**Epilogue**

*"Dreams are our only geography—
Our native land". Dejan Stojanović[[1]](#footnote-1)*

The identity of the State of Israel is complex. A multitude of different processes, world views and internal conflicts seethe within its DNA. Some of these are uniquely Israeli, while others are characteristics shared with many other states. This book attempts to trace the imprint of these characteristics within the realm of Israel’s public land policy and its land laws. The book demonstrates the ways in which these fields are characteristic of broader attributes of state and society. Tracing the expressions of the state’s identity in the realms of land policy and land laws affords us a better understanding of both the state’s identity characteristics and its land policy and laws.

**Identity Characteristics**

Identity is abstract, while land is something concrete. In this book I endeavored to explore several prominent characteristics of Israel’s abstract identity as they are expressed concretely in the realm of its real-estate: the State’s continuous striving to establish its legal and political independence; the movement away from a centralized leftist-socialist world view towards a right-wing capitalist world view that encourages a free market; the sense of restriction created by a small and crowded country and the striving for innovation and creativeness; the state’s aspiration to serve as the nation-state of the Jewish people on the one hand, and as a state that upholds the complete equality of all its citizens on the other; the independence and creativity of the Israeli legal system and the conflicts over the limits of judicial authority.

**The Striving for Independence**

In Chapter One, I demonstrated how land laws reflect the Israeli state’s consistent struggle to establish its legal and political independence. Israel may have won its political independence with its establishment, but because of the ongoing conflicts with its neighbors, apparently the feeling that this independence remains uncertain persists. Israel feels a constant need to demonstrate its independence. One way of demonstrating this independence has been the State of Israel’s effort to establish its legal independence. This effort was expressed in the gradual ridding of the influence of legal systems predating Israel’s establishment and the gradual creation of an independent and original Israeli legal infrastructure. The inclination towards independence found expression in many branches of the law. I have shown in this book how it was expressed in Israel’s land laws, from the state’s establishment through to the present day. Thus, Chapter One showed the process of extrication from under the influence of the Ottoman and British land laws that were in force when the State of Israel was established. Although these laws were repealed by the 1970s, their lingering legacy remains, at the start of the third millennium, responsible for the distribution of private land in Israel. These laws are also the reason most of the unexploited land in the country is defined as state lands. The long reach of legal history continues to disrupt the Israeli real-estate market of the 21st century.

**The Transition from Socialism to Capitalism**

 In this book’s second and third chapters, I have shown how land laws reflect the changes that have taken place over time in the social and economic perspective guiding Israeli society and its leadership. On the eve of Israel’s establishment and during its first decades, a centralized leftist-socialist world view held sway. Following the political upheaval that took occurred in the late 1970s, Israel gradually moved away from its socialist foundations; its leadership and its economy began marching, at an accelerating pace, to the tune of a more right-wing capitalist perspective and towards an unfettered free market, increased competition and privatization. These left leaning and the right leaning views both still exist among Israel’s leadership, in public opinion, and in the rulings of the courts. The tension between them is one prominent characteristic of Israel’s contemporary identity, and it is clearly reflected in the State’s management of public land and in its privatization.

Thus, in Chapter Two, I demonstrated how a socialist frame of reference shaped and continues to affect the overarching administrative framework of public land in the State of Israel. In accordance with the socialist perspective, most public land in Israel is owned by the government. This principle is set in a Basic Law of constitutional status and shapes the rules for administering the public inventory of real-estate. From its earliest days, values such as equality and distributive justice have underpinned the State’s public land policy, and to this day, land legislation and court rulings continue to be grounded in these principles. The socialist worldview in Israel also has a Zionist-nationalist aspect, which finds expression in the Zionist-Jewish historical backdrop for the State’s control over most of Israel’s lands. The nationalist perspective may not have been the key motivation for centralized administration principles, but it reinforces these principles against the winds of privatization.

All the same, Israel of the third millennium has become a capitalist state oriented towards a free market. This orientation has resulted, since the 1980s, in processes of privatization of a small but crucial portion of its land inventory. Chapter Two focused on the political and ideological aspects of this privatization process. It showed how the balancing point in Israeli governmental land administration is gradually, though fairly slowly, shifting away from the socialist end of the political-ideological scale and towards its more capitalist extremity, and towards privatization.

**The Bureaucratic Administrative Mechanism/Administrative Bureaucracy**

While Chapter Two dealt with the ideological shifts in Israel’s public land administration policies, that is, in the transition from socialism to capitalism, Chapter Three focused on another, practical, dimension of public land privatization in Israel; its bureaucratic aspects. The transition from a centralized administration to privatization is not a single immediate move. The bureaucratic administration apparatus, one of the characteristics of the socialist system, is divested of its powers slowly and gradually. Therefore, the informed decisions on the transfer of formal ownership of public lands were preceded in Israel by a slow lengthy bureaucratic process, in which the government gradually transferred economic aspects of its ownership to individuals. These informal privatization processes were initiated many years prior to the enactment of a formal policy on the privatization of urban land. They are, furthermore, also taking place today with regards to some of the State’s inventory of agricultural land and the inventory of natural resources. The persistence of these processes indicates the internal dilemmas and conflicts accompanying the transition from centralized control to privatization. It also points to the bureaucratic disadvantages of centralized control over land stocks.

**A Small State with a Large Population**

In Chapter Four, I showed how Israel’s land planning policy and planning laws reflect the fact that the State of Israel is a small, crowded country, burdened by geographic and demographic limitations, on the one hand, and a country brimming with innovation and technological creativity, on the other. Israel’s small size and elongated shape, combined with the demographic growth of its population, pose unique challenges. Belonging to a small country is part of the Israeli ethos. In this sense, it is part of every Israeli person’s identity. This is expressed, for example, in a popular song that begins with the phrase: “A little country with a moustache, half a pin on the world map.” [[2]](#footnote-2)The common Israeli perception of living in a small country is, furthermore, usually also accompanied by the feeling (which more recently, with the discovery of natural gas reserves, has become less accurate) that the country was not blessed with natural resources.

Alongside that sense of restriction and confinement, or perhaps because of it, there exists a further element of the Israeli conventional ethos whereby Israel’s most valuable resource is its human capital. Israelis are proud of their innovativeness and originality. Indeed, in recent years Israel really has become an entrepreneurial powerhouse in technology, water, agriculture and other fields. The tension between the feeling of restriction and confinement and pride in entrepreneurship and innovation is a common characteristic of Israel’s current identity. It also finds expression in Israel’s land planning.

Chapter Three, thus, contains a review of the unique challenges posed by Israel’s geography and demography, followed by an analysis of the ways in which the land planning system attempts to meet those challenges. The analysis shows how, on the one hand, the planning system generates an abundance of initiatives and innovations and tries to turn disadvantages into advantages. The state of Israel is in the midst of a wave of land development and planning in a range of areas, particularly in transportation, energy and water. There are technological and planning innovations in the efficient development and use of subterranean and ocean space. There are original initiatives for the exploitation of natural resources and dealing with natural disasters (most importantly, earthquakes). On the other hand, the attempts to deal with various challenges do not always end successfully. The reasons for this are the tension found also in the planning arena between the centralized and decentralized approaches, and the bureaucratic challenges to the work of the planning apparatus.

**A Jewish and Democratic State**

In Chapter Five, I demonstrated how Israel’s land policy and land laws reflect one of the most central and fundamental identity issues in the State of Israel; its aspiration to act as the nation-state for the Jewish people, on the one hand, and as a state that treats all its citizens completely equally, on the other. The realization of this “double promise” poses a considerable challenge in light of the complex relationship between the country’s majority and minority, as well as the need to bridge two conflicting national aspirations. This is an existential paradox that lies at the foundations of Israel’s unique identity, as well as the identity of each and every one of its citizens.

Israel’s problem of the dual identity, Jewish and democratic, finds prominent and controversial expressions in the state’s land policy as it pertains to its Arab minority. The first expression has to do with the policy regarding the outcomes of Israel’s War of Independence. As a Jewish state, Israel has no interest in returning lands to the people who owned them prior to the war, both because of the fear that restitution will lead to return and affect the state’s Jewish nature, and because it does not see itself as responsible for the outcome of the war. As a democratic state, Israel is obligated to compensate citizens whose property was expropriated. The policy of non-restitution is enshrined in law and impervious to judicial constitutional review. The Supreme Court supports the policy, even though it has expressed discontent with the harm it has caused to the property of the state’s Arab citizens.

The problem of dual identity finds its second expression in Israel’s policy regarding allocation of land resources. Both the state authorities and its citizens are conflicted over which of two contradictory models should govern this policy: a “separation” model, according to which the majority and minority groups will continue to live in separate settlements, as they see fit, or an “assimilation” model, which encourages the integration of these two population groups in mixed communities, neighborhoods and settlements. The actual willingness to reside in mixed settlements is split among both the Jewish and the Arab publics. Neither the majority nor the minority are enthusiastic about assimilating into one another, and in any case, it is doubtful they are ready. The Israeli reality in terms of real-estate is primarily one of separate but equal. The historical backdrop, cultural differences, and also the complicated mutually suspicious relationship between the two groups, all indicate separation. The government, likewise, appears to support this policy, as does, to a certain extent, the judicial authority. Yet, despite all of the above, and against all odds, a slow but accelerating process of assimilation is also taking place. This can be ascribed primarily to the invisible hand of the free market, as well as to certain messages regarding assimilation emanating from the Supreme Court and removing some of the potential barriers to the process.

**The Challenge of Equality**

Has the State of Israel successfully met the challenge of equality in the allocation of land resources? Though there is much room for improvement, the image of inequality is in reality more complex than is usually thought. In terms of the extent of privately owned land, as well as land used for residence, the Arab minority has as an advantage over the Jewish majority. The state executed expropriations following its establishment, with the exception the refugee villages, have had a very small impact on the inventory of privately owned land in the Arab sector. Although the development of Arab settlements is slow and hindered by a shortage of lands and of planning, additional internal problems in Arab society make development difficult. The situation places an extra burden on the state as it seeks to fulfil its responsibility to develop Arab towns, and it is working actively, though not actively enough, in this arena. Allocation by the state of additional lands for the development of Arab settlements is conditional upon the integration and more efficient use of the large stock of privately owned land in these settlements, though more recently there has been more consideration of the unique characteristics of the Arab minority in land allocations.

Since the State of Israel was founded, very few new Arab settlements have been established (and of these most were Bedouin), but the number of mid-sized urban Arab settlements, where most of the Arab population is concentrated, is commensurate with the overall proportion of the Arab population within the general population residing in settlement of that size. Thus, at the each of the municipal government levels, the Arab population rate correlates with the rate of Muslim municipalities. Nonetheless, rural spaces are noticeably occupied almost exclusively by Jewish settlements, and rural lands are also primarily located in the jurisdiction of Jewish regional councils. This is undoubtedly the most obvious expression of the preference for the Jewish aspect of the Jewish and democratic State of Israel when it comes to land policy and laws.

A further expression of this preference is the low ranking of Arab settlements on a socio-economic index that considers a range of variables covering demographics, education, employment and standards of living. The situation of the Arab population living in mixed cities and in cities that have become mixed only recently, is better. Assimilation appears to advance social-economic equality. The problem of the state’s dual Jewish-democratic identity is reflected throughout all these arenas even today, seventy years after the founding of the State of Israel, and will most likely continue to haunt it for many more years to come.

**Judicial Independence**

 In Chapter Six I examined how the Israeli Supreme Court’s rulings in the domain of land laws reflect the independence and creativity of the Israeli judicial system. The State of Israel is blessed with an independent and creative judiciary and its justices are well-respected abroad. All the same, the independence of Israel’s judicial system, its creativity, and the judicial critique it levels against the actions of other government authorities have all intensified considerably, some say too much, over recent decades. Since the turn of the millennium, the judiciary has been at the center of a heated public debate over the limits to its authority. The debate has engaged not only jurists; it is has permeated every level of society. The status and independence of the judicial authority are key features of democratic states in general, and of Israel specifically. This characteristic of identity is also reflected in the rulings of the Supreme Court in the realm of land laws. Chapter Six presented two prominent examples.

In the laws of private land, Israeli jurisprudence has very creatively developed independent local Israeli doctrines, which are similar to the doctrines developed by British courts of equity centuries earlier. Basing land laws on Israeli legislation and independent Israeli judicial creation is another example of the State of Israel's constant striving to preserve its legal independence; it also demonstrates the independent, activist and creative approach of the Israeli judiciary. In the areas of constitutional and administrative law, the Supreme Court led an activist change of laws pertaining to expropriation and planning damage to real-estate. The Court seized the authority to interpret differently, in the spirit of the Basic Law: Human Dignity and Liberty, enacted by the Knesset, laws to which the Basic Law explicitly stated it did not apply. Using this creative and activist interpretation of laws led to a significant reduction in the cases in which it is permissible to expropriate land without compensation. The changes led by the Supreme Court in the area of the judicial review of the authority to expropriate, in contrast, were more minor. The primary reason for this was not a conservative approach to the judicial role, but internal ideological disputes within the Court.

**The State of Israel Psychoanalyzed**

The above makes it apparent that an analysis of Israel’s land policy and laws can serve as a litmus test for its predominant contours, allowing the researcher to “reverse engineer” its character and fundamental problems. If only it were possible to have the State of Israel recline on a Freudian analyst’s couch, surely he would diagnose the same identity characteristics this book has revealed through the study of its land laws: a desire for independence and a break from the bonds of past which continue to hold sway over the present; being forever torn between socialism and capitalism and ongoing tension between the desire for centralized planning and control and the craving for a free competitive economy; the need to adjust life in Israel to physical constrains, alongside creativeness, innovation and imagination; the desire to give expression to nationalist aspirations, balanced by the need to consider and treat the other with respect and equality; the inclination to innovate and push limits, countered by the requirement that the democratic rules of the game be respected.

In fact, the underlying theme of this analysis is that the State of Israel in a constant state of flux, eyes set forward to the future while the past still haunts it from behind. It strives for legal independence, but finds it hard to shed the remnants of the Ottoman and British past. It aspires to be a capitalist state, but its bureaucratic authorities retain socialist modes of action. Israel is quite conscious of the limitations imposed by its size, but at the same time it strives to become an innovation and technology superpower. It wants to be Jewish and democratic, but the enduring aftereffects of the War of Independence and the demands for restitution and equality still cloud the relationship between the Jewish majority and the Arab minority. Israel boasts a creative, strong and independent legal system, but is afraid it may have gone too far. The process of change is fraught with uncertainty. Perhaps this is the process of maturation of a country that is already seventy years old.

The Freudian analyst would most probably conclude that the imaginary patient is a conflicted soul, and would recommend that the patient translate the diagnosis into rules for daily behavior. This book, however, did not draw its conclusions from the analyst’s couch, but from an analysis of Israel’s land policy and land laws. It has shown how they reflect the very soul of the State of Israel. Its diagnosis is neither abstract nor fanciful. It has traced the practical rules that concretely and regularly affect the lives of millions of Israelis.

Land policy and land laws reflect the “real [e]state” of a country’s affairs; this is more than just a theoretical discussion of what is or what ought to be. The world of real estate is not merely a series of dry, technical regulations; the code to a society’s very identity is interwoven with the details and directives of those laws.

1. Dejan Stojanović, "Don Quixote," <https://www.poemhunter.com/poem/don-quixote-6/>. Stojanović is a Serbian-American poet, journalist and philosopher born in Kosovo. [↑](#footnote-ref-1)
2. Meir Goldberg "A Little Country With A Moustache" (Poem)(Hebrew)(1989), <https://www.discogs.com/composition/dbba0a05-f390-449f-be4a-68a7ee95960b-A-Little-Country-With-A-Moustache>. [↑](#footnote-ref-2)