Chapter 3

The Administration of Public Land-Socialism in a Capitalist Era

*The Jubilee year…[is]an ancient institution set up by our Teacher Moses…to ensure the ends of social justice…our methods serve the purpose none the less. The increases in land values accrue not to the individual owner, but to the public".*

Theodore Herzl, *Old New Land: (AltNeuLand)*[[1]](#footnote-1)

In 1960, the Knesset passed Basic Law: Israel Lands.[[2]](#footnote-2) "Prohibition of transfer of ownership", the first clause, established that "the ownership of Israel Lands…shall not be transferred by sale or in any other manner". Israel's Basic Laws have special status, and are meant to constitute chapters of the State's constitution. Although their status as constitutional is the subject of heated debate, the Israeli Supreme Court ruled that their legal status trumps that of regular laws enacted by the Knesset, the Israeli parliament.[[3]](#footnote-3) The Supreme Court also ruled as such, albeit with less finality, about the constitutional status of Basic Law: Israel Lands,[[4]](#footnote-4) which is the second Basic Law that the Knesset enacted; only Basic Law: The Knesset preceded it (1958). It was legislated far earlier than Basic Laws that deal with more weighty topics, such as the President's status, the State's economy, the army, Jerusalem, the Judiciary and Human Rights in Israel. It is worth noting that from a comparative viewpoint, anchoring the prohibition of transferring ownership over government-owned lands in the constitution is quite exceptional. The constitutions of most Western states, such as America, Canada, Germany, Italy and the European Union emphasize the protection of private property, not the preservation of public ownership. The constitutions of Middle-Eastern countries which are not considered particularly liberal, such as Iran[[5]](#footnote-5) and Egypt[[6]](#footnote-6) emphasize the right to private property as well. Legislating the prohibition of transferring ownership from Israel Lands in a Basic Law of constitutional status at so early a stage in the creation of Israel's constitution indicates the great importance that the Israeli legislator ascribed to it. It is interesting, then, to understand the reasons for which the State's leaders saw such importance in this prohibition.

Three different ideological motives led to the adoption of this principle: the first is a cultural-symbolic motive, meant to establish a connection between Jewish tradition, and the return of the Jewish Nation to its homeland and the establishment of the State of Israel. The second is a national-historical motive which sought to make the transfer of ownership to foreigners a difficult undertaking. Both of these motivations express the Zionist character of Israel and reflect two basic problems of identity that the State struggles with: the question of *Halakha*'s (Jewish religious law) status as a normative or inspirational source of legislation, and the question of minority and foreigner status in such a State. Despite this, these two motivations were far less weighty than what is normally believed. Their value was more declarative than practical.

The decisive motivation for adopting the prohibition against transferring ownership of Israel Lands and for clinging to it so zealously was an economic-socialist worldview which characterized the State's leadership in her nascent years. This worldview places an imperative on the government to retain ownership of its lands in order to advance equality and social justice. At best, this worldview is suspicious of the holders of capital; at worst, it loathes them. Sparks of this perspective can already be found in the vision of Theodor Herzl, the founder of the Zionist Movement. During the British Mandate period, it took hold among the leaders of the Jewish settlement and decisively impacted Israel's land policy during her first thirty years.

Towards the end of the seventies, the economic-socialist view's weight decreased in the eyes of Israel's leadership and the public. Israeli society was gradually moving away from its leftist, socialist economic orientation, and towards a libertarian disposition that believed in competition and the free market. The principles which governed the administration of the government's land inventory seemed to be old vestiges of a disappearing world. The social and political upheaval did not skip over them. Increasing pressures led to privatization processes over the most valuable components of governmental land: urban and agricultural lands, and natural resources. This did not happen all at once, but was a gradual process, at first hidden and informal, and only later visible and formal. The process is currently at its peak. That it is happening at all reflects a change in economic identity that is sweeping the State. It is a practical expression of the tension between the increasing tendency towards a global, competitive, free market, and the communal, socialist foundations which guided Israel's founders and which still occupy significant space in the eyes of the public and of political parties. The tension between these two approaches finds expression in legislative processes, in public lands administration and in Supreme Court rulings. It will be at the center of this and of the following chapter.

In this chapter, the rise of the principle prohibiting the transfer of ownership over Israel Lands, as well as the beginnings of its fall, will be described, emphasizing the ideological changes that influenced these processes. We will delineate three motives, and the magnitude of their contributions, that influenced the adoption of and the clinging to this principle. The ideological upheaval surrounding this principle, and the way in which it led to the privatization of crucial components of public land will be described. We will examine the processes of this privatization in the fourth chapter.

**The Cultural-Symbolic Motive: The Biblical Commandment of Jubilee**

The cultural-symbolic motive for legislating Basic Law: Israel Lands was the Jewish-Zionist declarative message that was a harbinger of the law's inception. Legislating the law drew inspiration from the laws of the Jubilee Year (*shnat haYovel*) as they are described in Jewish scripture, principally the Torah. According to these laws, ownership of a plot of land would be returned to its original owners every fifty years. This commandment appears in Leviticus: "In this Year of Jubilee everyone is to return to their own property".[[7]](#footnote-7) The Year of Jubilee being the fiftieth year is also taken from Leviticus: "The fiftieth year shall be a jubilee for you".[[8]](#footnote-8) The explanation that Leviticus provides for this commandment is a religious one- the Holy Land belongs to God: "The land must not be sold permanently, because the land is mine and you reside in my land as foreigners and strangers".[[9]](#footnote-9) In the book of Numbers, a social explanation of the commandment is given: "No inheritance in Israel is to pass from one tribe to another, for every Israelite shall keep the tribal inheritance of their ancestors";[[10]](#footnote-10) "Be sure that the land is distributed by lot. What each group inherits will be according to the names for its ancestral tribe".[[11]](#footnote-11) In a patriarchal society whose social structure is based on distribution of plots of lands among tribes, retaining lands within the patrilineal ancestor's tribe throughout the generations is of prime importance. In such a society, lands are not simply central sources of income for the family or the tribe, but also a crucial component in their existence as social units ("name").[[12]](#footnote-12) Allowing outsiders entry to the land, whether by way of sale or inheritance, weakens not only the economy but the very fabric of society as well.[[13]](#footnote-13) Parallels may be found in modern-day rural societies, such as the traditional Arab village.[[14]](#footnote-14)

The Basic Law's legislators, the Israeli judiciary, and legal scholars and historians often quote this biblical background when explaining why the State of Israel adopted the prohibition of transferring ownership of Israel Lands in a Basic Law.[[15]](#footnote-15) Yet it would be erroneous to claim that the State did so from a religious standpoint that applies *Halakha* exactly as the scriptures present it. Most of the legislators involved with this Basic Law were secular Jews who were not guided by religious faith or by an obligation to *Halakha*. Moreover, stringent adherence to religious law as such could not serve as a reason for the prohibition in the Basic Law, because the Biblical prohibition does not deal with retaining public ownership of lands, but with retaining private property rights over given plots of land. Likewise, the commandment of the Jubilee year has not been applied at least since the destruction of the first Temple, and Maimonides, one of the most important scholars of *Halakha*, wrote that this commandment will only be revived when the Messiah comes.[[16]](#footnote-16) As such, the repeated reference to the Biblical commandment of Jubilee as a justification for the imperative of retaining ownership of Israel Lands was not due to religious adherence but stemmed from somewhere else.

In reality, the laws of Jubilee were a cultural-symbolic source of inspiration in the legislation of the prohibition of transferring land ownership, and not an obligatory normative source. The purpose of clinging to a source within Jewish heritage was to emphasize Zionism's and the State of Israel's cultural and national link to the Jewish People, its heritage, and the Land of Israel.[[17]](#footnote-17) The implementation of the Jubilee laws specifically in the Land of Israel and not in the Diaspora, and the agricultural background of the prohibition, were able to serve as inspiration for the renewed link between the Jewish Nation and its land – a link characterized by toiling over the land and "redeeming" it from its desolation.[[18]](#footnote-18) Former Chief Justice of the Israeli Supreme Court, Hon. Dorit Beinish, explained in the ***Dror*** case (2012) that the principle of not allowing public lands to be transferred to private ownership, as expressed in the Basic Law, is founded upon "the Jewish Nation's tradition" and "on our public view – as a nation and as a society – that there is deep meaning and a multiplicity of dimensions in our land, which symbolize the return of the Jewish Nation to its homeland".[[19]](#footnote-19)

Support for modern conceptions of equality can also be found in the Jubilee laws. As will be shown later on, these conceptions had a definitive impact on the adoption of the prohibition against transferring ownership. Zionist thinkers of a secular-nationalist disposition were thrilled to use the Jewish tradition as inspiration for their modern social ideas. The Biblical lands were divided equally, in proportion to the size of the tribe: "To a larger group give a larger inheritance, and to a smaller group a smaller one; each is to receive its inheritance according to the number of those listed".[[20]](#footnote-20) It was due to this that Theodor Herzl, the visionary of the Jewish State, based his economic vision for the State on the Jubilee laws. In his book, *AltNeuLand*, which was published about twenty-five years before the State of Israel's founding, Herzl proclaimed through his protagonist, David, that "The Jubilee year…[is] an ancient institution set up by our Teacher Moses" and delineated the purpose "…to ensure the ends of social justice…".[[21]](#footnote-21) Herzl admitted in the continuation of that same sentence that "We indeed arranged it a bit differently. The land now reverts back to the New Society"[[22]](#footnote-22) and explained that thus, "The increases in land values accrue not to the individual owner, but to the public".[[23]](#footnote-23) Ze'ev Jabotinsky, founder of the Revisionist Movement, whose writings served as basis for the articulation of Israel's Economic Right's manifesto, also drew inspiration from the Biblical Jubilee laws to anchor his ideas. He supported their adoption in the Jewish State in order to bring about "social reconstruction", which would enable periodic repairs of distortion in the free market and return of property divisions to their initial, societal point of balance.[[24]](#footnote-24)

After the Basic Law's legislation, the Jubilee laws served as a source of the terminology which the authorities that administer Israel Lands employ. For example, the standard lease period of Israel Lands was set at forty-nine years, and was thus meant to end in the fiftieth year, the Jubilee.[[25]](#footnote-25) The end of a lease period is referred to as the "Lease Jubilee" within Israel Lands regulations.[[26]](#footnote-26) The cultural-symbolic background of the Jubilee commandments undoubtedly explains the declarative value of enacting a law which preserves ownership of Israel Lands for the State of Israel. Bases for other reasons for the modern ban on transferring ownership can be found in the religious explanation of the laws, such as the striving for equal allotment of resources. Yet it is doubtful that a historical-cultural source of inspiration was enough to bring the State to adopt the operative policy of ownership retention and to cling to it for so many years. In practice, there were different reasons- stronger and more practical- for the State's preservation of the policy.

**The National-Historic Motive: Non-Jewish Citizens**

Another common explanation for the adoption of the ban on transferring ownership of Israel Lands is set in the national-historic motive for legislating the Basic Law. There are those who claim that the State of Israel instituted this prohibition in order to prevent transfer of land ownership to her non-Jewish citizens or foreigners.[[27]](#footnote-27) However the weight ascribed to this factor as a reason for the Basic Law's enactment is greatly overestimated. Its weight was much lighter than what tends to be claimed.

The fear of ownership transfer to non-Jews indeed characterized the JNF's policy regarding the lands it had acquired during the British Mandate period. Its lands were purchased through resources provided by world Jewry and served as the only source for land provision to the Jewish settlement in Palestine, which was a minority population at the time. It was a period of national struggle, aiming for the establishment of a Jewish State, under foreign British rule which opposed Jewish purchase of lands. The JNF feared that were it not to retain ownership over the lands that it had acquired with huge sums of money and under difficult conditions, those lands would revert to non-Jewish hands.[[28]](#footnote-28) This fear ceased to guide Israel's government after the State's establishment. The young Jewish State now had a huge inventory of public lands at her disposal, which included, as explained in the previous chapter, tens of thousands of kilometers of State lands and Development Authority lands. The State's non-Jewish residents become a minority that appeared to have no power to lead an economic struggle over the purchasing of lands. The State of Israel ensured this minority, in her Declaration of Independence, that it would enjoy total equality of civil rights such that it could not be discriminated against, treated unequally, or prevented from acquiring rights over Israel Lands.

As early as 1949, when the government was deliberating the idea of limiting the transfer of ownership of its lands, Prime Minister David Ben-Gurion claimed that "we are now dealing with a State…There is no comparison between the state of affairs during the period in which lands were purchased by the JNF and our current state of affairs".[[29]](#footnote-29) In a cabinet meeting, Finance Minister Kaplan stated that "regarding the Arabs…either we seriously think that that small number of Arabs who live here will have equal rights, or we are just outwardly saying that […] some Arab will buy himself another ten houses in Ramle and Lod, and I don't think that many of them will do that. In any event, we cannot place [such] limitations because there are Arabs in Israel".[[30]](#footnote-30) During the process of legislating the Basic Law as well, towards the end of the State of Israel's first decade, no weight was given to the worry that land rights would be transferred to the State's Arab minority. The starting assumption of the committee of ministers that penned the Basic Law, chaired by Minister Levi Eshkol, was that with the State's founding, the JNF's purpose changed "from redeeming the land from foreigners, to redeeming the land from its desolation".[[31]](#footnote-31) The explanatory comments on the bill for the Basic Law stated that "the purpose of the JNF's and the State's lands (including those belonging to the Development Authority) is one and the same: to serve the needs of the State **and her residents**".[[32]](#footnote-32) The chairman of the Knesset's Constitution, Law and Justice Committee, MK Warhaftig, clarified that "any law that we pass is for the good of **all** those who reside in the State".[[33]](#footnote-33) MK Yohanan Bader, one of the leaders of the right-wing *Heirut* party, opposed instituting the ban, noting that "the fathers of Zionism […] intended to ensure that the land which the JNF was to purchase, wouldn't pass from Jewish to foreign ownership […] this purpose is no longer relevant".[[34]](#footnote-34) MK Jacob Hazan, of the left-wing, socialist *Mapa"m* party, and a supporter of the Basic Law, testified that in the deliberations in which he took part and in the small committees that prepared the law, there was consensus both from the JNF and from the government, that the administrative body which was to be created for the purpose of administering Israel Lands, would need to take care of "the Jewish citizen as of the Arab citizen".[[35]](#footnote-35) The worry surrounding the sale of lands to Arabs or other non-Jews was not mentioned at all in Knesset deliberations leading up to the Basic Law's enactment as a reason for its legislation.

The further claim that the goal of preventing non-Jewish citizens from acquiring land ownership was a hidden, inexplicit reason for the Basic Law's enactment, is also doubtful. The ban on transferring ownership in the Basic Law did not prevent, in and of itself, the transfer of other land rights over Israel Lands to non-Jewish citizens. From the founding of the State of Israel, there has never been a ban on leasing Israel Lands to non-Jewish citizens; the State does indeed let her lands to these citizens.[[36]](#footnote-36) Only the JNF seemingly clung to the prohibition, established in its statutes as early as during the British Mandate, against transferring land ownership or even letting lands to non-Jews. The legislative steps towards the Basic Law's enactment were meant, apparently, to protect this ban, and it has been mentioned often by the legislators.[[37]](#footnote-37) The JNF did view the Basic Law’s adoption of the principle behind the ban on land transfer as a triumph, preserving its principles for retaining the Nation's lands.[[38]](#footnote-38) The Israel Lands Administration, however, established for the purpose of administering all Israel Lands, found ways to avoid discriminating against non-Jewish citizens in the allotment of JNF lands, by exchanging JNF lands given to non-Jews with land belonging to the State or the Development Authority.[[39]](#footnote-39) Moreover, today, when urban Israel Lands are privatized, ownership of them is transferred equally to whoever held lease rights to them, without regard to national or religious affiliation. The Attorney General reiterated before the Supreme Court that he would do such with JNF lands as well, and he promised to prevent inequality in leasing them.[[40]](#footnote-40) This set-up also applies to JNF lands in light of a general agreement to exchange lands, which it signed with the State, as described in the previous chapter. There are indeed claims, which will be examined below, that the allotment policy for Israel Lands to non-Jews is discriminatory despite the absence of a ban on transferring rights to them. Yet there is no dispute that such a ban does not exist. The desire to prevent the transfer of land ownership to Israel's non-Jewish citizens could not have been, and never was a motive for the general prohibition of transferring ownership over Israel Lands.

**The National-Historic Motive: The Ban on Sale to "Foreigners"**

Unlike the fear surrounding Israel Land transfers to the State's citizens, it was seemingly possible to explain the general prohibition with the fear that Israel Lands would fall to the hands of foreigners who are not citizens of the State. The results of the War of Independence and the creation of the "refugee problem" appeared to elicit worry that the Palestinian refugees, representatives for them, or forces in Arab States would purchase Israel Lands as a step towards actualizing the Right of Return. The ban, then, can seemingly be understood as a means of preventing such purchases. Yet in practice, the worry that foreign bodies would purchase lands did not trouble the Basic Law's legislators, and they gave no expression of it. This attitude could have stemmed from Israel's success at that time in effectively quashing attempts of return.[[41]](#footnote-41) MK Bader, a prominent right-wing politician in opposition to the Basic Law, was the only person to explicitly reference this worry during the legislation process, and he dismissed it out of hand: "The risk that we will sell our land to foreigners in an Israeli State- that could happen with a dunam or half a dunam- is no longer possible".[[42]](#footnote-42)

It was years after the Basic Law was enacted that the fear that foreigners would purchase lands was first invoked as a reason for instituting the prohibition against transferring ownership of Israel Lands. Four later developments led to this. First, in 1967, Israel gained control of territories in the West Bank and the Gaza Strip, and the possibility that refugees in those territories would return to their lands within the official State borders and attempt to purchase them, became more tangible. As a result, a new law was legislated, banning agricultural land transaction and establishing that that constitutes "divergent use" [of the lands] and is a criminal offense.[[43]](#footnote-43) During the process of legislating the new law, it was claimed that one of the unstated but driving reasons for it was the desire to prevent transactions with former refugees.[[44]](#footnote-44) Yet during the sixties and seventies, very few complaints were lodged with the Israel Lands Administration regarding informal sub-leasing of agricultural Israel Lands to Arabs.[[45]](#footnote-45)

Second, at the beginning of the eighties, Israel's government removed its monetary oversight of foreign currency. This created the fear that the State would no longer be able to control the flow of resources meant to purchase rights over Israel Lands from hostile entities. In response, the government suggested enacting a new law, with the purpose of "preventing the possibility of granting land to [foreign] enemy or unwanted bodies".[[46]](#footnote-46) Another catalyst for this suggestion was the Beth-El communities land purchases. Beth-El was a Protestant-Zionist Christian community in Zichron Ya'akov and other locations throughout the country, headed by German nun, Emma Berger.[[47]](#footnote-47) Other occasions of land sale to foreigners were mentioned offhandedly, without elaboration, in Knesset deliberations, as was the fear of purchases by Saudi Arabia or via "Petro-dollars", yet this all seemed to reflect fears of future eventualities, rather than consequences of actual phenomena.[[48]](#footnote-48) Although that bill and others similar to it were never passed, in 1982, the Israel Lands Council, responsible for Israel Lands land policy, decided for the first time since its inception, to place restrictions on granting rights over Israel Lands to foreigners.[[49]](#footnote-49) In this decision and in a series of later decisions based on it, "foreigner" was defined as anyone who is neither resident nor citizen of Israel, nor entitled to move to Israel through the Law of Return. As such, this policy was meant to prevent non-Jewish outsiders from purchasing lands.[[50]](#footnote-50)

The third development that raised concern about transferring Israel Lands to foreigners was the privatization process of urban lands. The worry that the privatized lands would trickle over to hostile forces was one of the reasons that privatization was opposed.[[51]](#footnote-51) As a result, the Israel Lands Council reiterated its dedication to the ban on transfer.[[52]](#footnote-52) It was not until 2011 that the prohibition against transferring both leasing rights and ownership of Israel Lands to foreigners via privatization was formally anchored in legislation.[[53]](#footnote-53) The purpose of the legislation, as stated in the bill, was "to prevent the spread of foreign entities, including hostile bodies, across the State's land".[[54]](#footnote-54) In the time leading up to the law's enactment, Israeli media outlets published investigations that raised suspicion that Jewish-owned lands were being privately acquired– whether by Arabs or Jews – through the aid of foreign entities.[[55]](#footnote-55) Knesset members from right-wing parties who supported these legislative amendments used these publications as support of their stances[[56]](#footnote-56), but supporters of the law from center and left-wing parties also felt that real danger existed.[[57]](#footnote-57) Yet statistics provided by the Israel Lands Administration during the legislation process showed that in the preceding years, only a few dozen requests to transfer Israel Lands to foreign ownership were filed,[[58]](#footnote-58) and most of them – mainly requests from foreign companies – were approved.[[59]](#footnote-59) The new legislation did not ban ownership transfer to foreigners but conditioned it on the approval of the Defense and Foreign Ministers, and required that the main consideration to be taken into account be "the good of the public and their security".[[60]](#footnote-60)

The fourth and latest development that raised interest in banning land ownership transfer to foreigners was the advent of globalization, which strengthened the concern of land purchases by foreign countries and multi-national companies.[[61]](#footnote-61) Globalization created an opening in Israel for major companies to purchase lands, as when the Chinese food giant, Bright Food (Group) Co. Ltd., owned by the Chinese government, purchased the Israeli food company, T'nuva. This transaction was met with sharp public and political criticism, focusing on the claim that 3.3 hectares of land, worth 1.4 billion New Israeli Shekels, would now be controlled by the Chinese government.[[62]](#footnote-62) The criticism, however, did not prevent the sale. It seems that initiatives by hostile entities to purchase lands are likely to meet with problems of accessibility, increased prices of assets, and economic limitations stemming from regulations instituted to prevent money laundering.[[63]](#footnote-63) Therefore the likelihood and the danger that such purchases be made on a wide scale is doubtful. No reliable research detailing the scale of the phenomenon has been published. Such bans are common in other countries;[[64]](#footnote-64) one even appears in Venezuela's constitution.[[65]](#footnote-65)

Whatever the true potency of the fear of land sales to foreigners may be, this aspect of the reasons behind the ban is doubtlessly a result of developments that came after the Basic Law's legislation. The idea of banning the transfer of land to non-resident foreigners did not guide the authors of the Basic Law; it gained attention many years after the law's enactment.[[66]](#footnote-66)

**The Economic-Socialist Motive: "Profiteering" vs. "Equality"**

The strongest motive driving the adoption of the prohibition on transferring ownership over Israel Lands was the communal-socialist worldview of the central stream leading the State of Israel in the sixties. A socialist worldview supports preserving state control over all means of production and having them allotted by the government in order to advance equality. It is anywhere from suspicious of, to hostile towards private ownership and owners of capital. A general ban on transferring land ownership fits well with such an outlook. It allows the government to distribute land resources, oversee their usage, and to enjoy their rise in value for the good of the entire public. Such bans can be found in countries with socialist backgrounds, such as China[[67]](#footnote-67) and Cuba.[[68]](#footnote-68)

The socialist worldview held by the young State of Israel’s leaders was formed in the years preceding the State’s establishment. In practice, it escorted the Zionist Movement from its very beginning. Theodor Herzl wrote in *AltNeuLand*, his utopian novel, that the reason for retaining public ownership of lands is *“to ensure the ends of social justice…*[because]*…[T]he increases in land values accrue not to the individual owner, but to the public”.[[69]](#footnote-69)* In other words, by leaving land ownership in its hands, the public would enjoy the increase of land value in many different ways. The heads of the Jewish settlements in Palestine during the British Mandate were mostly associated with labor parties of a socialist orientation and already in that time were deeply repulsed by the idea of private land ownership.[[70]](#footnote-70) They fiercely attacked "profiteering" and "speculation", derogatory terms for purchasing land not for use but for turning a profit by reselling it at a higher price. In December 1933, David Ben-Gurion, who was at that time the leader of the pre-state Jewish settlement, wrote that "a terrible ailment has struck us – the profiteering that barters over lands so that it is almost impossible to purchase any".[[71]](#footnote-71) Then head of the JNF, Avraham Granovsky, wrote in 1940 that "it is of utmost importance to erect a legal-governmental veil before the phenomenon of land profiteering in the Hebrew State"[[72]](#footnote-72) and warned that were that to not happen, "we must fear the danger of anarchy in the real-estate market and the speculative rise of land costs."[[73]](#footnote-73) The socialist worldviews were especially relevant for agricultural lands, which were the central targets for the Zionist Movement's land purchases in its early days. Agricultural labor was considered an important value in the eyes of influential Zionist thinkers, and the socialist stance saw the preservation of land ownership as a necessary means for protecting farmers from the risks bound up in agricultural work, for retaining equality in the allotment of agricultural land plots, and for preventing "speculative" land use by farmers.[[74]](#footnote-74)

The socialist stream continued to guide the State after it was founded. Many of the State's leaders, especially representatives from workers' parties, continued to justify public land ownership with similar reasonings. This worldview saw State ownership of land as the proper tool for economic development, and dismissed the transfer of lands to holders of capital, as they believed that that could only lead to "profiteering". This point of view was prominent among those who justified the ban on ownership transfer, both during deliberations that took place in the early fifties over implementing the ban on State and Development Authority assets,[[75]](#footnote-75) and during deliberations that took place at the end of the fifties, towards the legislation of the Basic Law.[[76]](#footnote-76) In the final deliberation, Finance Minister Levi Eshkol noted that it is "a socialist worldview regarding means of production" which stands at the foundation of the Basic Law.[[77]](#footnote-77) These socialist opinions did meet with more liberal-capitalist opinions which opposed the government monopoly and supported privatization and free initiative.[[78]](#footnote-78) For example, MK Yohanan Bader, the head of the legislation's opposition from the right, claimed that government control of 95% of the State's territory will deter investors, and that a property owner who sells his property is not a "profiteer".[[79]](#footnote-79) Further, he claimed that eternal retention of ownership is the same as the dead controlling the living "manus mortua", "a curse for industry and the nation" and "a blockade that prevents all development".[[80]](#footnote-80) MK Shne'or Zalman Abramov, the theoretician of the liberal Israeli party, claimed that the principle of State ownership of land is "an attempt to revolt against desired development" and "an anachronism".[[81]](#footnote-81) Yet in the meeting of these opposing views, the socialist approach came out on top.

In recent decades, the socialist justifications for ownership retention have become lackluster. Yet, specifically now, the socialist view has been given renewed support in Supreme Court judgments. In the ***Qad'an*** case,[[82]](#footnote-82) which examined the State's authority to discriminate based on one's national affiliation, Chief Justice Aharon Barak reviewed the purposes of governmental land administration. The starting point of his analyses was the purposes for the legislation of the Basic Law.[[83]](#footnote-83) Among these, the Court listed the goal "to prevent speculative trade in State land".[[84]](#footnote-84) It was further established that "[T]he (general) purpose of all legislation is to guarantee equality to all persons,"[[85]](#footnote-85) and that "Equality lies at the very foundation of social coexistence."[[86]](#footnote-86) This articulation of the justifications for the prohibition would have been greeted with much fanfare from its original supporters.

The message that the preservation of ownership was meant to advance equality, was emphasized in the Democratic Discourse case, which dispensed with the granting of special benefits to lessees of agricultural Israel Lands.[[87]](#footnote-87) The Court ruled that the purpose of retaining public ownership is "the realization of distributional justice and land allotment" and its goal, "the just social division of resources".[[88]](#footnote-88) It even claimed that "Law plays an important role in everything relating to the oversight of decisions about the division of wealth in society".[[89]](#footnote-89) In the ***Avi'ezer*** case, the Court ruled that allotment of agricultural plots to industrial entities that do not mean to work in agriculture does not fit with "principles of social justice".[[90]](#footnote-90) In the **Workers' Society** case, it was ruled that public lessees, such as the General Workers' Organization ("*HaHistadrut*"), cannot "yield profits for themselves at the account of the State's lands".[[91]](#footnote-91) In the **Independent Cities Forum** case, which dealt with the allotment of benefits to lessees of agricultural Israel Lands, the Court ruled that social justice considerations focus "on the relationship between different groups and communities – as opposed to the traditional debate over the principle of equality, which focuses on comparisons between individuals" and that social justice considerations must be given "significant weight when making decisions about rights and uses of Israel Lands".[[92]](#footnote-92) In the ***Dror*** case, the Court criticized legislation that allows privatization of urban lands, and partially accepted the petitioners' claims that there is "concern over the transfer of large areas of land, all developed, to the hands of 'land barons', as they define them, who will create 'islands' of private lands, and will control them for the purpose of yielding profit".[[93]](#footnote-93)

In these rulings, the Supreme Court sided with the original views that influenced the principle of ownership retention. Yet the timing of these rulings, emphasizing these principals, stood in opposition to the spirit of the changes going on outside the Court walls. It could be that the Court felt compelled to emphasize and underscore the distributional reasons behind the prohibition of land transfer specifically at this time, because of the steps taken towards privatization that are arriving at its threshold and seeking Judicial Review. A more far-fetched explanation is that the Court wanted to preserve the elitist values of "liberal former hegemones", which had grown weak.[[94]](#footnote-94) Yet, at the end of the day, the Supreme Court's general approach to the principal of ownership transfer did not prevent the extension of the steps towards Israel Lands privatization. The Court refused to acknowledge the claim that privatizing lands infringes upon "the public's property rights".[[95]](#footnote-95) In **Independent Cities Forum**, Justice Arbel ended her ruling with the statement that "the years have passed, the State has risen, and with the passage of time, needs have changed, preferences have switched, and the ethos has weakened […] we must consider the changing reality, the economic changes".[[96]](#footnote-96) In the coming sections, we will describe those changes of "ethos" in the policy for administering Israel's public lands inventory.

**The Changing Ethos: From Socialism to Market Economy**

In the decades that have passed since Basic Law: Israel Lands was legislated, Israel's political map has changed. The political strength of the socialist parties has weakened. Since 1977, a right-wing, liberal economic worldview has guided both the parliamentary majority in the Knesset, and the governments. Israeli society has become a competitive, Western, free market society.[[97]](#footnote-97) In the past, representatives of the Agricultural Settlement Movement, which controls the majority of agricultural Israel Lands, stood at the forefront of the supporters of ownership retention; in the new century, some served as popular representation for privatization lawsuits. A prime example of this is the statement made by the representative of the NGO "*Admati*" ("My Land"), which represents 147 communal settlements that were founded before the State and constituted the central support of Israel's socialist views, during a Knesset deliberation over the privatization of Israel Lands:[[98]](#footnote-98)

"I have already left the war for equality that I used to wage. Now we are moving forward and discussing transferring ownership. We ask, we demand, equality between my home in the settlements – the *kibbutz* and the *moshav* – and urban homes".

Preserving ownership did not prove itself economically, either. The policy led to the establishment of a large, inefficient bureaucratic mechanism, The Israel Lands Administration, which struggled to deal with the huge inventory for which it was responsible, and with many points of tension with citizens.[[99]](#footnote-99) In 2009 a new body was founded, The Israel Lands Authority, with the purpose of making the inventory's administration more efficient, and improving it according to accepted business standards.[[100]](#footnote-100) It's post- establishment absorption into the government apparatus met with obstacles, and the State Comptroller expressed doubts about whether it had – or would in the future – realize its purpose.[[101]](#footnote-101) Moreover, as will be clarified in the next chapter, the government struggled for decades to produce the expected economic profits from the ownership retention mechanisms, and was forced to gradually dispense with a significant portion of them. Over time, various corruptions and favoritism of interested parties were discovered as well.[[102]](#footnote-102) The governmental mechanism did not manage to supply the land demand and as a result, property prices have quickly shot up, especially in recent years.[[103]](#footnote-103) The advantages of public ownership became burdens. It did not yield the expected economic profits for the public. This all led to a weakening of the socialist justifications for banning ownership transfer. It did not lead to the voiding of the Basic Law or of the principle embodied in it, but it did lead to changes in legislation and policy steps that limited the principle’s application, and moved Israel Land privatization forward. This section will focus on “the fingerprints” of this ideological change in legislation processes and Supreme Court rulings. The next chapter will detail the various processes towards privatization of Israel Lands that were put in place following the ideological change.

In 2009, the goals of the Israel Lands Authority, created to more efficiently administer Israel Lands, were set out in primary legislation for the first time. The goals set before the new authority reflect the change that has swept the traditional view of distribution. While the first goal is the centralized administration of Israel Lands “for the good of the public” and “for public needs”, this is accompanied by goals which reflect a new, contradictory outlook: “Advancement of competition in the land market” and “prevention of concentrated control of lands”.[[104]](#footnote-104) The message expressed in the legislation of these goals was explained in the comments to the bill: transfer of ownership to lessees must be enabled, as “preserving ownership […] interferes with market efficiency”.[[105]](#footnote-105) The major change that had occurred within the world-view of the State’s leadership ever since the legislation of the Basic Law, was evident in the Knesset discourse surrounding the expansion of privatization powers. The socialist views that support the principle of ownership retention were well heard, but mainly reflected minority opinions that opposed privatization.[[106]](#footnote-106) MK Sheli Yahimovich, of the Labor Party leadership, which stresses social-democratic views, opposed the expansion of the privatization process because she is “socialist” and “we are turning into a bank for land trade”.[[107]](#footnote-107)

A change in the definition of Public Needs, in whose name the ownership of public lands had been retained, occurred alongside the definition of competition and privatization as goals of the Israel Lands Authority. If in the past, such needs had included almost all types of land usage, in recent years a narrower view has taken its place, which sees ownership retention as necessary mainly over lands needed for governmental supply of public goods or over resources that must be preserved for future generations. This view lends justification to continued public ownership of natural resources and of as-yet unused Israel Lands, but allows the privatization of developed lands meant for other usages, principally urban ones. We will now explain some of the terms that stand at the foundation of this limiting approach.

A public good is a good whose consumption by one person does not take away from the ability of anyone else to consume it, and whose consumption by others may not be prevented or conditioned on payment. The inability to prevent consumption neutralizes any motivation for private production of the good, as others who did not invest in its production will equally benefit from it. Governmental supply of a public good is one of the ways to handle this problem. Prominent examples of such goods are security and public order.[[108]](#footnote-108) Lands are definitionally not a public good, as they are a finite resource whose use by one precludes other people’s ability to use it, and its use by others may certainly be prevented. Yet land serves as a medium for the production of public goods. As such, for example, training grounds “produce” security for the State’s residents, forests and nature reserves “produce” environmental quality and improve quality of life, and an antiquities site “produces” cultural and historical heritage. If a private owner were to use his land to produce security, environmental quality or cultural heritage, he could not prevent other people from using those goods without paying for them, and hence has no reason to produce those public goods on his private land. He will prefer to designate his land for the production of non-public goods, in exchange for whose use he can charge money. It is possible that some of those goods will themselves contribute to the production of public goods, yet their contribution will be less than what is needed, to an ever-increasing degree.[[109]](#footnote-109) Therefore, as long as the production of these public goods are essential for society and the more distinct they are, the government must ensure their production on lands through the retention of government ownership of them, or through governmental planning.[[110]](#footnote-110) This is a common justification given for the retention of government ownership over lands used as parks, nature reserves, beaches, antiquity sites, sites of historical importance, forests, open landscape areas and army training territory.[[111]](#footnote-111) Similarly, allotting the full inventory of private lands in this generation is likely to ignore the needs and desires of future generations. This generation will produce much more benefit in the present, and externalize negative impacts (creating shortages and damage) onto future generations.[[112]](#footnote-112) This line of reasoning can also justify public ownership of quarries and natural resources, or of the unused land inventory.[[113]](#footnote-113)

In the legislative amendments from 2009, the Israeli legislator explicitly expressed the limited purpose of ownership retention. It was established that Israel Lands will be administered “as a resource for the development of the State of Israel and for the good of the public, **the environment, and future generations**”.[[114]](#footnote-114) Retaining ownership of the land for the good of future generations was emphasized several times when it was decided that “enough land **reserves** [must be left] for the needs and the development of the State **in the future**”,[[115]](#footnote-115) and for “the preservation of land **reserves** for public needs”.[[116]](#footnote-116) In debates in the Knesset about preparations for a full constitution for the State of Israel, with consensus, it was suggested that the general principle of prohibiting ownership transfer of Israel Lands be struck from it, and that a clause be included instead that simply creates a general obligation to preserve lands and natural resources for future generations.[[117]](#footnote-117) We emphasize that this suggestion has yet to be accepted. In recent years, the Supreme Court has expressed the consideration of future generations’ needs as a reason for the policy of land ownership retention. Thus, for example, in the ***Dror*** case, the Court ruled that urban lands be privatized “sparingly and in line with the needs stemming from the population’s natural growth rate”.[[118]](#footnote-118) In the **Independent Cities Forum** case, Justice Arbel approved steps towards privatization of structures in agricultural areas, but warned that “extended construction in open areas will hurt future generations, whose needs we must take into account as well” and that “there is room to take into account long-term considerations, relating to consequences of a given distributional decision on future generations.”[[119]](#footnote-119)

In practice, most Israel Lands territory does include undeveloped lands which are not meant for development according to the national plan. The total land reserves for development in Israel, including privately owned areas, stands at 1,729 sq. kilometers, which is only about 8% of the country’s territory. The area that has already been developed stands at 988.5 sq. kilometers, which is another 4.5% of the state’s territory. Therefore, the developed area designated for development covers only 12.5% of the territory of the State of Israel. The rest of the area includes a majority of open land (87.5%).[[120]](#footnote-120) Within this remaining balance, rocky territory, brush, and excavated lands (64.7%), threshed forests and parks (7.3%), agricultural lands (20%),[[121]](#footnote-121) army training territory (30%), IDF and Ministry of Security and Security Industries structures and camp territory (5%),[[122]](#footnote-122) national parks and nature reserves (23%),[[123]](#footnote-123) and 22,000 antiquity sites[[124]](#footnote-124) can all be found, at times overlapping. Most Israel Lands serve, then, for the production of public goods such as landscape, security, nature, heritage, and the preservation of reserves for future generations.

The transition from a policy of total retention of ownership to a policy of limited retention of natural resources and lands for future generations took place in other socialist countries that underwent liberalization, such as Russia, whose constitution obligates the state to preserve lands and natural resources, but does not impose a general obligation to preserve public ownership.[[125]](#footnote-125) This is the common approach in the West as well. In the Millennium Development Goals of 2012, the World Bank allowed for any use of natural resources, including lands, that is efficient and sustainable.[[126]](#footnote-126) The central goal of the Bureau of Land Management’s (B.L.M.) administration of America’s federal land inventory is to ensure the accessibility of natural resources (quarries, forests, landscapes, parks) and assets of historical and cultural value to the general public.[[127]](#footnote-127) According to the Federal Land Policy and Management Act 1976 (FLPMA),[[128]](#footnote-128) land may be privatized only once a plan has been set for it; the guiding principles of such plans are environmental protection and consideration of future potential for use and long-term benefit.[[129]](#footnote-129) In England, on the other hand, the Crown Estate Commissioners, whose authorities are defined in the Crown Estate Act 1961 (CEA 1961),[[130]](#footnote-130) have been criticized for not adequately considering wider public interests.[[131]](#footnote-131) As a result, the Commissioners proclaimed their intention to not limit their focus on the future exclusively to profit yields, but in advancing sustainability and social and environmental benefits as well.[[132]](#footnote-132)

In sum, the State of Israel has undergone a far-reaching ideological transformation since the days in which the principle of retaining ownership of Israel Lands was first formed. The leftist, socialist worldview that informed the design of the prohibition has been exchanged for a more liberal version. While this change did not bring about the complete voiding of the principle, it did lead to changes in its application, to a large degree. The strict policy of ownership retention was exchanged for an ever-expanding policy of privatization. Despite this, most Israel Lands are undeveloped territories or territories used to produce public goods and remain under government administration. The next chapter will examine the way that the ideological change led to privatization processes over three components of the government's land inventory: urban lands, agricultural lands, and natural resources.

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