Chapter 2

The Evolution of Public and Private Land Inventory

*"The land was ours before we were the land’s"*

Robert Frost, *The Gift Outright*

The composition of Israel's public and private land inventories constitutes a mirror image both of the history of the State, and of the central characteristics of her identity. First, the State of Israel is part of the Levant. As was the case with many of her neighbors, she was vulnerable to Ottoman and Muslim influence, and Ottoman legislation had a decisive impact on the formation of her land inventory. Second, the State of Israel is a Jewish state which arose as a result of the Zionist movement's efforts to realize Jewish self-determination in the Land of Israel. The state's Zionist character as the State of the Jewish Nation was reflected in the function filled by the Jewish National Fund and the Zionist idea in the development of the State's land inventory. Third, the State of Israel arose against the backdrop of an armed struggle with Arab states and the Arab-Palestinian Nationalist movement, which opposed her establishment. The results of this struggle, especially the abandonment of Palestinian refugees' assets, are evident in the structure of the state's land inventory to this day. Fourth, a socialist worldview guided the State of Israel's leadership in her nascent years. This worldview had a prominent impact on the composition of the State's land inventory. This impact can be seen clearly in the huge volume of public inventory and the institution of policy which preserved that public ownership and precluded, until recent years, the ability to transfer ownership to private hands. This chapter will review the various stages that influenced the structure of the State of Israel's land inventory: the inventory's initial formation under Ottoman law, which functioned as its "assembly line"; its registration and "packaging" in the British Mandate period; and transfer of refugee and JNF land to public administration after the State's establishment. The chapter will close with statistics illustrating the influence that the processes involved in creating the inventory still have on its character today.

**The Ottoman Assembly Line: Creation of Private and Public Inventory**

Ottoman land laws have had a central historical influence on the division of the State of Israel's land inventory between private land and public land. The Ottoman laws were based primarily on Muslim land laws and were in force across the entire Ottoman Empire. In this sense, Israel's land inventory was created by processes similar to those that took place in other countries under Ottoman control.[[1]](#footnote-1) The normative system which impacted the division of Israel's land inventory was created mainly in the last days of Ottoman rule. Its main component was the Ottoman Land Code of 1858.[[2]](#footnote-2) This was mostly a codification of preexisting laws, yet it also initiated a number of reforms. While its main concern was defining the status of, and administrative procedures for government land, it also laid the foundation for the privatization of those lands.[[3]](#footnote-3) The Ottoman system defined land status as either private or public based on its nature and use. Built-up land in urban or village settings was considered to be in private ownership (*mulq, waqf*). Public lots which were meant for use in urban areas were considered to be under public municipal ownership (*matruka*). The governmental inventory was composed of two categories of open lands outside urban territory. The first, of more limited breadth, included land that could be used for agricultural purposes (*miri*). These plots were generally located in the areas that surrounded developed territory. Formal ownership of these lands (*raqabe*) was given to the government because agriculture was the main source of income for both the population and the ruler. The second and more common category of lands under governmental ownership included all land that was neither urban nor fit for agricultural use, and was located outside the borders of any settlement (*mewat*).[[4]](#footnote-4) Figure 1, below, illustrates the definitions of private and public ownership under Ottoman law.



**Privatization of Governmental Land in the Ottoman Period**

Towards the end of the period of Ottoman rule, land owned by the government began to undergo privatization processes. The government tended to grant private individuals limited rights for lands fit for agriculture (*miri*), which included rights for use and yield consumption (*tasarruf*). According to Ottoman law, these rights were lesser than private ownership rights: they could be neither transferred nor inherited, and the individual right-holder was required to return the lands to the ruler in a non-cultivated state (*mahlul*).[[5]](#footnote-5) At the end of the nineteenth century, cultivated land began a gradual process of privatization, and ownership rights to *miri* lands were slowly transferred from the government to private hands.[[6]](#footnote-6) From a legal standpoint, this process began with the blurring of the differentiation between ownership rights and usage rights: usage rights could be commercially traded and the government did not always enforce the obligation to return the land to it in an uncultivated state. The British Mandate government and the State of Israel registered the cultivated lands in the land registry to the full ownership of their cultivators, so long as they had been cultivated for more than a decade, or in some cases, for more than fifteen or twenty five years.[[7]](#footnote-7) This process was completed at the beginning of the State of Israel's third decade, when Land Law 5729-1969 finally stated that "The ownership of immovable property which…belonged to the Miri category shall be under full ownership…"[[8]](#footnote-8)

An additional avenue for privatization was available up until 1921 in regard to undeveloped government lands that were located outside the borders of settlements and which were not fit for agricultural cultivation (*mewat*). The Ottoman Land Code recognized the possibility of reviving such lands (*ihya'a*; "Revival").[[9]](#footnote-9) During the British Mandate, the court decided that revival constituted "conversion from the unfruitful to the productive"[[10]](#footnote-10) and as such, turned those lands into *miri* land which led to the privatization of those “revived” areas. Two famous cases of revival of *mewat* land towards the end of the Ottoman period were the sand dunes west of the settlement Rishon LeZion (with permission of the governor, Jamal Paha)[[11]](#footnote-11) and the the Jaffa sand dunes, south of Jaffa.[[12]](#footnote-12) In 1921, the British abolished the possibility of acquiring private ownership of *mewat* lands through “revival.” The Land (Mewat) Ordinance of 1921 established that "Any person who, without obtaining the consent of the Director of Lands, breaks up or cultivates any Waste Land shall obtain no right to a title deed for such land and shall further be liable to be prosecuted for trespass".[[13]](#footnote-13) The British initiated this change in order to retain ownership of the full inventory of waste lands, for the sake of meeting the "dual obligation" with which article 6 of the Mandate for Palestine, given them by the League of Nations, tasked them:

"[To] encourage, in co-operation with the Jewish agency…close settlement by Jews, on the land, including **State lands and waste lands**not required for public purposes." On the other hand, the Mandate required of the British to ensure "that the rights and position of other sections of the population are not prejudiced…"[[14]](#footnote-14) (Emphasis my own- H.S.)

The State of Israel did not change the British ordinance forbidding the revival of *mewat* lands, and established that such lands would be registered to the State.[[15]](#footnote-15) In 1969, the Ottoman land categorizations were completely voided, along with the British Land (Mewat) Ordinance.[[16]](#footnote-16) Today, some Israeli Bedouins are attempting to substantiate litigation, suing for ownership of lands in the northern Negev, based on the claim that they revived those lands before 1921.[[17]](#footnote-17) Israel's Supreme Court has thus far adopted the approach that the Negev is *mewat* land, rejecting claims of revival.[[18]](#footnote-18) In any event, the accumulation of "dead" land as governmental land froze in 1921. Most of the undeveloped territory in Palestine became governmental land in that year, and it was no longer possible to acquire private ownership over it via revival.

**The British Mandate "Packaging House": Land Title Settlement and Registry**

Ottoman rule in the Palestine officially ended in 1917, yet Ottoman law remained in force there for many years thereafter. The British Mandate government adopted most of the Ottoman laws including the Ottoman Land Code of 1858.[[19]](#footnote-19) The essential change that the British made to the code, as mentioned above, was the removal of the possibility of reviving *mewat* lands. The British Mandate's most important contribution to the development of Israel's inventory of public and private lands was its institution of modern land title settlement and land registry mechanisms. If we conceptualize the Ottoman's contribution as being the "assembly line" of land ownership, then the British contribution was the design of the "packaging house" for the "products", the categorization of land as either private or public. Although land records did exist during the Ottoman period, they only documented a miniscule percent of the lands, both public and private, and their quality was lacking.[[20]](#footnote-20) The British filled in the missing gaps by instituting a systematic process of land title settlement and by opening a modern land title registry based on the Torrens system. The entire legal history of all plots of land should be examined through this lens. If a plot of land was proven to be in private ownership, it was registered to its owners. If private ownership was not proven for a given plot of land, it was registered to the State. Registration of rights in the Land Registry was based on a mapping and survey process for registration purposes (Cadaster), which clearly and precisely established the borders of each plot. Court decided ownership in cases of legal disputes, and their decisions granted *in rem* rights which were final and nearly indefeasible.[[21]](#footnote-21)

The land title settlement process began with the legislation of the Land (Settlement of Title) Ordinance, 1928, and continues to this day.[[22]](#footnote-22) The British managed to register rights for only 5,500 square kilometers of land, of which only 5,000 were included in the territory of the State of Israel in 1949. The settled territory was spread out along the coast in the shape of the letter N, from Khan Yunis to Nahariya, eastward across the valleys through Bet She'an, and north from there, via the Jordan valley and the northern valleys, to Metula. Most of this land was agricultural and cultivated and most of it was, at the time, privately owned.[[23]](#footnote-23) The British Mandate government managed to register only a small amount of its land (about 1,500 square kilometers) in the land registry. About 12,577 square kilometers of the "Be'er Sheva desert", excluding only 2,000 kilometers, were evaluated as *mewat* or non-cultivated *miri* land, making them government-owned according to Ottoman law, but were never registered during the Mandate period.[[24]](#footnote-24) The State of Israel continued to register land title settlements in the Galilee, the Negev, the inner Shefela region, and urban areas, including West Jerusalem. Ownership of most State lands, including the majority of the Negev, was settled and registered after the State's establishment.[[25]](#footnote-25) The State of Israel continued with settlement efforts in areas over which she implemented Israeli law after 1967, i.e. East Jerusalem[[26]](#footnote-26) and the Golan Heights.[[27]](#footnote-27) In a small number of neighborhoods in East Jerusalem, a similar settlement process had been implemented during the period of Jordanian rule. Israel adopted the results of that process, yet in most of the neighborhoods that she established in East Jerusalem, she discontinued its implementation. State lands were registered to the State in the Land Registry through expropriation of the territory necessary for creating those neighborhoods. Most of the expropriated territory was government-owned regardless, and only a minority of it had been in private hands. Adjudicating private ownership claims in these new neighborhoods remained relevant only for purposes of compensation.[[28]](#footnote-28) Ownership over most land in the Golan (about 1,000 square kilometers), excluding the Druze villages in the north-east of the region, were settled and registered to the state during the 1980s. The process has recently expanded, with the encouragement of the Supreme Court, to include those Druze villages.[[29]](#footnote-29) It can be said, in sum, that the land title settlement process that the British Mandate government implemented and which is still in force today, is responsible for the registration of the land inventory as either private or public, as it was "produced" and developed by Ottoman law.

**The Influence of Ottoman Law Today: State Land and Private Land**

After her establishment, the State of Israel gradually limited the application of Ottoman law. The period of time one needed to have controlled and cultivated land in order to acquire private ownership over it increased, first from ten to fifteen years, then to twenty five years, and in some instances even longer.[[30]](#footnote-30) In 1970, the Knesset voided the Ottoman law completely, though it retained the rights that had been created through it beforehand.[[31]](#footnote-31) The only aspects of the Ottoman law still in force today are the statuses of holy charitable trust land (*Waqf*) and land whose title the State has yet to settle and list in the title register.[[32]](#footnote-32) These lands amount to only a very small percentage of the State's territory, and their settlement process is very gradually and very slowly developing each year (2.2% of the lands left to settle in 2011).[[33]](#footnote-33) Despite all this, the Ottoman law managed to "produce" the vast majority of Israel's private and public lands before being voided. The law, then, has had a decisive and lasting influence over the distribution of the types of ownership over the State of Israel's territory.

As such, most of the territory in the Land of Israel during the Ottoman period belonged to the *mewat* category. *Mewat* included all non-settled lands and non-cultivated lands not in close proximity to settled areas. The League of Nation's Mandate vested this great volume of government-held land to the British High Commissioner, in trust "for the Government of Palestine".[[34]](#footnote-34) When the British Mandate over the Land of Israel came to an end, Israeli law transferred all this government-held land from the British to the State of Israel.[[35]](#footnote-35) Thus, the nascent State inherited ownership of *mewat* lands from her predecessors. The state similarly received ownership of *miri* lands—fit for cultivation but as of yet uncultivated—which had not been transferred to private hands prior to the State's establishment. If the Ottoman law had not been voided, most of the State's land would be *mewat* land today. Indeed, the State of Israel's land inventory includes about 14,885 square kilometers of land, which cover nearly 69% of its territory and constitute roughly 74% of the public land inventory (see Figures 2 and 3, below). Yet the value of the State's land is low, in relation both to other components of the public inventory and to the inventory of lands that are privately owned. This is due to the State lands' distance from settled areas, a historical outgrowth of how the Ottomans categorized these lands. The quality of these lands is gradually increasing in tandem to the rise of urban sprawl and the establishment of new settlements.

When in force, Ottoman law was similarly responsible for producing private land ownership in the State of Israel. Two mechanisms served to recognize private ownership under Ottoman law. First was the recognition of private ownership over built-up lands in cities and in villages that existed prior to the State's establishment (*mulq*). Second was the possibility of acquiring private ownership of lands fit for agricultural cultivation (*miri*) by way of continuous cultivation over long periods of time. Some of the built-up and cultivated lands that had been produced up through the end of the British Mandate period are still privately-owned today. As will be elaborated below, lands that had been owned by Palestinian refugees and by the Jewish National Fund were removed from private ownership after the State of Israel was established. These lands were recategorized as public due to changes that arose after the State's founding. After these lands' status change, only about 1,486 kilometers of land within the State remained privately owned. This amounted to about 7% of all State territory (see Figure 2, below). Most of it was created in accordance with Ottoman law when that was still in force. The historical backdrop on which the inventory of private lands was produced influenced their geographical location and, as such, influenced their value as well. Most private land can be found in cities or villages that existed during the British Mandate and survived the State of Israel's founding. Hence, a large portion of private lands are located in older cities, such as Jerusalem, Tel Aviv or Haifa, in settlements that were established at some point between the advent of Zionism and the establishment of the State, and in Arab cities and villages which remained intact after Israel’s establishment (see Table 1, below). These are the State of Israel's core areas, and the value of their lands is high. On the other hand, it is quite rare to find privately owned land in cities and neighborhoods that were built in peripheral areas after the founding of the State and which were *mewat* lands under Ottoman law. Moves towards privatization in these areas have only begun in recent years. We will examine this in the upcoming chapters.

In summary, from a legal standpoint, the State of Israel is already free of the Ottoman law's restrictions. Yet a deep-set, significant mark has been left on the geography of the State's real estate market by of the influence of the otherwise dead Ottoman law. The founding of the State of Israel initiated three crucial changes in the production process of its land inventory. Two of the changes dealt with the transfer of two major land clusters—the land of Palestinian refugees and JNF land—from private ownership to public management. The next paragraphs will focus on those changes. The third change was the implementation of new principles regarding the preservation of public land inventory and its privatization. We will focus on this change in the next chapters.

**The Palestinian Refugees' Lands-From Private Inventory to Governmental Management**

The transfer of Palestinian refugees' property to governmental management was the first prominent change to the structure of Israel's land inventory soon after the State's founding. When the War of Independence ended, Palestinian refugees left behind buildings and cultivated lands in hundreds of villages and a few cities. According to Ottoman law, these assets were the refugees' private property. There are varying estimates of the volume of private land that was left behind. The gap between the different estimates is due to the fact most of the refugees did not manage to register their property in the land registry before they left, so evaluations of property ownership were based on interpretations of Ottoman law and on the identification of the usages of the lands (urban, agricultural).[[36]](#footnote-36) For instance, one evaluation presented to the United Nations Conciliation Commission for Palestine (UNDOP), which was established in order to examine possible solutions to the refugee problem soon after its creation, reported that the refugees left behind 14 kilometers of built-up land in villages, and 4,590 kilometers of land fit for various levels of cultivation.[[37]](#footnote-37) According to an Israeli evaluation presented to UNDOP, only 3,980 kilometers of land were abandoned in total.[[38]](#footnote-38) Both evaluations were based on the breadth of cultivable territory according to a review of land use undertaken by the British in 1945.[[39]](#footnote-39) In 1952, the Israeli Ministry of Finance organized a review that found the breadth of cultivable territory to be much smaller.[[40]](#footnote-40) As a result of this review, the total amount of rural land, both cultivated and built-up, came to 3,290 kilometers. The amount of abandoned urban territory was assessed to be about 25 kilometers.[[41]](#footnote-41)

When the war ended, the refugees lost any practical ability to administer their assets. The State of Israel blocked any possibility of the refugees returning to their property, and created policy which prevented their return on principle. The State began settling millions of Jewish refugees who teemed to the young state, on the Palestinian refugees' property. Their properties were also used to expand extant urban settlements and to establish new ones.[[42]](#footnote-42) Israel could not have done any of this without first legally transferring the title to the refugees' property to herself. The first step that the State took to achieve this was defining the lands as Absentee Property and transferring their administration to a Custodian of Absentee Property.[[43]](#footnote-43) This, however, was not sufficient, because any property management performed by a "custodian" legally appears to be temporary control in custody for the actual owners, the beneficiaries. Therefore, the State then *permanently* transferred ownership of the absentees' property to a new government body that was created specifically for this purpose: The Development Authority.[[44]](#footnote-44) Ownership of the refugees' property was transferred to the Development Authority through two parallel channels. First, in 1953, the Custodian of Absentee Property sold all absentee land under his authority, including any that he would receive in the future, to the Development Authority.[[45]](#footnote-45) Additionally, the Land Acquisition (Validation of Acts and Compensation) Law, 5713-1953, authorized the Finance Minister to grant all abandoned property that was designated or used for "necessary development needs, settlement or security" to the Development Authority.[[46]](#footnote-46) Most of the property transferred through this latter channel was located in villages that had been abandoned during the War of Independence and had already been transferred to the Custodian of Absentee Property and the Development Authority. The main purpose of these double expropriations was to ratify the process of seizing the abandoned property of the Palestinian refugees who remained Israeli citizens ("The Present Absentees"). While their property in the abandoned villages was already considered absentee property, because they were Israeli citizens there was no justification for not properly compensating them after the seizure of their land. The Acquisition law was meant, principally, to grant refugees with Israeli citizenship the right to compensation.[[47]](#footnote-47) The Finance Minister granted the Development Authority a total of 1,225 kilometers of land, yet the law's main focus, the "Present Absentees"' land, was much smaller in magnitude. The total of those lands came to 28.3 kilometers under Jewish ownership, roughly 239 kilometers under private Palestinian ownership, roughly 66 kilometers of *waqf* land and 0.101 kilometers of Church property.[[48]](#footnote-48)

A relatively small amount of private land was transferred to the Development Authority from two other sources. First, in the 1950s, the property belonging to the German Templars in the settlements which they had established in the 18th century was added to the Development Authority's inventory. The government of the British Mandate had confiscated those properties right before the outbreak of the Second World War, and gave them to the newly appointed Custodian of Enemy Property. In 1947, the Germans' property was evaluated at about 46 square kilometers only, but was centrally located and can be found today in the heart of Israel's largest cities.[[49]](#footnote-49) The custodian of Enemy Property sold them to the Development Authority in the fifties[[50]](#footnote-50) and the Israeli government compensated the German government for those properties.[[51]](#footnote-51) Most of the German property was later transferred from the Development Authority to other bodies, including the JNF, the Tel Aviv Municipality and the Haifa Municipality.[[52]](#footnote-52) Second, following the implementation of Israeli law over East Jerusalem in 1967, the Custodian of Absentee Property transferred lands located there, which were owned by Palestinians who were not residents of Jerusalem and who resided in enemy countries or the West Bank, to the Development Authority. Despite this, the Attorney General and the Supreme Court greatly restricted the authority to transfer lands in Jerusalem belonging to Palestinian residents of the West Bank to the Development Authority.[[53]](#footnote-53)

In 1960, the administration of all Development Authority land was transferred to the Israel Lands Administration, which was created that year for the very purpose of centrally managing all of the state's public lands.[[54]](#footnote-54) As such, the Development Authority was subsumed under the Israel Lands Administration and no longer functioned as an independent body with its own management.[[55]](#footnote-55) Yet the Authority still existed from a formal, legal point of view, and it is still the listed owner in the land registry of 2,500 kilometers of land, which accounts for about 12% of the state's territory (see below, Figures 2 and 3). Historically, all of the Development Authority's land was privately owned and much of it is located in or near settled areas where the value of land is high. While the scale of the Development Authority's land comes to only 12.5% of the public land inventory in Israel, they yielded 30% of the profits made from public land between the years 2000 and 2013. These profits are still formally imputed to the Authority and then transferred to the Finance Ministry as a loan on an annual basis.[[56]](#footnote-56) Why continue this formal separation between Development Authority assets and all other State assets? This question was raised as far back as 1960, when the Knesset deliberated over the enactment of the legislation that transferred Development Authority land administration to the Israel Lands Administration. Member of Knesset, Menachem Begin, then head of the Opposition and later Prime Minister, suggested that the Authority's lands be nationalized and included with all other State lands. Then Attorney General, Hayim Cohen, who went on to become a Supreme Court Justice, responded that he "opposes this suggestion for an inherently politically reason. We could have dispensed with the Development Authority and transferred its assets to the State. We intentionally created a separate authority. And we intend to use this separate body and the fact of it being separate from the State in negotiations that we hope will one day be conducted".[[57]](#footnote-57) He further stated that possibility of this separation being interpreted as willingness to negotiate the future return of Authority assets was a risk that the government was willing to take.[[58]](#footnote-58)

Are all these considerations still relevant today? At least superficially, the Authority’s continued independent existence appears to conform to the idea that the seizure of the absentees' lands and their transfer to the Development Authority were meant, as the Supreme Court stated, "to hold it (or its proceeds) until the formulation of political arrangements between Israel and its neighbors, in which the fate of the property will be decided on the basis of reciprocity between the countries".[[59]](#footnote-59) However, the State of Israel's consistent stance in international forums has been that the refugees' assets will not be returned to their original owners. Former vice Chief Justice of the Supreme Court (ret.), Elyakim Rubinstein, wrote that "At the Camp David Summit in 2000, I was a member of the Israeli delegation and chaired the subcommittee that dealt with the subject of the refugees, and there was no doubt in Israel's position (which was also supported by the USA) that denied the very basis of that right [of return] as being 'national suicide'".[[60]](#footnote-60) It may be assumed that this separation does not, then, indicate that Israel plans to return the refugees' lands to their original owners. Yet the profits yielded by those assets may be used at some future time to fund an arrangement for the solution to the refugee problem or, at the very least, to fund the accounting of all the monies involved in such an arrangement.

It may be further assumed that Israel fears that another change in the status of the Development Authority's land may meet with both international and domestic political opposition, and reawaken lawsuits meant to bring about the return of the absentees' lands. Such lawsuits—at least for the present absentees, i.e. refugees who retained Israeli citizenship—appear in the document for the Future Vision of the Palestinian Arabs in Israel.[[61]](#footnote-61) Various organizations have made it their mission to have the assets returned[[62]](#footnote-62) and lawsuits suing for this are filed still to this day.[[63]](#footnote-63) It is well known that international claims for the refugees to return and for their assets to be returned to them continue unabated.[[64]](#footnote-64) It would seem that the political sensitivity of this issue prevents the complete dissolution of the Development Authority and the transfer of its lands to the State, even though doing so would have very little practical meaning. Yet, as has been stated, simply has allowing the status quo to continue bears political implications as well, at least in terms of Israel’s public image.

**Jewish National Fund Lands – To Governmental Administration**

The second major change to private and public land inventories following Israel's establishment was the transfer of Jewish National Fund (JNF) lands to government administration. The JNF was founded and registered as a private company in England in 1907. During the Mandate period, it functioned as the World Zionist Organization's arm for purchasing property in the Land of Israel.[[65]](#footnote-65) The monies used to fund these purchases came from donations collected from Jews throughout the world, and from profit yields from the JNF's assets and successful real estate transactions.[[66]](#footnote-66) The JNF focused on purchasing lands that were privately owned, since the British government avoided granting it government-owned lands, in violation of an explicit obligation to do so by article 6 of the Mandate. The lands that the JNF purchased were owned by Arabs who had received private ownership rights through Ottoman law. Most of these lands were agricultural, cultivated or at least cultivable. They were generally located on the peripheries of existing Arab villages, and were used by the Fund to establish new Jewish settlements or neighborhoods. The JNF purchased very little valuable land in urban areas. Representatives of the Arab National Movement vehemently opposed the JNF's activity, both out of political opposition to Zionism and because they viewed it as causing segments of the Arab population to disinherit their lands. This resulted in the Mandate Government implementing the "White Papers" law, which set limits on Jewish purchase of Arab land.[[67]](#footnote-67) Despite these limits, which the State of Israel voided immediately upon her founding,[[68]](#footnote-68) the JNF successfully purchased just under 1,000 kilometers of land during the Mandate period.[[69]](#footnote-69) During that period, these lands were categorized as private.

When the State of Israel was established, her new government took upon itself the administration of all lands acquired by her predecessors and of the Palestinian absentees' lands, as noted above. As such, the government gained control of more than 80% of the entire territory of the state, and could use this huge inventory to create settlements and manage large waves of immigrants. There was seemingly no more need for the JNF to purchase land. Yet the JNF was so strong that during the State's first few years, it convinced the government to sell it, via the Development Authority, more than 1,000 kilometers of Palestinian refugee assets. This transaction boosted the scale of the JNF's land inventory to its current size.[[70]](#footnote-70) These activities, however, did not serve to remove the question mark that hovered around the JNF's continued existence, in light of the major land inventory held by a Zionist, Jewish government. This question arose, first and foremost, within the Israeli government. Prime Minister Ben-Gurion did not want the JNF to become "a state within a state". He believed that all public lands should be administered by a single government body that related to all citizens equally.[[71]](#footnote-71) Even the heads of the JNF wondered why it should still exist when there was no more need for the "redemption of the land". Joseph Weitz, one of the heads of the JNF, wrote that this was a question of "to be or not to be".[[72]](#footnote-72) The effects of this doubt were also felt in the limited funds that it managed to raise. The situation was such that at a certain point, it did not have the resources to purchase thousands of kilometers of land that it almost convinced the government to sell to it.[[73]](#footnote-73) These difficulties prompted the heads of the JNF and of the government to search for a new purpose for the JNF and to restructure the administration of the lands it had purchased.

In 1957, Prime Minister Ben-Gurion tasked a committee, headed by then Finance Minister, Levi Eshkol, with "clarifying the Jewish National Fund problem” (in this chapter: "The Eshkol Committee").[[74]](#footnote-74) The other committee members were Agriculture Minister, Kadish Luz, Trade and Industry Minister, Pinhas Sapir, Minister Peretz Naftali, Agriculture Ministry General Manager, Hayim Givati, and a JNF representative, Joseph Weitz. The committee made several recommendations. It suggested that all JNF lands be transferred to the administration of the government while retaining JNF ownership over them, and that JNF representatives be involved with the administrative mechanisms of all public lands. It further suggested that the principle of not transferring ownership of lands under government administration, including JNF lands, be anchored in a Basic Law, granting it special legal status. Regarding the JNF's new purpose, the committee suggested that the Fund focus its activities on "redeeming wilderness" rather than "redeeming the land". In that respect, it would serve as the government contractor responsible for afforestation and reclamation of all public lands, including JNF land, State land and Development Authority land. It would continue its education and fundraising activities throughout the Jewish world. The committee also recommended that the state and the JNF create accounting mechanisms, through which the State would receive administrative fees and the JNF would receive the profits from its land and payment for its afforestation and foundation laying work. It was recommended that the relationship between the government and the JNF be defined and anchored in a "treaty" that would be signed by both bodies.[[75]](#footnote-75) The committee members believed that their recommendations would justify the JNF's continued existence for several decades. Committee member and Trade and Industry Minister, Pinhas Sapir, stated that "what we are suggesting is a slogan for the JNF for at least the next 50 years".[[76]](#footnote-76) Committee chair, Levi Eshkol, proclaimed that "if we were to bring about the JNF’s end, I would see it as a tragedy and a great loss"[[77]](#footnote-77) and he predicted that the recommendations would hold for "10, maybe 20 generations […]".[[78]](#footnote-78)

The Eshkol Committee’s recommendations were accepted in full and constitute the foundation of the working arrangement for the administration of JNF land to this day. In 1960, Basic Law: Israel Lands was enacted. It coined the eponymous term for the full inventory of the State of Israel's public lands: "Israel Lands".[[79]](#footnote-79) This term refers to three separate categories of land: land owned by the State, land owned by the Development Authority, and land owned by the JNF. The Basic Law's first clause establishes that "The ownership of Israel lands…shall not be transferred either by sale or in any other manner".

In that same year, the Israel Lands Administration Law was enacted. The law created a new body, the Israel Lands Administration, which was charged with the administration of all Israel Lands, including JNF lands.[[80]](#footnote-80) The law's third clause also established the "Israel Lands Council" and instructed that it "[shall] lay down the land policy in accordance with which the Administration shall act, shall supervise the activities of the Administration and…shall approve the draft of its budget". Six out of fourteen Israel Lands Council members are JNF representatives, despite the upheavals within the structure of the council in the last few years.[[81]](#footnote-81) Prior to the legislation of these laws, the government and the directorate of the JNF had already approved a version of a treaty between the bodies, which was finally signed on November 21st, 1961.[[82]](#footnote-82) The treaty defined the relationship between them in consonance with the recommendations of the Eshkol Committee. Clauses 17-19 describe the procedures for ending the treaty's force. In accordance with clause 10, the JNF serves as the government's agent for "the reclamation and afforestation of Israel lands" to this day. The majority of its activity in this area is performed on State and Development Authority lands.[[83]](#footnote-83) The Fund also works to rehabilitate streams and create water reservoirs.[[84]](#footnote-84) As clause 16 dictates, the JNF continues "to operate, as an independent agency of the World Zionist Organization, among the Jewish public in Israel and the Diaspora, raising funds for the redemption of land from desolation and conducting informational and Zionist-Israel educational activities".

This aside, the scale of JNF land purchasing has shrunk, as expected. It continued purchasing lands beyond Israel's borders (in the West Bank) and in East Jerusalem, but the scale of this activity was miniscule.[[85]](#footnote-85)

Today, the JNF's land is administered by the Israel Lands Authority, a corporation which took the place of the Israel Lands Administration (more on this in the next chapters). Since 1960, the JNF's land has been administered together with all components of the public land inventory, meaning State lands and Development Authority lands. They include 2,574 kilometers, or 12%, of the territory of the State (see below, Figure 2). Around 1,000 kilometers was purchased in the pre-State period and more than 1,000 kilometers of land, mostly belonging to Palestinian absentees, was sold to the JNF after Israel's founding.[[86]](#footnote-86) The JNF's lands are located in areas where private land ownership was a possibility in the pre-State period. Some of the areas have since become well-established settlements and some are in the heart of densely populated areas, or close to them. This is the most reasonable explanation for the JNF's lands yielding 35.5% of all Israel Lands profits between 2000 and 2013 even though it accounts for only 12.5% of those lands.[[87]](#footnote-87)

The governmental administration of the JNF's land has faced certain problems in recent years, which has reignited public discussion about the Fund's future. To start with, the JNF has dedicated significant resources to its organizational survival, meaning to the management of its bureaucratic mechanisms and to pension obligations.[[88]](#footnote-88) Furthermore, most of the JNF's income is earned from its governmentally administered lands. In 2016, for example, 92% of the Fund's income came from such lands while only 5% came from donations.[[89]](#footnote-89) The magnitude of the donations are also tiny in comparison with the JNF's expenditures for afforestation and other purposes, and it certainly cannot sustain its present breadth of activity with donations alone.[[90]](#footnote-90) Over the past few years, this state of affairs has engendered sharp public criticism of the JNF’s management.[[91]](#footnote-91) The JNF was forced to agree to Israel State Comptroller oversight[[92]](#footnote-92) and to earmarking part of its income for uses decided by the government.[[93]](#footnote-93) Some of these steps have incited the JNF to threaten to end its working relationship with the government and to take over the administration of its own land.[[94]](#footnote-94)

The steps taken towards privatization of urban public lands, which will be discussed in the next chapter, presented another challenge in applying the arrangement for the Israel Lands Authority to administer JNF land. The transfer of ownership of JNF lands is in opposition to the JNF statute in two ways: First, the JNF principally opposes transferring ownership of its assets. As far as it is concerned, its assets must remain in eternal charitable trust for the Jewish people. Additionally, it holds especially strong opposition to the transfer of its lands to non-Jewish owners, as the very purpose for which the JNF was established was to serve the Zionist cause.[[95]](#footnote-95) On the other hand, the Israel Lands Authority, which administers the JNF's lands, is a government body, obligated by both statutory and case law, to treat all Israeli citizens equally.[[96]](#footnote-96) As will be elucidated in the coming chapter, since 2000 it has been the government's policy to work towards privatizing all Israel Lands that are built-up, urban lands. This policy has created the potential for a serial contradiction between the JNF's stance, which rejects the transfer of ownership, and the government policy in support of privatization. Privatization efforts have forced both sides to come up with a permanent solution to this problem, reigniting the debate surrounding the purpose of the current arrangement's continued existence.

Three solutions to the problem of privatizing JNF land have been promulgated in Israeli public discourse: nationalizing JNF lands and permanently transferring them to the administration of the government (heretofore: "Nationalization"); returning the administration of JNF land to JNF auspices (heretofore: "Return"); and switching JNF lands in the desired regions that are set for privatization with other State lands (heretofore: "Switch"). We will now elaborate on each of the three suggestions.

The option of **Nationalization** has been called for principally by non-profit organizations and politicians who represent Israel's Arab minority. The supporters of this alternative claim that nationalization is crucial to enabling the government to administer JNF lands equally with respect to all citizens. Nationalization also reflects a historical criticism sounded by the representatives of the Arab minority against the sale of refugee assets to the JNF.[[97]](#footnote-97) The disadvantage of this option, however, is that it injures the JNF's private property and demands that an inventory that has been accumulated over the course of generations, using monies donated by Diaspora Jewry for the sake of achieving the Zionist movement's goals, be expropriated and used for the needs of all of Israel's citizens. Nationalization is likely to bring about the JNF's end, as it will attack the body's main source of funds. It will put an end to afforestation and reclamation, which the JNF specializes in, as well as educational activities, advocacy, and a healthy relationship with Diaspora Jewry. It is safe to assume that it will also spell the end of the JNF's fundraising activities and of the modest land purchasing that it still engages in outside of Israel's borders. The JNF, then, does not support this option, nor any of Israel's governments up to now.

The heads of the JNF have recently considered demanding the **Return**of the administration of its lands to its own auspices. They have gone so far as to put their intention to do so in writing and present it to Prime Minister Benjamin Netanyahu.[[98]](#footnote-98) The supporters of this alternative, some of whom are politicians from right-wing parties, back up their stance with three central claims. The first is that the JNF has to continue working towards fulfilling its purpose, which is the fulfillment of Zionism's goals. As such, there is no justification for using JNF lands in ways that violate its statute, and its assets should be used exclusively for the purpose of actualizing the Zionist Movement's goals.[[99]](#footnote-99) This claim seems to constitute a criticism of certain liberal views which the State has adopted towards its non-Jewish citizens. It reflects a lack of trust in the Jewish State's ability to fulfill the Zionist vision and its ability to sustain this vision alongside the State's democratic character. The second claim is that return of JNF land to its own administration will contribute to the growth of property market competition with the Israel Lands Administration, which controls most of the State's territory.[[100]](#footnote-100) The problem with this claim is that, as far as it truly reflects the JNF's intentions, the JNF is officially a not-for-profit and over the past few years, as noted above, it has faced sharp criticism over its financial management. This casts doubt on the degree to which return will actually lead to an improvement in administrative efficiency and competition in the property market. The third claim in support of return, which is probably also the main motivation for the JNF's demand, is the heads of the JNF's dissatisfaction with State intervention in how it uses its income. The announcement of their intentions for return was not made from a place of passion but, having no other choice, from a conscious decision to put pressure on the State and make it renege on its intention to intervene in the management of the JNF's monetary resources.[[101]](#footnote-101) The State of Israel does not support Return. There is also some legal doubt surrounding the possibility of this option. It is not applicable without a change in legislation. Whatever the status of the treaty with the JNF may be, it does not have the power to force the Israeli Parliament to make a legislative change that the Parliament itself is not interested in.[[102]](#footnote-102)

The third possible solution for the problem of privatization is to **exchange** lands with the JNF. The current arrangement, in which the Israel Lands Authority administers the JNF's land, would remain intact. The JNF would retain ownership of its land, but it would sell its urban property, meant for privatization, to the State, which would in turn grant the JNF ownership of similarly sized lands in the country’s geographical periphery. A financial accounting between the sides would also be conducted. The advantage of this option is that it enables the government to apply its privatization policy equally to all land that it administers, and to unburden itself of the limitations placed on it by the JNF statute. At the same time, it enables the JNF to preserve its principles through the new land inventory that it would acquire. A land exchange essentially allows both sides to continue enjoying the advantages of the current arrangement. The JNF would retain the size of its land inventory, would continue to serve as the government's contractor for "redeeming wilderness" and would continue to fundraise and receive income for its education and advocacy activities. The State would continue to administer the JNF's land inventory as part of the full public land inventory, and would continue, with the JNF's agreement, to strengthen the trend of increasing transparency over how the JNF manages its money, and keep the JNF vulnerable to public criticism.

The advantages of a land exchange have led the state and the JNF to adopt it. In June 2009, after bumpy negotiations compounded by changes in the government, Prime Minister Ehud Olmert put together an agreement of principles for its implementation.[[103]](#footnote-103) However, the JNF was delayed in approving the agreement because of legal proceedings which objected to the agreement’s validity and were probably influenced by political shocks that had occurred around that time.[[104]](#footnote-104) The proceedings were cancelled at the JNF’s initiative a few years later, following the Fund’s decision to abandon its plans to implement Switch.[[105]](#footnote-105) This decision was reached after the creation of a new government, led by Benjamin Netanyahu, and the sharpening of political confrontations between the government’s various components. Finance Minister Yair Lapid, head of the centrist *Yesh Atid* party, supported the submission of the JNF to public oversight and to state intervention with its financial management. Right-wing *HaBayit HaYehudi* [lit. “The Jewish Home”] party was charged with the responsibility of managing the Israel Lands Administration and supported a plan for separation.[[106]](#footnote-106) Starting from 2013, the Israel Lands Administration decided to grant long-term renters of JNF lands all the economic benefits bound up in the transfer of ownership, even before receiving JNF’s agreement to such a transfer.[[107]](#footnote-107) At the end of 2015, after a new government was formed and the management of the Israel Lands Authority was entrusted to new Finance Minister Moshe Cahlon, head of the centrist *Kulanu* [lit. “All of Us”] party, the JNF and the State, with the mediation of Minister Avi Gabay, a then *Kulanu* party member, came to an agreement in which they accepted the terms of the 2009 Agreement of Principles for conducting a land switch.[[108]](#footnote-108) Representative of Israel’s Arab minority claim that the agreement is illegal. They petitioned the Supreme Court in opposition to a component of the agreement regarding the number of JNF representatives on the Israel Lands Council, yet the case is still ongoing.[[109]](#footnote-109) Regardless, the State has already begun implementation. In 2015 it was announced that 1.5 kilometers of JNF-owned land with 13,000 housing units in central Israel was located for the purpose of switching it for State land in the western Negev.[[110]](#footnote-110) In 2016 the JNF transferred ownership of 1.24 kilometers of land in the center of Israel and Jerusalem to the state, in exchange for the same amount of land in the south of the country.[[111]](#footnote-111) The switches which have been executed thus far seem to have made minimal changes to the scale of the JNF’s land inventory and to how they are administered by the Israel Lands Authority.

**Conclusion: Private and Public Land Inventory Characteristics**

By the end of the State of Israel’s first decade, the processes by which its inventory of private land was crystallized had mostly finished. The private inventory ceased to grow with the start of the gradual cancellation of the Ottoman Land Code, the main factor in its growth, and when most of the lands had been registered. The process of creating the inventory of public land ended in principle as well in 1960 when the Israel Lands Administration took over the centralized administration of the inventory’s three main components: State lands, Development Authority lands and JNF lands. Ever since the enactment of Basic Law: Israel Lands, which prevented transferring ownership of Israel Lands, no major changes have been made to the public inventory or to its components. In the coming lines, we will summarize the main characteristics of the private and public land inventories.

A salient trait of the land inventory is that the overwhelming majority of it is public. The State of Israel’s present holding of territory, including the Golan Heights and East Jerusalem, spreads across 21,643 square kilometers.[[112]](#footnote-112) Of this, privately owned land covers 1,486 square kilometers, which accounts for only about 7% of all the State’s territory. The Israel Lands inventory, with all its components, covered 20,061 square kilometers as of 2012, which is about 93% of the territory of the State. Israel Lands are comprised of 14,885 square kilometers of State land (69%), 2,521 square kilometers of Development Authority land (12%) and 2,574 square kilometers of JNF land (12%).[[113]](#footnote-113) These statistics are presented below, in Figure 2.

Figure 3, below, shows that the proportion of State lands in the total land inventory is especially large in the open and undeveloped peripheral regions, in the south and in the north. The proportion of this component of lands is significantly smaller in the settled, urban regions of central Israel. The proportion of private lands are greater in those areas. Furthermore, the public inventory there is comprised of high proportions of land that had previously been privately owned, meaning Development Authority and JNF lands.[[114]](#footnote-114)

The substantial proportion of Israel lands often raises the claim that the Israel Lands Authority holds a monopoly on the property market and that this monopoly leads to market inefficiency.[[115]](#footnote-115) Even if there were truth to this claim, an examination of the concentration of Israel lands in urban settlements, where most of the population is concentrated, shows that their distribution is lower in both Jewish and Arab urban settlements that pre-existed the state. In these settlements, the private land inventory had time to develop in the years when it was still possible to acquire private ownership of land. Most of these settlements are in the areas with the highest demand for land and, as a result, the highest property prices. For example, in Tel Aviv – Jaffa, Israel’s most expensive and in-demand city, more than 50% of the land is privately-owned. The proportion of Israel land is higher in settlements that were established after the State was, or which contained a high proportion of land belonging to Palestinian refugees before 1948. Table 1 elaborates the proportion of private and public ownership in select urban textures throughout Israel.[[116]](#footnote-116)

**Table 1**

**The distribution of private and public land in selected urban textures (sq.km)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Urban texture** | **Israel Lands (Public)** | **Private Land** | **Unsettled ownership**  | **Total** |
| **Arab villages existing before and after 1948** |
| Sakhnin | 10.731 (35%) | 19.360 (64%) | 0.166 (1%) | 30.257 |
| Shefa-Amr | 16.221 (40%) | 24.148 (59%) | 0.425 (1%) | 40.794 |
| Umm al-Fahm | 15.026 (55%) | 12.102 (44%) | 0.285 (1%) | 27.413 |
| **Jewish (or mixed) cities established before 1948** |
| Hadera | 11.568 (37%) | 19.534 (63%) | 0.102 (0%) | 31.204 |
| Jerusalem | 50.984 (38%) | 32.282 (24%) | 49.526 (37%) | 132.792 |
| Tel-Aviv Holon | 41.329 (43%) | 53.654 (55%) | 2.113 (2%) | 97.096 |
| Petah Tikva | 25.110 (53%) | 21.949 (46%) | 0.207 (0%) | 47.266 |
| Rishon Le-Zion | 54.683 (54%) | 46.701 (46%) | 0.523 (0%) | 100.861 |
| Haifa and Krayot | 73.902 (55%) | 54.551 (41%) | 6.198 (5%) | 134.651 |
| **Jewish cities established after 1948** |
| Beit-Shemesh | 34.141 (75%) | 9.957 (22%) | 1.433 ( 3%) | 45.531 |
| Modi'in | 28.059 (81%) | 6.775 (19%) | 0.032 (0%) | 34.866 |
| Kiryat Gat | 26.882 (92%) | 2.293 (8%) | 0.002 (0%) | 29.177 |
| **Cities populated by absentees before 1948** |
| Ramla-Lod | 33.439 (73%) | 9.861 (22%) | 2.211 (5%) | 45.511 |
| Ashkelon | 35.723 (80%) | 9.387 (21%) | 0.257  | 44.853 |
| Tiberias | 18.881(77.3%) | 4.606 (18.9%) | 0.935 (3.8%) | 24.422 |

This chapter showed how the process by which Israel’s private and public land inventory was created has had a lasting impact on the State’s land inventory to this day. As a result of this process, the property market is highly concentrated s and significant part of it is administered by the State. The degree of State interference in the market is smaller in older settlements located in central, expensive areas. Yet even in those areas, the government enjoys control of a sizeable chunk of land.

In the coming chapters, we will present the way in which the governmental land inventory is administered. We will present the principles of administering urban and agricultural lands. We will also point out privatization trends within this inventory. These trends deal with only a small portion of all public lands, and they have not yet changed- nor are expected to do so in any significant way in the near future- the scale and internal composition of the inventory.

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7. The Ottoman Land Code 1858 § 78; Haim Sandberg Land Title Settlement in Eretz-Israel and The State of Israel 239-244 (2001)(Hebrew); Alexandre Kedar *The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967* 33 N.Y.U. J. Int'l L. & Pol. 923, 935 (2001); Benton [↑](#footnote-ref-7)
8. Land Law 5729-1969 § 153, 5 Isr. L. Rev. 292, 319 (1970)(Hereafter: Land Law 1969) [↑](#footnote-ref-8)
9. The Ottoman Land Code 1858 § 103 [↑](#footnote-ref-9)
10. C.A 65/40 Habibi v. Government of Palestine (1940) 1 S.C.J. 168, 170-171. [↑](#footnote-ref-10)
11. Document titled *Decision of the Administrative Council of Jerusalem Regarding the improvement (or revival) of the ‘Mahlul’ Sand Dunes By the Rishon-le-Zion People* and an official announcement by the High Commissioner of Palestine, dated August 23, 1921, ISA 22, M/3497, File GP/2/35a (“decissions”); Sandberg Land Title Settlement, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 123. [↑](#footnote-ref-11)
12. Document titled *Jaffa Land Dun*, ISA 22, 3508, File SD 12(19); Sandberg Land Title Settlement, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 126-128; Goadby & Doukhan, supra note **שגיאה! הסימניה אינה מוגדרת.** , at 48. [↑](#footnote-ref-12)
13. Land (Mewat) Ordinance, 1921, P.G. 6. [↑](#footnote-ref-13)
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20. Goadby & Doukhan, supra note **שגיאה! הסימניה אינה מוגדרת.** , at 298; [Ruth Kark](http://www.tandfonline.com/author/Kark%2C%2BRuth) & [Haim Gerber](http://www.tandfonline.com/author/Gerber%2C%2BHaim), *Land Registry Maps in Palestine during the Ottoman period*, 21 The Cartographic Journal 30, 30 (1984); [Ruth Kark](http://www.tandfonline.com/author/Kark%2C%2BRuth) & [Dov](http://www.tandfonline.com/author/Gerber%2C%2BHaim) Gavish, *The Cadastral Mapping of Palestine, 1858-1928,*159 The Cartographic Journal 70, 71 (1993); Sandberg Land Title Settlement, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 134-155. [↑](#footnote-ref-20)
21. Goadby & Doukhan, supra note **שגיאה! הסימניה אינה מוגדרת.** , at 271ff; Sandberg Land Title Settlement, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 196, 209ff; Kedar *The Legal Transformation*, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 938. [↑](#footnote-ref-21)
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113. Israel Land Administration Report on activities for the 2012 budget year 72 (2013)(Hebrew), [www.mmi.gov.il/Osh/Aspx/DownloadTofes.aspx?Maarechet=71&TofesId=%20325&UserId=-1&RO=true](http://www.mmi.gov.il/Osh/Aspx/DownloadTofes.aspx?Maarechet=71&TofesId=%20325&UserId=-1&RO=true) [↑](#footnote-ref-113)
114. Ibid. [↑](#footnote-ref-114)
115. Minutes of a Parliamentary Debate on "The Israel Land Authority's Monopoly and the Implications for Housing Prices," Knesset Economics Committee, Knesset 19, May 8, 2013 (Hebrew), Knesset Website, http://fs.knesset.gov.il//19/Committees/19\_ptv\_231682.doc. [↑](#footnote-ref-115)
116. Urban textures are areas designated as urban land according to Israel National Master Plan for Construction, Development and Conservation No. 35 (27.11.2005)(Hebrew), [www.mmi.gov.il/IturTabotData/tma/%D7%AA%D7%9E%D7%90%2035/tama\_35.pdf](http://www.mmi.gov.il/IturTabotData/tma/%D7%AA%D7%9E%D7%90%2035/tama_35.pdf);

The data are taken from the texture cards of planning areas in urban textures according to National Master Plan 35, as published by Beery Cohen, Yaron Turel and Moti Kaplan, National Outline Plan 35 - Follow-up and updating guidance, Expansion to the Report Stage B - Texture Cards 11 (Planning Administration, Ministry of the Interior, 2009) (Hebrew) (Copy reserved copy by the author); Sandberg, Basic Law, supra note **שגיאה! הסימניה אינה מוגדרת.**, at 115-120. [↑](#footnote-ref-116)