiftachel 1992, 95–98). State control of land ownership was one of the major tools that enabled the achievement of population distribution and Jewish presence goals.[4]

Population distribution and territorial presence were viewed as being best achieved by planning many small, rural villages widely dispersed rather than through urban concentrations. This population distribution goal was reinforced by an ideological emphasis on rural development as a utopian form of living, to symbolize the return of the Jewish people to the Holy Land and to agriculture (Cohen 1970). This two-pronged ideology led to the establishment of several hundred cooperative or communal rural settlements, distributed as widely as possible within Israel. Some were established prestate (on land owned by the JNF, see below), others after 1948 and into the 1970s (on both JNF and state land). This massive effort was the focus of considerable attention by planners and received generous land, water and budget allocations.

The prorural policy was, however, at odds with the factual reality. At all times the vast majority of Israel's residents preferred to live in urban areas. To bridge this disparity, some 30 small new towns were planned and established by central government on nationally owned land during the 1950s and 1960s (Alterman and Hill 1986).[5] Retention of most of the country's land area in national ownership was a major instrument that enabled central government

[3] A reminder: this refers to the international law status of the borders of Israel proper, without the areas occupied in the 1967 war.

[4] The population distribution policy has been implemented in many ways, not only through state control of public land and stimulation of construction. The Law for the Encouragement of Capital Investments offers differential loan, writeoff and tax perks to anyone wishing to locate an industry in a peripheral area. Households of young couples, new immigrants or needy families are offered preferred mortgage terms. Employees are offered reduced income tax.

[5] As in many other countries (Alterman and Cars 1991) the housing then was characterized by uniform blocks of apartments designed by government architects with little regard for consumer diversity, and little attention paid to the differing landscapes. A new town in the green hills of the Galilee might be planned at a density similar to a neighborhood in Tel Aviv.

to control the timing, location, size and type of new villages and towns. By contrast, in the older, prestate cities and towns there was not much public land. But since these cities were at the time already built up, this fact was not viewed as meriting intervention, especially since concentrations of public land holdings were usually available on the outskirts of these cities, enabling the government to construct housing for immigrants there.

During Israel's early years, preservation of open spaces was not a prominent part of the politicians' agenda and was *not* one of the reasons the public land ownership system was instituted. The fact that the major national parks were declared in the 1960s and 1970s, on both public and private land, was a feat of conviction of a few leading planners rather than a reflection of the priorities of the politicians (Brutzkus 1988).

Despite the deep-rooted changes in Israeli demographics and geopolitics, the population-distribution doctrine was not challenged until the mass-immigration crisis of the 1990s (Shachar 1993). Leading national-level planners working for the Ministry of Interior in charge of statutory planning and the Ministry of the Environment used the crisis as an opportunity to challenge this "sacred cow," and offered a doctrine more befitting Israel's current objective conditions.

The new doctrine promoted by the statutory planning and environmental agencies and by nongovernment organizations (NGOs) revolves around the new awareness that land and natural resources in densely developed Israel are extremely scarce and vulnerable. This doctrine encourages the preservation of enough open spaces for future generations and the intensification of use and reuse of urban land. Since the late 1990s the planning bodies have been promoting multiuse, higher urban densities and urban redevelopment.

However, at the same time the statutory planning bodies are still called on to approve contentious land-gobbling projects, and they often find it difficult to withstand these pressures. The Ministry of Housing and the Lands Administration have not given up on their traditional development agendas. The construction of the Cross-Israel Highway is proceeding despite extensive criticism (Alexander 1998). During 2002 these powerful agencies, supplemented by the Prime Minister's Office and the Ministry of Finance, spearheaded a cabinet decision to initiate several new towns and scores of new exurban neighborhoods (within Israel proper). These proposals are propelled by the same mixture of geopolitical and security goals that have always been behind Israel's population distribution policies. But today these goals have new partners—the growing number of Israeli households who seek the lifestyle offered by lower-density communities. These proposals must receive the approval of the statutory planning bodies, where the environmental agencies and NGOs have a voice. The debate promises to be intensive.

A few words about housing policy. Until the mid-1970s the overwhelming majority of housing starts were classified as public: some 80 percent of the annual housing starts in the 1950s and 60 percent in the 1970s. During that period some housing was constructed by the Ministry of Housing with public funds, but gradually, public housing has come to mean housing planned by the Ministry of Housing but financed and constructed by private developers.

In Israel this second type of housing is called public-program housing; Europeans might call it social housing. (For a comparison with The Netherlands, see Needham and Verhage 1998.) The share of social housing subsequently declined sharply during the 1970s, and by the late 1980s was only 17 percent of the annual housing starts (Israel Central Bureau of Statistics 1988). The share of public rental housing is very small and declining further due to a policy of encouraging long-term residents to "buy" (i.e., long-term lease) their unit.

In the early 1990s when mass-immigration from the former Soviet Union commenced unexpectedly, state-built housing was resumed. Yet, from the time the crisis ebbed out, the share of public housing has gradually been returning to precrisis levels and is once again concentrated in the peripheral areas. Since private home ownership (or long-term leasing) has always been the consumer preference and public policy has actively encouraged this trend, more than 70 percent of Israeli households own a long-term lease for their housing unit (usually in condominium tenure).

The Origins and Legal Basis for Israel's Public Land Ownership

In order to understand the evolution of Israel's public leasehold system, it would be useful to survey its origins and its key legal attributes.

The Origins of National Land Ownership

The sources of national land reflect Israel's special history and raison d'etre. Israel's public land should by no means be viewed as a land bank, as understood in other countries, because the essence of a bank is that there is a turnover of land holdings. In contrast, under the Israeli system the total stock has remained almost static for decades. This fact arises from the special manner in which Israel's public land holdings emerged.

For the purpose of this chapter, a detailed historical account about how Israel's mammoth presence of public land emerged is unnecessary. This issue will be left to historians and political geographers (and, of course, to politicians) who will undoubtedly continue to discuss it for many years to come. It will suffice to say that there were three main routes whereby the state and quasi-state land holdings came about. These parallel the three types of national landowners who constitute national land, as defined in Clause 1 of the Basic Law: Israel Lands (of 1960). It defines "Israel Lands" as owned by one of three agencies: the State of Israel, the Jewish National Fund (JNF) or the Development Authority. Henceforth these three categories together will be called *national land*.

The JNF is not a state agency. It is a nonprofit worldwide organization of the Jewish people, established at the end of the nineteenth century as part of the Zionist Movement, and registered in London. Its major goal was to purchase land from local landowners to prepare the ground for a hoped-for Jewish State in the region then called Palestine. Until the early 1960s the JNF managed its own land holdings, its own leasehold contracts and levied the rent on them.

In 1960 it signed a treaty with the State of Israel as part of a package of legal arrangements whereby the JNF agreed to place its land holdings, without transferring title, under the administration of a state agency to be established for that purpose. The treaty and the concomitant set of legislation stipulated that the JNF would have equal representation in the joint statutory decision-making bodies, and that the proceeds from transactions carried out on JNF land would accrue to it after deduction of the costs of management.

The 1960 Israel Lands Administration Law establishes the statutory agencies that would manage Israel Lands. It states that all three categories of national land are to be administered by the Israel Lands Council (the policy-making body) and the Israel Lands Administration (the managing body). The JNF appoints half (less one) of the members of the Council, while the government appoints the other half (plus one).

Three types of landowners represent the historic sources of national land, and will be discussed in their historic order: JNF land, state land and Development Authority land.

The first source of public land holdings was the purchases made by the JNF, which today owns some 13 percent of the total of nationally owned land. The JNF saw itself as a land trust for Jewish settlement and development in the Holy Land, and to maintain as much land as possible in "Jewish hands." The Fund began purchasing land from local Arab landowners at the beginning of the twentieth century. With the establishment of Israel in 1948 and the changed geopolitical situation in the Middle East, the Fund's land purchases have almost ceased.[6] Arab landowners were no longer willing to sell land to Jewish government or quasi-government institutions.

Because the JNF, in prestate times, had focused its efforts on buying arable and vacant land suitable for building housing, most of its land holdings are now located in relatively attractive areas that carry a considerably higher value than its proportionate share of the total public land holdings. The JNF thus receives hefty annual proceeds from rent payments and other fees on its land. The JNF uses these funds for two major purposes: first, to undertake certain types of public works not routinely funded by government, such as regional water reservoirs,[7] rock clearing and soil erosion and conservation works; second, to steward open spaces through large-scale afforestation, development of parks and installation of open space recreation facilities for the general public. Today the JNF can be counted among the "green" agencies on most issues.

[6] The Fund, through a subsidiary called *Himanutah*, still occasionally carries out small-scale, pinpointed land purchases from private landowners, for the usual Jewish-Arab demographic reasons.

[7] The JNF, as an agency of the Jewish People rather than the Israeli Government, sees its role as promoting Jewish towns and villages in Israel, especially in areas such as the Galilee, where there is demographic competition over which sector—Jewish or Arab—will become the majority in the area. Some view this as a defense issue, citing the danger of secession from Israel if an Arab majority is achieved. Others view this as phobia and criticize the JNF for being a quasi-government body that carries out a distinctly discriminatory policy. However, the investments in forests, parks and waterworks is to benefit the general public and is equally accessible to all. I predict that at some point in the near future, the High Court of Justice will rule that the JNF is, in many ways, a quasi-government body and cannot continue its policy of investing only, or mostly, in the Jewish sector and ignoring the Arab sector.

The second source of public land goes back to land registered under the British Mandate over Palestine, the rulers of the region until 1948. These large holdings were transferred to the State of Israel upon its establishment. This category of land constitutes about 75 percent of all total Israel Lands. Because the British Mandate government could not be choosy in its land holdings (it, too, inherited much of it from the Turkish-empire regime), state-owned land represents a broad range of types in terms both of geographic location and development potential. So, while the state owns extensive tracts of land within and near cities, towns and agricultural villages, it also owns the entire uninhabitable desert area in the south of Israel, which constitutes about 50 percent of the country's total area.

By now, most state land reserves within cities and towns are exhausted, having been used for the construction of housing, industry and public facilities. Beginning in the 1950s state-owned land, at times supplemented by JNF and Development Authority land, was used to house hundreds of thousands of immigrants. It was also a major instrument for implementing the population-distribution policy by enabling the construction of cooperative and communal villages in outlying areas.[8] Most of Israel's 30-odd new towns were built on state-owned land. Today, most remaining land reserves in national ownership are classified as agricultural and are attached to cooperative or communal villages. Private undeveloped land is even scarcer than national land, so most land available for future development is likely to be in state ownership.

The third source of national land pertains to the remaining 12 percent, the most politically sensitive type of national land. A statutory body established in 1950, the Development Authority, received its holdings from the Custodian of Absentee Property. This is a government officer charged with registering the land owned (mostly) by Arab residents who left or were expelled from their place of residence during the 1948–1949 war. Most of these land holdings have been leased or sold, but continue to be listed in the Registry of the Custodian of Absentee Property.

Not a Land Bank: The Static Nature of the Public Land Holdings

The total amount of public land holdings in Israel has been almost static over time since 1948, when the state was established; this arises from three factors. First, as will be explained later, there are strong legal and ideological constraints to the transfer of title to national land into private hands. Very little land leaves the pool. Second, most sources of national land refer back to a particular historic context that no longer exists, so there are few opportunities for new sources of public land.[9] New land acquisitions by the state or quasi-national

[8] These were established by the state in collaboration with quasi-state agencies: the JNF and the Jewish Agency.

[9] The last major increments to national land holdings occurred in the 1960s as part of the last major expropriations of land owned by Arab villagers for the purpose of constructing new (Jewish) towns (Yiftachel 1992). Such action encountered increasing criticism and sharply declined in subsequent years. Authorities are now more careful, that where needed for projects like the current Cross-Israel Highway, expropriations be done equally from both Jewish landowners (or long-term leaseholders) and Arab landowners.

agencies (as distinguished from municipal acquisitions; see below) do occur on occasion, for example, where there are pockets of private land within an area designated for a public facility, such as an airport or major road, or for a new state-initiated new town or village. But this is done only on an as-needed, small-scale basis, and is not part of a land banking policy.[10] Third, municipal land acquisitions, while common on the local level for the purpose of supplying neighborhood and urban public services, are not a significant quantitative addition to the total public land holdings.

The Weak Role of Municipalities and Municipal Land

Unlike most countries represented in this book, the vast majority of public land in Israel is owned or managed directly by the state, and not by municipal or regional agencies. (For a comparison with The Netherlands, see Needham and Verhage 1998.) Municipalities in Israel are legally and financially quite weak (Alterman 2001b). The Basic Law: Israel Lands does not even include municipally owned land under the definition of "Israel Lands" (Weisman 1993: 231–232).[11] Israeli municipalities have never practiced land banking to any significant degree (Alterman 1990; Alexander, Alterman and Law Yone 1983). The municipalities do have some land holdings, but these vary from almost none, as typical of "development towns," to around 10 percent in older cities (Alterman 1997).

As in most U.S. cities, the major sources of municipal land in Israel are dedications or expropriations for roads and public buildings, carried out incrementally as necessary for each new development approved (Alterman 1988a; 1988b; 1990). Land designated for public services may fall on nationally owned land or on private land, depending on the land use plan's designations. The Planning and Building Law ostensibly expects planning bodies to be "ownership blind." Often, the land necessary for local public infrastructure and services is owned by the state. In the past, the Lands Administration used to transfer title to the municipalities voluntarily. For legal and administrative reasons this practice has been phased out since the 1980s. The Lands Administration increasingly has been acting as a private landowner. It prefers that the municipalities exercise their legal powers and exact the land through compulsory dedication under the same legal conditions that apply to private property,

[10] The chronologically last source of national land—expropriation by national agencies—is, happily, no longer practiced on a significant scale, having ceased in the 1970s in response to political protest by the Arab sector (Yiftachel 1992). The current controversy concerns the expropriations planned for the new Cross-Israel Highway. Public protest is so strong that I estimate the Lands Administration will not succeed in most cases, except if barter is offered, exchange the land for state-owned land elsewhere.

[11] Weisman (1993, 231–232) notes past distinction between national and municipal land was somewhat foggy. It is uncertain the fog is entirely cleared. The question would arise when a local authority wanted to expropriate land for public services from the Lands Administration. This may seem curious to non-Israelis but is indeed the widespread procedure. Local authorities in Israel do routinely *expropriate* land for public services from the national Lands Administration—it does not just *give* the land over to local authorities. Legally and administratively, this makes excellent sense in the Israeli land and legal system (see Alterman 1990).

or through negotiated exactions (Alterman 1988b; 1990).[12] In these cases, there would be a reduction in the stock of nationally owned land, through its transfer to the municipality. Only where the land taken for roads or public services was privately owned would there be a net addition to the public land pool (in state or municipal ownership, depending on the type of land use). Although very important at the local scale, at the national scale such land transfers are quantitatively negligible.

The Unlimited Range of Uses Located on National Land

A unique characteristic of Israeli public land is the literally unlimited range of land uses that are located on it. About 70 percent of Israel's households live on nationally owned land, and a good portion of its industrial production is undertaken on such land. And of course, the majority of public services and utilities (airports, power plants, universities, hospitals, cemeteries) are located on Israel Lands. It is the capacity of the leasehold system to adapt to the country's changing economic and social conditions that has made it possible to undertake all these activities on public land.

Another striking difference makes the Israeli land-policy system unique: in most countries (even during the lifetime of the Soviet regimes[13]), there is, in general, more publicly owned land in urban regions than in the agricultural sector. In Israel the picture is reversed: the majority of agricultural land is in national ownership. About 83 percent of all agricultural production is conducted on nationally owned land. Indeed, of the 7 percent of private land, most is found in urbanized areas. Due to strong conversion pressures, most agricultural land in private ownership has already been converted, and the balance is fast disappearing.

The Legal Prohibition to Privatizing National Land

In the past, Israel's national land holdings were strongly bolstered by ideology. Today, the ideological basis is receding, and the near-monopoly of the Israel Lands Administration no longer is immune from challenge (Alterman 1997). At the same time, the support for continuing the national ownership of most of the land has by no means dissipated. In other countries, this issue, with its extensive economic and social repercussions, would likely have become a key item on the national party political platforms and would have enticed electoral interest. However, in Israel's special political climate, issues of security, the controversy over the occupied areas and conflicts between the religiously non-Orthodox majority and the Orthodox minority usually occupy the public agenda. Thus, no major political party has as yet placed land policy issues in a prominent place on its political platform and there is little public interest

[12] The common legal opinion—and practice—is that local authorities are fully authorized to expropriate state-owned land under the same conditions as private property. Recently, some legal experts have cast doubt on this approach, but the High Court has not had the opportunity to rule on this topic.

[13] In the countries of Eastern Europe (e.g., Poland, Yugoslavia and, to a lesser extent, Hungary), in Soviet times, some types of land remained in private ownership. These were first and foremost located in the rural sector.

to debate this issue (except lately regarding the rights of farmers in cases of conversion to urban use).

The commitment to maintain the existing national land holdings is enshrined in a basic (constitutional) law—the 1960 Basic Law: Israel Lands. In strict legal terms, the fact that we are dealing with a basic law rather than a regular law means little because this particular basic law has no special procedure for amending or repealing it.[14] But, significantly, the Knesset elected to set the country's key land policy in a law titled "basic." It says that the legislators of the time viewed national land ownership and its protection as one of the basic tenets of the State of Israel. However, that intention has very little legal import today, and has declined ideologically as well. Yet, despite the major changes made in land policy, the Basic Law has, to date, never been amended, not even slightly. These changes have been made by means of hundreds of incremental regulative decisions made by the Lands Council. These have not, or not yet, infringed directly on the principles set out by the Basic Law.

The Basic Law has only three clauses: the first two are discussed here, and the last in the section on property rights. The first clause defines the three categories of "Israel Lands" (see above), and states that the "[o]wnership [of Israel Lands] will not be transferred through sale or any other way."

The second clause indicates that the above principle will not apply to particular types of real property or transactions that have been explicitly excluded by law. Here, *law* means any Knesset legislation, not necessarily a basic law. (Subsidiary legislation, however, does not qualify.) If another law explicitly permits, transfer of full title could be allowed. Otherwise, transfer of rights in land would be allowed through a mechanism short of transfer of title, for example, through long-term leaseholds or short-term rental.

The 1960 Israel Lands Law, legislated as a package together with the Basic Law, sets the main exceptions to the transfer-prohibition clause in the Basic Law. This law specifies a finite set of situations whereby it allows the transfer of title. The majority of these situations refer to highly specific, small-scale situations, for example, where national land is exchanged with nonnational land in order to complete a plot of land, or where a swap occurs between the state and the JNF in order to solve a specific problem.[15] The only general allowance for the outright sale of land is the enigmatic clause that allows the transfer of title of up to 10,000 hectares (approximately 25,000 acres) of *urban* land. The law does not specify any use limitations or any additional conditions. The ceiling is cumulative, not annual, and that number has not been amended since

[14] The concept of using basic laws was proposed in the 1950s, when it became clear to politicians and legal scholars that the Knesset was not likely to muster a majority in the foreseeable future, for legislating a full-scale constitution. They proposed a modular compromise—to incrementally legislate those constitutional elements for which a majority can be mustered from time to time. Each element was to be included in a special law, titled "Basic Law." Only in subsequent years did the Knesset develop more sophisticated tools to assure that basic laws will have a special status.

[15] The latter sometimes is used by the Lands Administration to solve site-specific problems where Arab-Israeli citizens wish to live or lease commercial-industrial property located on JNF land.

originally enacted. According to official Lands Administration figures, the cap is still far from being exhausted.[16]

The Israel Lands Law applies equally to all Israel Lands. But during negotiations with the State of Israel about the joint management of all national land, the JNF had set up an additional set of restrictions on the transfer of its own land. By means of a *treaty* signed in 1960 between the State of Israel and the JNF, the latter prohibits any transfer of title to its land (except against swaps of land where necessary). The treaty requires that title to JNF land may never be transferred through sale, inheritance, gift or the like. That means that the 10,000 hectares of urban land, which the Israel Lands Law allows to be sold, would in fact apply to state and Development Authority land only.

Viewing itself as a custodian of land for the Jewish people, the JNF incorporated into the treaty with the State of Israel a further and highly controversial condition. The Israel Lands Administration would be allowed to *lease* JNF land to Jewish people only, whether to those living in Israel or residing abroad.

The set of laws about Israel Lands thus makes it clear that the majority of land in Israel, once released for development or use, must be governed through a legal tool short of ownership and transfer of title. It is here that Israel's extensive public leasehold system comes into view. For decades, it has been used as the primary contractual tool regarding national land in the urban sector. While long-term leaseholds were the intended mode in the rural sector as well, this did not materialize. Most of that sector is in fact governed by three-year automatically renewable contracts.[17] Nonetheless, almost everyone in Israel and outside (for example, most literature on Israel's land system) speaks of rural land—erroneously—as if it is governed by long-term leases for 49 years.

Leaseholds and Land Use Law

How do land use planning controls apply to all this public land? The answer can be found in the l965 Planning and Building Law, which replaced the 1936

[16] However, the Lands Administration has never clarified which types of title transfers it regards as falling within this clause (Weisman 1993). This fog may have emerged because, in the initial years, it was unclear whether the transfer of title to local authorities when land is dedicated for public services—probably the single largest category of transfers—should be counted against this ceiling. Current prevailing legal opinion is that it should be, but I have seen no figures that report on these and other types of transfers. The Israel Lands Council has not developed a general set of policies regarding the application of this clause to outright sale, rather using this clause to solve special problems ad hoc. The amount of land sold outright is likely quite small.

[17] This situation arose not by design but by default, for technical reasons pertaining to a backlog in cadastre preparation and land registration, and a syndrome of procrastinating that typified all agencies involved, including the residents. Until recent years this legal situation bothered no one, since the agricultural sector on public land (the cooperative and communal villages) was characterized by very stable social-economic organization and a high degree of tenure certainty despite the "funny" contracts. However, with the decline of agriculture as an economic base, and a chronic socioideological crisis that beset the communal mode of living, pressure to allow urban development in some of the rural land has intensified in recent years, especially since the mass-immigration crisis of the early 1990s. The legal status of occupants of rural public land became a hot economic and political issue. In recent years residents of the cooperative and communal villages have been promoting the gradual replacement of the three-year perpetually renewable contracts with long-term leasehold.

Town Planning Ordinance, enacted by British Mandate over Palestine.[18] Until 1965 planning controls did not apply to government-initiated development, such as by the Ministry of Housing or the Public Works Department. The Planning and Building Law abolished the distinction between private and public developers. All government developers—national or local—must abide by planning regulations and procedures, just like private developers, and no concessions are allowed (except for defense-related development, which is governed by a special procedure). The relationship between the particular attributes of the Israeli leasehold contracts and planning controls will be one of the issues discussed later in this chapter.

The Legal Status of Private Land and Its Influence on Public Leaseholds

Ironically, despite the quantitative dominance of national land and the fact that the private land sector is only about 7 percent, Israel is today very much a country where the ethos of private property dominates both legally and politically. I argue that the concept of private land ownership has become so dominant it has gradually encroached into the very idea of public land ownership. Israel thus presents an interesting, probably unique, hybrid that enshrines public ownership on the one hand, but at the same time places private land ownership on a legal and economic pedestal.

The above statement—which may seem counterintuitive to most readers—is very much the reality of Israel's land market, land law and land policy. To justify this ostensible anomaly, let us discuss the conclusion that the weight of private land ownership is many times its quantitative weight. There are six reasons:

1. The small percentage of freehold land has de facto always played a much more significant role than its numeric size implies, because it happens to be located in areas where development pressures are high, either economically or demographically. These include core areas in the older, prestate cities that today are economic centers; and towns along the high-growth coastline that originally were private-sector Jewish agricultural villages where each household-owned title to its land (a tenure rare in Israel). Conversion to urban development occurred in these areas much sooner than to publicly owned farmland, and most of these areas are now cities undergoing further land use intensification. Private land also is concentrated in Arab villages and towns where most land is privately owned and where development pressures are high due to a very high natural growth rate.

2. Most real property taxes apply equally to private land and to long-term leased land, as shall be explained later in detail.

3. A 1992 constitutional law provides an extremely high degree of protection to property rights. The Basic Law: Human Honor and Freedom constitutionally enshrines property owners' right to have authorities refrain as much

[18] Laws of the State of Israel, 1965. (Official translations were available in English until the early 1980s only, and thus did not cover many later amendments.) For a detailed description of the law and the planning bodies, see Alterman (2000).

as possible from incursion into a person's property rights. The trend in court decisions in recent years is to further bolster these rights. This trend spills over into the interpretation of public leasehold tenure rights.[19]

4. The share of publicly initiated development has greatly declined over the years and most development on public land is currently carried out through the private sector and with private financing. As will be shown, incremental trends in the leasehold system have paralled these changes. Public financing today is offered only for "classic" public services, i.e., roads and schools, and for a small part of the housing sector only. However, in outlying areas the range of publicly financed development is considerably broader.

5. The public has voted with its cash in favor of private property rights. Some 70 percent of Israeli households own or hold a long-term lease on their housing units. This is very high in international comparative terms. Public policy has consistently encouraged home (mostly condominium) ownership and most families expect to have the opportunity to own (or lease long-term) their housing unit (Alterman 2002). Real property—mostly as long-term leaseholds—is the highest-value asset held by the vast majority of households and by many commercial establishments.

6. Most important for un derstanding public leaseholds in Israel, the marketplace in urban land hardly distinguishes in price between similar properties located on private or public land. As we shall see, the Lands Administration has gradually eliminated most restrictions within the leasehold contracts, thus making them almost tantamount to private land ownership.

Israel's Public Leasehold System Viewed Through the Prism of Property Rights

The stage is now set for analyzing the leasehold system in Israel, which will be presented along the 10 dimensions shown in Table 1. Each dimension pertains to a particular property right—a "stick" in the "bundle" of property rights that compose freehold ownership. The prism of property rights will be used to present the Israeli public leasehold system. Regarding each type of property right, I will ask: to what extent do the terms of the lease limit this right? The argument will be that in view of the special characteristics of the Israeli land policy system, a process of quasi-privatization has occurred, which over the decades has gradually closed most of the property rights gaps between leasehold and freehold.

Understanding Israel's leasehold system is a bit like composing a picture from a puzzle that contains many rather strange, counterintuitive subelements. This puzzle-picture is composed of the 10 property rights dimensions. To under-

[19] For example, the demands of the current property rights movement in the U.S. are pale as compared with Israel's current law on compensation rights for what Americans call *takings*.

TABLE 1

Israeli Long-Term Leasehold System and Property Rights

1. Applicability to land and/or fixtures: Does the lease enable the separation of ground from fixtures?
2. Period: What is the term of the leasehold?
3. Renewal: Are there extension or renewal rights?
4. Value: How is the value of the lease calculated (original and extended)?
5. Use rights: Are there restrictions on use? What linkage is there with regulatory land use planning?
6. Development rights: The rights and conditions regarding future development
7. Transfer rights: Are there restrictions on transfer (sale, inheritance)?
8. Market rights: Who benefits from the rise in property value upon transfer? May the land be mortgaged?
9. The right to control the timing of development
10. Tax obligations: Who is responsible for the various property based taxes (e.g., betterment, added-increment, property)

stand the operation of the leasehold system, the reader might wait until all elements of the puzzle (all 10 components in Table 1) have been presented.

Applicability to Land and/or Fixtures

The third clause of the Basic Law: Israel Lands defines *lands* as including all buildings and other fixtures permanently attached to the land. Israeli property law does not enable separation of the ground from the fixtures in property transactions or title registration. This means that the state, the JNF and the Development Authority who own the title to the land will also own whatever anyone builds on it, regardless of who has constructed it and with what capital.

The majority of Israeli citizens, including many planners, do not realize the legal and economic meaning of this clause. In theory, this clause means that if the leasehold is ever terminated the lessee will lose all property rights, not only to the land but also to the fixtures (land, plantings), but will be compensated. To the shocked reader, I hasten to say that this is not likely to occur. The manner in which the Israeli leasehold system has developed reflects to a significant extent the decision makers' desire to prevent the reversion of property rights, along with the fixtures, to the public landowner. But while providing a high (though not absolute) degree of security to leaseholders in the urban areas, the decision makers have at the same time forfeited the opportunity to use the leasehold system as a potential lever to guide or control land use, redevelopment, social balance or other public planning goals.

I will note that in the rural areas, quasi-privatization has not occurred to any parallel degree. Leaseholder security in the rural sector is today much lower than in the urban areas. A High Court of Justice decision delivered in August 2002 ruled that whenever conversion of public agricultural use is sought (usually because it is no longer economically viable), the lease will revert to the Lands Administration and the farmers will receive compensation for their

investments in farming improvements only. They will remain with leasehold rights to the residential house plot only.[20]

The Period of Life of the Lease

In the 1969 Real Property Law, leasehold is defined in Clause 3 simply as rental for more than five years, while long-term leasehold (literally, in Hebrew, *leasehold for generations*) is defined as leasehold for more than 25 years. However, very few leases around the country are drawn out for only 25 years because the dominant lessor, the Israel Lands Administration, uses 49 years as its basic term. The JNF has been using this term since the 1920s, when it started leasing out the land holdings it had purchased. The period of 49 years was initially chosen by the JNF as a symbolic "citation" (to use postmodern language) of the Biblical Jubilee period of 50 years. After that period, says the Bible, land is to revert to its original owners.

If there was any symbolism in this jubilee-like period, it has evaporated away. Some leaseholds—signed before the late 1970s and not yet altered—may still carry the 49-year term, but incremental policy changes regarding renewal of the lease (discussed below) have, in more recent leases, led to longer time periods, usually as multiples of the 49-year basic term. This trend applies to urban residential leases—the majority of the leases. (Nonresidential leases may still carry only one term of 49 years.)

Today, leases are regularly drawn out for two periods of 49 years (98 years). Furthermore, in 1999 the Israel Lands Council authorized the administration to sign new leases for *two* automatically renewable terms of 98 years (196 years). Two centuries are a long time anywhere in the world, and especially in the turbulent Middle East. Legal scholars might debate the question of whether a lease for that length of time no longer qualifies as leasehold, because it may be tantamount to freehold ownership.[21]

Under most systems of leaseholds, the marketplace assigns differing values to properties under leasehold, depending on how long the lease must "run" before it expires. One of the most interesting aspects of the Israeli leasehold system is that the marketplace has never been sensitive to the duration of time before the lease runs out. A lease may have only a few years remaining, yet the potential buyers will rarely ask about that, nor are they likely to negotiate the price accordingly. Even Israeli lawyers tend to be oblivious to this question. Some may be caught off guard if asked to handle a leasehold contract with

[20] H.C.J. 244/2000 Amutat Siah Hadash *(The Association for a New Discourse; RA) v The Minsiter of National Infrastructure, the Israel Lands Adminstration et al.)*. Available in Hebrew at *www.court.gov.il*

[21] Such a debate already has occurred in the mid-1980s between two leading legal scholars in Israel, in connection with the recommendations of the Goldenberg Committee (one of many public committees charged with reviewing the national land policy) to extend the leaseholds to 999 years. Amnon Goldenberg, a leading private-sector lawyer, thought this would still be legally considered leasehold and would not negate the Basic Law: Israel Lands. Professor Joshua Weisman, a leading property law scholar, disagreed. Since the committee finally did not propose the 999-year recommendation, this question has not yet been tested in court. The committee's proposal of 98 years was not adopted until a dozen years later.

a lessor other than the Israel Lands Administration. Being so engulfed by the special leasehold terms of the Israel Lands Administration, some Israelis have been known to mistakenly extrapolate their disregard for leasehold life to real estate transactions abroad, sometimes with perilous results….[22]

Expiration of the Lease and Renewal Rights

What happens upon the expiration of the lease? Does the lessee have renewal rights and if so, under what financial terms? If the lease is indeed terminated, what will happen to the value of the buildings, etc., and other improvements to it, provided they were paid for or built by the lessee? In the past this issue could have been regarded as the soft belly of the Israeli public leaseholds in the urban sector, but a satisfactory policy was developed in time to avoid a crisis.

The first prestate leases with the JNF dating from the 1920s started to expire in the 1970s. Some older leases had no reference to what would happen upon expiration. They were silent about renewal rights, or stated only that renewal would be according to the policy of the lessor at the time (see Weisman 1993, 253). In British-Mandate Palestine of the 1920s and 1930s, the 49-year horizon must have looked very far off. More surprising is the fact that the Lands Administration failed to develop a coherent policy in advance of the first waves of expirations. Lore has it that as the first few dozens of residential leaseholds expired in the 1970s (in one of the suburbs of Haifa), the administrator in charge simply sent a notice to the residents in accordance with the dry language of the lease.[23] According to those leases, upon expiration, the lessee would be obliged to vacate the premises. The lessee would then be entitled to receive from the Lands Administration the value of the fixtures (buildings, trees) that had been added to the land. The notice generously allowed the leaseholders to extend the lease for another period, but only if they paid the full reassessment value of the property for the new period. Given the high real estate prices in Israel relative to average income, the residents were understandably dismayed, and raised their voices.

Although the issue of leasehold termination never made large national headlines (probably because the Israeli news agenda is perpetually occupied with other issues), one can assume the elected politicians realized the danger of leaving the problem unresolved. They probably knew well how to extrapolate the initial small scale problem to the time when a larger number of leases would expire. With time, most Israeli households would encounter this problem. What politician would allow their voters to be required to vacate their homes? What Israeli courts, traditionally very reluctant to vacate residents, would implement this requirement on a large scale? Alternatively, what household could afford to pay tens or even hundreds of thousands of dollars to renew their lease? It

[22] I can recount many stories of how Israeli developers, and even their lawyers, misread a rare tender put out by some *private* property holder in Israel, asking for proposals to build on the property while getting a leasehold contract for part of the property in exchange. They would not regard the life of the leasehold as of much relevance, and assume that it would in effect be almost for perpetuity.

[23] This story was recounted to me in the 1980s by the late Mr. Ben Shemesh, former director general of the JNF and subsequently chair of the Urban Committee of the Israel Lands Council.

cannot be imagined how the expiration of residential public leaseholds in Israel could be implemented. I would hazard the guess that few people in Israel have ever actually paid the full sum required under a public residential lease for extending their leasehold contract.

In an attempt to deal with the problem, the Lands Council in 1976 and subsequently in 1986, developed rules regarding expiration and renewal rights that still stand today. The principle is that the lessee does have the *right* to extend the lease for another term without any up-front payment (see below), and for only one-fifth the annual rent payments charged for initial leases (1 percent instead of 5 percent per year for the entire term) (Weisman 1993, 255). Thus, even though the leases may still say that extension will be governed by the policy of the lessor at the time of expiration, the need for payment upon extension will effectively be waived. Furthermore, in its 1999 decision about the double 98-year leasehold periods, the Council went on to say that when the lease expires (in the twenty-second century!), the total extension payment of rent for the extended period would not exceed 5 percent of the value of the property at that time. These decisions have in effect abolished the extension payment requirement. Today, when a lessee comes into the Lands Administration offices to inquire about one of the frequent bonus offers to those who upgrade an existing lease (see below), the lessee will be offered a new lease where the automatic renewal rights will be explicitly stated.

Calculating the Value of the Lease—the Land Rent Charges

To understand the manner in which the value of the lease is calculated, one should understand the manner in which national land comes into the development pool.

The manner in which land is released for development

The Lands Administration regularly releases land from its stock to meet the country's development needs. The land released usually is vacant land or land converted from agricultural use. Commercial developers who win Lands Administration tenders usually "sell" (i.e., long-term lease) the built-up property to the consumers. They try to do so as early as possible in the development process to retrieve their investment in the land (as the market will permit). Transfer to the consumer means that the consumer will sign a long-term lease directly with the Lands Administration.

Until the 1970s the system of price setting by the administration was based on artificial chart prices. These were set by government appraisers for each land use type, and included several levels and types of subsidies and many categories of privileged institutions and groups. Because these prices were not updated periodically, they were usually significantly below market price. This system has been phased out almost entirely (except for a small set of public services). Today, subsidies are set mainly to encourage development in periphery regions, and are made transparent and publicly known. However, a proposal to abolish these subsidies will be placed before the Lands Council by the end of 2002 (*Haaretz* 2002) The current categories of land prices are:

- 100 percent—full market price of the lease. Applicable in the coastal and central regions of the country (where most building starts occur).
- 50 percent of market price in the nondistant peripheries (Lower and Middle Galilee regions in the north, and the Northern Negev region in the south).
- 33 percent of market price in the more distant peripheral areas (Northern and Easter Galilee, the Israeli part of the Jordan Valley, and the Negev Desert).
- Zero charge for the lease in border areas with active hostilities (according to changing security conditions).[24]

Developers are also required to pay fees for infrastructure and, in some cases, schools. In the regions of preference—border or periphery—these fees may be partially subsidized, depending on national/regional development policies in force.

During the mass-immigration crisis in the early 1990s, when Israel was required to take in hundreds of thousands of penniless immigrants from the USSR and post-USSR states, additional subsidies for land and infrastructure costs—which at that time applied even in the country's central regions—were successfully used as a lever to stimulate housing starts (for a more detailed account of how these policies worked, see Alterman 2002).

Since the late 1970s, the major system of price setting gradually came to be based on public tenders. The administration's appraisers usually set a minimum price level for the tender and competitors must make a bid beyond that level. During times of recession, such as since 1997, some tenders do not engender any contenders. If convinced that there is market demand, the administration may then adjust the minimum price and try again.[25]

The alternative system, the lottery system, has not been used in Israel on a large scale but, rather, for very special types of programs. These usually are motivated by a policy of achieving below market prices. When the lottery system is used, the government land appraiser sets the prices. If the prices are indeed below market, there will presumably be more people registered so that allocation can be done by lottery. This system has been used in "development towns" (usually in the country's peripheries) as a means for retaining, or luring, households with above-average incomes. In a popular program called "Build Your Own Home," a limited number of plots of land are offered for single- or double-attached family homes (a scarce commodity in Israel). The households themselves enter the lottery and then act as their own developers. This system has been used in scores of edge towns and has provided their current or future residents with opportunities for upwards mobility and real property equity.

[24] Over the last two decades the border with Lebanon was the main conflict zone, but since the October 2000 hostilities with the Palestinian Authority began, other areas may enter this classification.

[25] The minimum-price policy is a point of continuous contention between the Developer's Union and the administration. The administration's rationale is to eliminate any opportunity for illegal price-setting by developers.

Another type of lottery-based program has been applied on an experimental basis in a few cases since the mid-1990s. This innovative program, called "Build Your Own Apartment" (an obvious attempt to cite the successful upscale program), targets lower-income families. It is intended to provide opportunities for apartment ownership for disadvantaged households by lowering the cost of the land component. The ground area for the condominium is directly registered in the name of each winning household according to their proportionate share in the total floor area of the condominium building. The developer is thus prevented from reaping any profit from the land component in the price of the apartment.

Despite its benefits, the Build Your Own Apartment program has been severely criticized by the state comptroller general as inequitable and open to potential misuse. Critics note that the absolute (as distinct from the proportionate) value of the subsidy in land prices differs greatly between the different regions in the country. In the center of the country the subsidy system can provide a windfall for the lucky households, while in the peripheries the value of the equity provided makes hardly a difference to the leaseholders' future prospects for upwards mobility. Despite this criticism, lottery-based programs are proposed periodically by elected politicians who wish to cater to their potential voters and are likely to resurface on a small scale. But the tender system is likely to remain the dominant allocation method.

Due to government's perpetual fear that land prices would rocket out of control, the administration's policy is to release as much land as feasible. Critics of the public land system argue that the administration's virtual monopoly creates an artificial scarcity and hike in prices that would not have occurred in a freehold and market system. However, within the particular Israeli land context, the extent of the higher price effect is intangible and will likely always remain an unsolved enigma. The administration's tender system is an expression of the desire to come as close to emulating market transactions as any administrative machinery could.

The manner in which the value of the lease is calculated

Now to the value of the lease itself: how is the land rent calculated and how are lease payments made? In some countries represented in this book, the major part of the leasehold charges is based on periodic, usually annual, payments of land rent. Years ago, this was the case in Israel as well. But with time, the system of *urban* leases (as distinct from rural leases) gradually evolved to one where the *entire value of the lease* is to be paid up front.

In prestate leases and into the 1950s, up to 40 percent of the total payment would be paid upon initial signing of the contract, discounted to present value. Later, in the 1950s and 1960s the prepayment portion was gradually increased to 80 percent. The annual rent thus became quite small and insignificant. The administrative costs of handling the annual payments for hundreds of thousands of leases became unreasonably high. The inefficient administrative machinery of the Lands Administration and the hassle to the lessees became a target of public criticism.

In the late 1970s the Israel Lands Council decided that new urban residential leasehold contracts would require full payment in advance of the rental fee for the entire duration of the lease. This type of contract is called a *discounted contract*, because rental payments due in the future are discounted to present value. As already discussed, this type of lease also waives the payment for lease renewal for another term of 49 years. In addition, the up-front payment embodies some other benefits, to be discussed below.

Since the 1980s the policy of full up-front payment has been gradually expanded to cover most categories of new urban leases. Regarding existing leases, the administration's goal is to encourage the lessees to convert them to the new system. When lessees come into the administration's offices for some other purpose, such as to transfer the lease to another party or to receive permission to realize additional development rights (both types of property rights to be discussed below), the administration's personnel will try to entice them to convert to the new type of lease. From time to time the administration takes active steps to lure lessees by offering them special reduced rent rates. Such offers always have an expiration date, but experience shows they are usually repeated.

I regard the up-front payment system as the most important feature of the Israeli system of urban-sector leaseholds. But, like most major land policy decisions in Israel, the decision to transform the leasehold system from one of periodic rental payments to all up-front payments did not trigger public discussion. This decision has greatly accelerated the process of quasi-privatization of public leaseholds, from a crawl to a racing speed. To appreciate the impact of this change, the reader should know the manner in which the up-front payment is calculated.

To calculate the up-front, discounted payment, the administration has adopted two artificial figures: one for the annual rental charge (5 percent), and the other for the annual discount rate (5 percent). These figures have been used for many years, without fluctuation or change, despite the great vicissitudes in the Israeli real estate market and the turbulence of its economy and financial markets. The 5 percent rental charge tends to be higher, and in some periods, considerably higher, than the rent rate yielded by the private rental market.[26] However, the 5 percent discount rate often is well below the market discount rate. These two figures have been used as the uniform basis for calculating the leasehold charge for most urban leaseholds, regardless of the differences in real land rent values among regions and through time. Variation in rent rates is not used as a policy tool during the life of a lease. However, as noted, a lower rent charge is offered from time to time for the purpose of luring existing leaseholders to convert to the fully discounted lease, and this is justified in that it will save the administration in future administrative costs.

[26] The private rental market, which is quite robust, is composed largely of owners or long-term leaseholders of condominium apartments (and some single-family homes) who rent out their units on the private market. Technically the leaseholders are subleasing, but no one in Israel ever uses this term or perceives it as such. In the public leases in the urban sector there are no restrictions on renting out the unit and the Lands Administration is not involved.

If one inserts into the rent formula a discount rate of 5 percent and an annual rental fee of 5 percent for a period of 49 years, the result is 91 percent. This means that the up-front payment is 91 percent of the full market value of the property, assessed by the government assessor as if it were sold in freehold. Up to the 1970s such assessment may have been grossly below market prices, but in recent decades the government assessments have been quite realistic, to the extent that at times (especially when the market is weak) they might be somewhat higher than market prices.[27] My hunch is that the decision makers first selected 91 percent as a favorite figure that signifies "almost 100 percent but not quite," and then "drew a circle" around it, selecting the two figures of 5 percent as convenient for reaching the desired target number.

Thus, most Israeli urban households are asked to pay 91 percent of the assessed value of the property up front, upon signing the lease (unless some subsidy happens to be in force, and this applies to a minority of the cases only). This is a burden on most households because average land values in Israel are high relative to most other advanced-economy countries, and average salaries lower. The typical price of the land component for a modest apartment is $25,000–$60,000 (outside the Tel Aviv metropolitan regions), and the built-up price would be $100,000–$200,000. Mortgages are expensive and usually cover only part of the price. So, signing a lease with the administration is, for most households, the biggest investment to be made in their lifetime, and the lease is the typical household's major capital asset. (Recall that the norm in Israel is that households would own or leasehold their apartment, and indeed some 70 percent do.)

Therefore, it should not come as a surprise that most Israelis have come to view leasehold contracts as tantamount to freehold rights. People who hold an urban lease typically say that they "own" their house or apartment. The more knowledgeable may make the (erroneous) distinction that the land is public but that they own the apartment. They are unlikely to know whether the public land in question is actually owned by the state or by the JNF—they assume that the owner is the Lands Administration. Most development professionals, even the real estate journalists, are not much more aware of the legal conditions of leaseholds. Knowing that the "discounted" leases require an up-front payment of 91 percent, they are likely to say that the leaseholder "owns 91 percent of the property rights while the administration retains 9 percent of the property rights." Of course, this widely heard explanation is a garbled set of legal-economic nonsense.

What property rights does the administration offer the lessees in exchange for the hefty up-front payment at virtually the full market price in freehold? Do the leases with the full up-front payment offer the lessee a release from some of the conditions and limitations on their property rights? The answers

[27] The reader may wonder if there are any real market prices in a country where 93 percent of the land is public. Yes, in built-up regions there are market prices indeed, shown by the existence of private land in significant proportions in many urban areas, and also the huge private market in public leaseholds. The transfer through sale is at uninhibited market prices. As we shall see, these tend to be almost the same as freehold prices.

to these questions will be given in the following sections, each covering one of the relevant types of property right that may be addressed and affected by long-term leases. But first, a detour will explain the relationship between the public leasehold system and land use planning and control.

Land Use Rights and Planning Control

One of the justifications for retaining public leasehold often found in the literature on land policy is the potential capacity to control land use. Theoretically, a public landowner could insert into the terms of the lease conditions that add to or substitute for the general land use planning controls.

Given the dominance of public land ownership in Israel, the relationship between the land ownership system and the land planning system is of prime importance. The Cabinet and the Lands Council decided early that the Israeli public leasehold system (in the urban sector) should *not* be used for the purpose of land use planning control. Indeed, there is a definite policy of disengagement between the leasehold system and the planning control system. In one of its earliest decisions, in 1965, the Lands Council issued a policy guideline that land should be released for development only after a statutory land use plan was in place.

In the 1950s and 1960s, Israel's formative years, the Lands Administration generously transferred large tracts of land to the then-all-powerful Ministries of Housing, the Public Works Department and the various infrastructure agencies. These bodies built scores of new towns and much of the country's modern infrastructure. At the time the administration was not very active in initiating development on its own, and its role was mainly to allocate land to other government bodies and private developers.

Until the 1965 Planning and Building Law was enacted, all government agencies were exempt from submitting a land use plan for legal approval and obtaining a building permit. The 1965 Planning and Building Law set up a new rule. All government bodies, including the Lands Administration, would have the same status under the law as a private developer, and would have to obtain approval for all its land use and development initiatives from the statutory planning and building control bodies.

The administration would, however, have an important edge over private bodies through its membership in the main statutory bodies, the six District Planning Commissions and in the National Planning Board. Until 1995 this membership was somewhat tenuous because the administration came under the cap of the ministry in charge of it (Agriculture then Housing then Infrastructure). A major 1995 amendment to the Planning and Building Law (Amendment 43) gave the administration independent membership, thus solidifying this advantage into law.

However, since the 1980s and in an accelerated pace since 1990, the administration gradually changed its policy and began to assume a growing planning and development role of its own. Today, it is responsible for initiating plans for about half of the housing starts on public land (mostly at market prices), for

some urban redevelopment tenders, for the Build Your Own House program, and for industrial parks (see Alterman 2001b).

Ironically, the 1995 legislation that gave the administration independent membership in the District Commissions came into effect shortly after a High Court of Justice decision effectively downgraded its status almost to that of any private interest party, despite its membership in the planning commissions.[28] The High Court ruled that the Lands Administration's representatives should be regarded as having a potential conflict of interests whenever a proposed plan pertains to national land, and should not be allowed to partake in key stages in the planning decision process. This decision carries extra import given the fact that at the time the country faced the mass-immigration flow from the Soviet Union (subsequently the CIS). The clause that was the subject of the petition to the High Court was part of a special law enacted for this crisis period, with the specific intention to give central government bodies special powers (for a full legal analysis, see Alterman 2000).

The court's decision parallels and reinforces the growing criticism of the administration, expressed in the media and by many public and voluntary bodies. The crux of this criticism is that the administration is no longer motivated by public interest goals, but by profit maximization. The powerful Ministry of Finance, which is to receive the income for the national treasury (after cost deduction), watches over the administration's shoulders.

The administration's "split personality" regarding its role in initiating planning and development is embodied in the Land Tenders without Planning (LTWP) method, introduced on a small scale in the mid-1990s. The very idea of this system is replete with irony. Frustrated by the long time its own planners take to receive planning approval from the statutory planning bodies for its planning initiatives, the administration decided to experiment with outsourcing the process of obtaining planning permission. The idea was that a large tract of vacant land slated by the administration for possible development would be offered to private developers through a special tender. Under the usual procedure, the tender price would be based on the approved statutory land use plan, that is, one where the use and permitted density would be stated. By contrast, under the LTWPs the winners would be selected on the basis of two criteria: the planning and urban design concept proposed by the contender for the entire tract; and the amount of money offered for the right to receive the leasehold rights for a predetermined percentage of the land, say 25 percent, if and when planning permission is obtained. Once the statutory land use plan is approved, the developer would receive its portion of the tract of land and be allowed to sell the built-up spaces at market prices.

The administration's rationale for this somewhat acrobatic policy was that a private developer would be more "hungry" (to use Wall Street jargon) to have its suggested plan approved and therefore be more effective in pulling the plan through the statutory planning procedure. However, the State of Israel's

[28] HC 3480/1991 *Uri Bregman v the Housing Construction Commission, Tel Aviv, Piskei Din* 47 (3), 716.

comptroller general, in its 1999 Annual Report, criticized this system for skewing public planning goals to serve the developers' interests. The comptroller expressed concern that this system would create undue pressure on the statutory planning authorities, which would feel obligated and pressured to approve the plan submitted by a developer who has won a public tender and is being promoted by a major government body. The Ministry of the Environment and green groups join in this criticism, citing the farmland conversions this system has arguably produced. Although the number of LTWPs actually implemented has been small, the idea is not dead. In 2002 the administration decided to reissue the LTWP, this time for smaller land areas and a lower number of housing or other units. Now that the land use planning system has been explained, I shall resume the discussion of property rights and leaseholds.

Development Rights

The lease usually stipulates that it applies only to existing development rights under current planning regulations. But under the Planning and Building Law the lessee has always had at least partial standing to submit to the statutory planning authorities an application for an amendment to an existing statutory plan, or to ask for a building permit to implement new development rights granted by an amended plan initiated by the municipality. Up to 1996 the planning authorities would not consider a leaseholder's planning initiative until the Lands Administration undersigned the plan as the landowner. The 1996 Amendment 43 to the Planning and the Building Law fully equalized the status of leaseholders with that of freeholders. It granted full legal standing to submit amendments or variances to existing plans to anyone "with an interest in the land," a phrase that has been interpreted to include even holders of lesser rights than leaseholds.

Thus, since 1996 the administration has lost the early warning information mechanism it had through the leaseholders' request for the administration's approval prior to submission of amendment plans to the planning authorities. Thus, the administration has had to develop its own system of information, and is gradually learning to rely on its representatives on the local and district planning commissions to bring in relevant plans before they are approved. This way, the administration can check to see whether its interests and policies are adversely affected and, in that case, submit an objection during the plan-deposit stage, like any other holders of interest in the land.

While the lessee has standing to request an amendment to the statutory plan (i.e., to alter the development rights according to the terms of the lease), the lessee cannot implement these rights without the administration's approval. But unless it has a particular reason to refuse, and that is rare, the administration hardly ever refuses permission for the realization of new development rights. It uses the permission requirement as an opportunity to levy a fee for the added increment (to be discussed below). The need to go to the administration for approval of each routine request for replanning or a variance is viewed by many as an unnecessary bureaucratic hassle. The Lands Council recently has

considered relaxing this administrative dependence as well. If this occurs, it will be another step in the process of quasi-privatization.

WHAT HAPPENED TO FOOTNOTE 29?

The lessee has independent standing, also, vis à vis the financial aspects of the Planning and Building Law. Under that law a landowner has the right to claim compensation from the local planning commission for decline in property value due to downzoning or externalities expected from an adjacent reclassified use.[30] The lessee has independent standing to claim these rather generous compensation rights (extremely generous in international comparative terms). If compensation is awarded, the lessee would then be the legal recipient!

In fast-growing Israel, upzoning is more frequent than downzoning. There are many cases of replanning for more lucrative land uses or higher densities. Alongside the compensation rights, Israeli law authorizes (rather, requires) the authorities to levy a betterment charge. It is the long-term lessee who pays this levy (see the Tax Obligations section).

Transfer Rights

The secret behind the perseverance of the Israeli leasehold system, despite its massive scale, is its successful coexistence with the market economy and the country's social structure. The key element in this success is the uninhibited right to transfer urban-sector leases at their full market value to (almost) anyone at anytime. A lessee usually can sell, bequeath, rent out or give the property at will, at any time, to anyone.[31] For the majority of transactions in the urban sector, the leases are fully liquid. So, despite the fact that most real property in Israel is under leasehold, the real-estate market is very vibrant and represents about 12 percent of the GDP, even though most of that market is under leasehold.

There is, however, a small additional bureaucratic errand to undertake upon transfer of leaseholds. Because the leases stipulate that the administration must give its consent for the transfer of the lease, the seller must obtain the administration's consent. In the majority of cases the administration grants its consent almost automatically, and this minor administrative intervention apparently does not impact the market.

The consent requirement for the transfer of the lease from one lessee to another does create a problem regarding the equal rights of Israeli-Arab citizens. Here we should distinguish between state-owned and JNF-owned land.

Regarding state-owned land—the majority of the administration's holding—there are no legal differences among Jews and Arabs, so the administration must grant or decline its consent in an ethnically blind manner. Yet, even regarding state-owned land, the consent requirement, as well as other administration powers, has been used in a discriminatory manner (Kedar 1996;

[30] Israel's compensation system for downzoning is unique and interesting beyond the leaseholds issue (see Alterman and Naim 1992).

[31] In rare cases, where some special subsidy in the price of land may have been involved, there may be a minimal period before the lease may be sold without the lessee having to reimburse the administration for the balance of the subsidy. However, programs that subsidize households through the land component are rare.

Yiftachel 1992). Such discrimination is on the decline and has been ruled illegal not only in cities, but also where a "community association" neighborhood is concerned. In a revolutionary 2000 High Court decision, *Qaadan v Katsir*, the court ruled that an exurban community, Katsir, cannot exclude an Arab-Israeli family (Qaadan) from eligibility to take out a government lease on a plot of land and build their home (Kedar 2000).[32] Long before this court decision, an increasing number of Arab citizens in cities and towns have been "buying" housing units on the open market from Jewish leaseholders and thus many reside or do business on state-owned land. A current study by this author shows that in recent years the Lands Administration has also begun to allocate an increasing number of tracts of state land for the expansion needs of Arab towns and villages.

In contrast, where JNF land is concerned, the consent requirement is used as an instrument for discriminating between Israel's Jewish and Arab citizens (Weisman 1980). Recall that the treaty the JNF signed with the state in 1960 mandates that land belonging to the JNF should not be transferred into non-Jewish households or businesses. Such cases are much less frequent than transfers of leases on state land because, for historic reasons, JNF land is concentrated in more limited and particular areas. Yet, cases of discrimination do occur occasionally, for example when an Arab household wishes to buy a lease on JNF land within a largely Jewish town. In such cases the administration often tries to find some creative solution to the specific, localized problem. They sometimes swap land parcels between the state and the JNF, thus removing the treaty's restriction. With the growing social mobility of Israel's Arab population and the increasing ethnic mixture of Israeli cities, this problem is becoming more acute and will likely require a general policy solution.

The landmark High Court of Justice decision may have cast doubt on the constitutionality of the differentiation between state and JNF land. Although the High Court decision concerns state-owned rather than JNF-owned land, it is a beacon for likely future court challenges. I expect that before long, a petition will be made to the High Court to give its opinion regarding JNF land too. The High Court will likely rule that the Lands Administration, like any other Israeli official body, is bound by the norms of administrative and constitutional law that preclude discrimination, and that these override its obligations according to the Treaty. One can guess that the administration's legal advisors already are applying the new (surmised) legal doctrine, and instructing their staff to try to avoid discrimination (e.g., by making the practice of land swaps more systematic). Anticipating this type of legal ruling, voices within the JNF have called for the JNF to withdraw from the Treaty and resume self-management of its land.

[32] H.C. 6698/95 *Qaadan v the Israel Lands Administration, Katzir et. al.* (Court decisions are delivered and published in Hebrew. For an unofficial English language summary, see *http://csf.colorado.edu/forums/ipe/2002/msg00516.html*)

Market Rights

Although the administration almost always gives its permission for lease transfer, it may use this opportunity to tax away part of the added land values. The basic principle in Israel has always been that the market rights to the unearned increment accrue partly to the lessee and partly to the administration. The leases allow the administration to capture the added increment in value on two main occasions (or *tax incidence points*). The first is the transfer of the property upon sale or gift of the lease (in Israel there is no inheritance tax on real property, and a recent attempt to introduce it has failed). The fee linked to this tax point is called a *consent fee*. The second incidence point is linked to the realization of additional development rights. This type of fee is called a *permit fee*.

The consent fee applies when the administration gives its consent to a lessee to sell or gift a lease. The administration has the right to levy about 40 percent of the unearned increment, compared with the original purchase price (corrected for inflation). The consent fee is assessed on the *undiscounted* part of the leasehold fee only. That is, if a person holds a fully prepaid lease, there is no consent charge at all. If, say, 80 percent of the charges have been discounted up front, the lessee will pay only 20 percent of the added-value fee.

Common wisdom about leaseholds is that the lessor usually retains the right to the full added value. However, this theory does not and could not hold under the massive Israeli leasehold system. At no point did the administration issue leases that entailed both the up-front payment and the consent fee obligation. The rationale was that a lessee who pays the up-front leasehold rent (which, as we saw, is very close to market value under freehold) should not be subject to higher unearned increment fees than a freehold owner. If the consent fee were to hold, leasehold would in effect be more costly than freehold, and due to the overwhelming presence of public leaseholds, this might have caused an artificial hike in already-high real estate prices.[33] Looking at this issue from another perspective, one could say that since the administration—and the Ministry of Finance—were interested in promoting the up-front payment leases over the former annual payment leases, they waived their right, as lessors, to the added increment.

This is not all. Israel is a country with very high—probably the world's highest—taxation of the unearned increment (Alterman 1982). There are three other added increment levies that the administration either did not or could not waive even when the entire rent charge is paid up front. These include another levy imposed by the Lands Administration (the permit fee), and two more taxes that are national and apply to both leaseholds and freeholds—the betterment levy and the added increment tax.

[33] Clearly, in the Israeli system it is difficult to judge what is the market price and what is an artificial hike in land values caused by extra leasehold charges. This is especially difficult in areas where consumers have no choice because there is effectively no private land for comparison. But, because the country is so small, one can assume a considerable interregional price comparison by consumers.

The permit fee is charged by the Lands Administration when the lessor asks for consent to implement additional development beyond the development rights that were in force at the time of the lease. The permit fee was 50 percent until October 2002, and ostensibly was reduced to 31 percent (but as I will explain, in many cases there will not be a real reduction). The administration applies this fee to all types of urban leases, and does not exempt even the up-front, discounted type of leases. Whenever both the consent fee and the permit fee apply, the administration will offset the lower of the two against the other, so that the lessor will not end up paying the cumulative sum of the two fees, but will pay significantly more than one.

Unlike the consent fee, the permit fee is not likely to be phased out in the near future, even for fully discounted up-front payments. Yet, some of the Lands Council's deliberations have hinted at the possibility of waiving the fee as a selective incentive, say, for controlling the timing of development (to be discussed below). The Ministry of Housing has also requested a waiver of the permit fee in designated urban redevelopment projects, but the administration and the Ministry of Finance have so far refused.

There are also two types of increment-based taxes that apply to all types of properties (unless an exemption holds). The first, called the *betterment levy*, is mandated by the Planning and Building Law at 50 percent of the appraised increment created directly by approval of an amendment plan, a variance, or nonconforming use, to be levied by the local planning authorities (but there are some exemptions for lower-income areas and some other categories). Many owners of leaseholds must pay both the permit fee to the administration and the betterment levy to the local authority. Until October 2002 the administration would offset the lower of the two fees from the total increment value. The offsetting policy has been abolished, along with the reduction of the fee to 31 percent. Thus, under both the old and the new policies the fee to be paid by leaseholders would be considerably higher than 50 percent.

In addition, owners of property rights are subject to the national Added Increment Tax on Real Property of 50 percent—the statutory parallel to the lease-based consent fee. The Added Increment applies to leaseholds as to freeholds. The law specifies that in case of leaseholds, for generations, the tax is to be paid by the lessee, not the lessor. However, this tax rarely is paid by households because the sale or inheritance of a housing unit (or of a lease to one) is exempt every four years, and most transfers by households fall within this generous exemption clause.[34]

One of the common rationales for public leasehold systems offered by land policy scholars is that they do—or should—enable the public agency to capture more of the unearned increment than freehold. According to this rationale, the Israeli leasehold system does indeed deliver the goods extremely well: while freeholders in Israel pay hefty unearned increment taxes by international com-

[34] In late 2001 the added-increment tax was cut to 25 percent, but increments in value gained through 2001 are still assessed at 50 percent, so it will take several years until the benefits of the reform reach most consumers.

parative terms (Alterman 1982), public leaseholders incur an additional layer of fees grounded in the lease.

This common wisdom on land policy has few followers in Israel—among neither consumers nor the decision makers. Once again, the fact that leaseholds pay an up-front market value almost identical to freeholds for the lease undermines the reasonableness of commonly held notions about public leasehold systems, and gives it a reverse twist. In the eyes of typical Israeli leaseholders (those who are aware of the additional charges), an absurdity of the Israeli system would be that they—who hold lesser property rights than freeholders—are burdened by higher betterment or unearned increment charges. As for decision makers, this issue—like most other key issues in the leasehold system—has never surfaced as a public issue.

The Right to Delay Development

One of the sticks in the bundle of property rights is the landowner's right to decide the timing of development decisions. The converse—the power to control the timing of development—is sought by public authorities in charge of development control, usually with futility. In theory, leasehold contracts could provide a good solution to this perennial quest. The leasing authority could easily introduce a clause in the lease or prelease contract stating that if the construction, or some phase of it, is not completed according to a particular schedule, there would be a fine or the lease would be voided.

This last type of property right, too, has proven resistant to control through leaseholds. With time, the administration's capacity to use leaseholds to control the timing of development has weakened. The administration has attempted to introduce conditions into the leasehold contracts to limit the freedom of the developers who have won tenders on public land to make their own decisions on the timetable of the development process. The main instruments introduced by the Lands Council are called *development contracts,* which developers are required to fulfill as a precondition to the leasehold contract. These vary for different types of development, but they share a time-limit clause, whereby developers must finish the construction of the infrastructure or buildings (or both) within the stipulated time period (usually three to five years). If the developer does not keep to the timetable, the development contract is voided, the lease will not be signed and the land must be returned to the administration.

The timing-control sanctions have been difficult to implement with regard to all types of developers: commercial, public or resident owners. Commercial developers have for years been complaining that the land return requirement is unreasonable. The Ministry of Finance has been attuned to the developers' argument that this requirement causes artificial delays in the development process and a hike in land prices. Recently, the Lands Council adopted a new policy whereby a developer who encounters financial problems in undertaking the development on time, will be allowed to transfer (sell) the prelease contract to another developer, instead of returning the land to the administration, as previously required.

A similar process has occurred with respect to households (resident owners)

in the Build Your Own Home program. As that program has grown in popularity, so has the administration's load of cases, where households could not (or did not find it convenient to) keep to the timetable of construction stipulated in their development contract. Since these residents also are voters, it became politically unsavory for the administration to enforce the return-obligation clause in the development contract, recently leading to the official relaxation of the timing-control sanction in these contracts as well. Thus, one of the last hoped-for benefits of public leaseholds—the desire to control the timing of development by private actors—has also gradually eroded away.

Tax Obligations

All real estate taxes in Israel apply equally to public leaseholds and are the obligation of the lessee rather than the Lands Administration. In the Israeli context, where the income from the administration goes directly into the national treasury (after deduction of costs), the Lands Administration has never been treated as a landlord responsible for paying the taxes. Due to the massive scale of public leaseholds, this simply would have meant transfer from pocket to pocket.

This special Israeli situation (or anomaly) is highlighted through a particular clause in the Planning and Building Law, which imposes the betterment levy. That clause does happen to include a rare statement that ostensibly recognizes that the leaseholder should not be obliged to pay the full tax. The clause says that the landowner has the obligation to reimburse the lessee for the difference in the levy as assessed on freehold compared with leasehold. However, the Lands Administration's leases bypass this clause by waiving the lessor's obligation. Since there usually is little difference in market price between similar freehold and leasehold properties, the problem is not very significant financially (and I have never seen it mentioned in academic or public forums), yet I find it worthy of a legal challenge.[35]

As already noted, over and above Israel's extremely high taxes on the unearned increment, that are charged equally on the unearned increment on both freeholders and leaseholders, leaseholders generally pay additional unearned increment fees grounded in the lease.[36] Contrary to common wisdom about leaseholds, had the average leaseholder known about this anomaly, she or he probably would have viewed these lease-based fees as additional—and unwarranted—taxes, rather than as a justified additional recoupment of the unearned increment rightly due to the landowner. They might have argued

[35] The public lease could be regarded as a uniform contract that applies to consumers who have little choice but to sign it. The administration is almost a monopoly (in many areas of the country, a full monopoly). Could leaseholders initiate class action against this clause? The catch is, of course, that under the Israeli public leasehold system there is little difference in value between the same property assessed as freehold or leasehold. The legal costs may not be worth the trouble. If, however, the court struck this clause from the contract, the Lands Administration would potentially be swamped with thousands of reimbursement claims for relatively small amounts of money each, which would accumulate to a large sum.

[36] ED/AU: Missing text for this footnote? Or s/b deleted?

that the income from all these taxes and fees goes to the same address—the national treasury (except for the planning-system based betterment levy that goes to the local authority).

Had the average leaseholder realized that she or he in effect pays higher taxes than freeholders, the leaseholder would likely have asked why private landowners—the minority—are regarded by the taxation system as privileged over leaseholders. After all, leaseholders bear greater administrative and financial burden than freeholders. But the vast majority of leaseholders—and even the vast majority of real estate professionals—has not paid much attention to this anomaly. These questions have rarely, if ever, been addressed in the press or the Knesset (Parliament) as a public policy issue. Indeed, the differences in taxes and fees hardly seem to affect consumers' location decisions. Most householders and smaller businesses will select land or built-up space, not according to taxes that may accrue in the future, but to current locational advantages and prices.

Conclusion

The Israeli public leasehold system has been undergoing a process whereby the property rights granted de facto to leaseholders have gradually come to resemble freehold ownership. This trend, which I call *crawling privatization*, has closed almost all remaining gaps between the two types of tenure, leaving only minor controls in the hands of the administration (but capturing even more of the unearned increment than the statutory taxation system). The market in leaseholds is a close simulation to the market in freeholds, as are the prices fetched.

Why has this occurred? When a leasehold system becomes very large, when it becomes the macro, ruling system rather than the exception, it must change gears if it is expected to work. The alternative to quasi-privatization is a land system similar to those in the Soviet bloc countries, whose demise needs no reminder. The absence of a vital market system in those countries had done terrible damage to urban and regional structures, the housing stock and the environment. It is possible that leaseholds—qua leaseholds rather than those masquerading as freeholds—could work as an effective public policy and planning tool only when they constitute an island of special tenure and public policy, in a sea of a private property and market regime. In such cases, leasehold systems will be judged by public opinion and by the marketplace, in what they can offer to the public and private domains, through fair competition with the freehold system.

The Israeli case shows that when the leasehold system becomes the dominant system covering large portions of the population and of businesses, then administrative intervention becomes too cumbersome to manage, and too politically onerous. That is, unless it is altered to become a private property lookalike, and market forces are allowed to work almost unfettered by administrative intervention. This is what has happened over the decades to the Israeli

large-scale public leasehold system (in the urban sector), and this is what has made it operate reasonably well.

What is the benefit in maintaining the large and heavy machinery of the Israel Lands Administration? Does it achieve any public policy goals beyond its capacity to capture more of the unearned increment than already captured by the general Israeli taxation system? And do these benefits, if any, counterbalance the damage that this government-heavy system can do? Answering these one million dollar questions is beyond the scope of this chapter, since it requires a systematic exploration into many national policy and planning areas, some of which touch directly or indirectly on the Israel-Arab conflict. However, the savvy reader will be able to draw out partial answers from the various sections here.[36] In politically turbulent Israel, the answer—obviously controversial—will probably depend on one's geopolitical values and views.

[36] This key issue has not been tackled systematically by researchers, and is not part of public discourse. Recently, I did attempt such an assessment, the first of its kind, published in an Israeli law journal and already cited by the Supreme Court (Alterman 1998). A summary here would be unfeasible, because it requires the presentation of many planning and public policy topics beyond this chapter.

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