Residential Communities in a Heterogeneous Society: The Case of Israel

Amnon Lehavi

Abstract Israel presents an intriguing case study for exploring the role of communities and private forms of spatial organization in urban governance. Unlike most western countries, the overwhelming majority of land in Israel is publicly-owned, meaning that the validation of community exclusionary practices would regularly require affirmative governmental backing. The evolution of urban and rural forms of settlement since the early days of Zionism shows how some types of private associations enjoyed such validation due to political clout. Contemporary Israel is much more heterogeneous and fragmented both ethnically and ideologically. This poses new challenges for designing the regulatory and legal framework of residential communities.

1 Israel's Changing Societal Landscape

At the end of 2015, a promotional video for a real estate project in the Israeli city of Kiryat Gat sparked a public outrage for its apparently discriminatory overtone. The developer *Be-Emuna* (literally meaning "in faith"), which caters to the national-religious sector, has been scorned for playing on perceived divisions between Jews of European descent (Ashkenazi) and those of Middle Eastern and North African descent (Mizrahi). The video features a national-religious family lighting Hanukkah candles, when two unruly neighbors barge into the apartment. Both neighbors speak in an exaggerated Mizrahi accent, one of them named "Abergil"—a markedly Mizrahi name. The two are apparently ignorant about the holiday's customs, mistaking the lighting of the festive candles to a bonfire, and taking over the event, to the family's dismay. Then, the narrator—who turned out to be *Be-Emuna*'s CEO–says: "Want the neighbors your heart desires? The *srugim* [a nickname for the national-religious sector —A.L.] have a new home. Join today the national-religious community of Carmei Gat

A. Lehavi (✉)
Radzyner Law School, Interdisciplinary Center (IDC) Herzliya,
Gazit-Globe Real Estate Institute, Herzliya, Israel
e-mail: alehavi@idc.ac.il

A. Lehavi (ed.), *Private Communities and Urban Governance*,
DOI 10.1007/978-3-319-33210-9_5

[the new neighborhood in Kiryat Gat—A.L.]. In faith: building you a community" (Blumenthal 2015; Gravé-Lazi 2015).

Following the public uproar, the company quickly removed the link to the video from its Facebook page and apologized for its insensitivity, while denying any discrimination in the actual marketing of the project. The commotion did not end then, however. Because the company won a public bid to develop the new project on government-owned land, the Attorney General's office quickly issued a letter to the Israel Land Authority (ILA), the administrative agency in charge of managing government-owned land, requiring the abrogation of the bid's award to *Be-Emuna* if it turned out that the company engaged in discrimination. The company, on its part, insists that it markets the housing units to the Israeli public at large (Busso 2015). In early 2016, setting a precedent, the ILA fined *Be-Emuna* for the discriminatory ad (Yaron 2016).

Moreover, while the focus of public attention has been on the alleged ethnic discrimination (Ashkenazi versus Mizrahi), the company's self-proclaimed designation of the project for the national-religious sector raises yet another issue: can real estate developers distinguish between religious and secular Jews, especially in those projects constructed on government-owned land? Could a real estate company, or a private association that participates in ILA public bids for the self-organized construction of housing projects, limit entry to the project based on the level of religiosity, or specific type of Jewish religious affiliation? Put in broader terms, what type of group-based affiliation might be considered legitimate for purposes of establishing a residential community that would be able to engage in screening mechanisms, while also promulgating community bylaws that would govern ongoing rules of conduct and use within the development?

As this chapter shows, such questions are being addressed across all societies, including in leading western liberal democracies. In such countries, the current discourse tends to focus on two distinct—maybe even contrasting—types of residential communities. The first type concerns cultural minorities, such as members of indigenous groups, which seek affirmative assistance from the state in validating their territorial congregation, such claims being grounded in the state's duty to rectify past wrongs (Kymlicka 1995). The second type deals with private residential communities, typically referred to as Common Interest Developments (CIDs), which demand a hands-off approach by government, grounding their prerogative to set up their rules of admission and ongoing governance of member conduct in the liberty of private property (McKenzie 1994).

While these strands of academic discourse are not foreign to Israeli reality, the case study of Israel presents unique features that illuminate distinctive perspectives on the role of territorial or residential communities within the nation-state. These traits, introduced briefly in the following paragraphs and explicated on throughout the chapter, may offer intriguing insights for the theoretical discourse and public-policy considerations pertaining to residential communities.

First, in sharp contrast to other OECD countries, 93 % of the land in Israel is owned by the state or one of its agencies (Holzman-Gazit 2007). Statutorily defined as "Israel Lands," and comprising about 4,820,500 acres (Israel Land Authority

2013), such lands are subject to specific legal and regulatory rules, and are jointly managed by the ILA. It should be noted that the proportion of Israel Lands changes across regions, and is relatively smaller in high-demand areas, and particularly in the Tel Aviv metropolitan area, where the rate of private ownership is slightly over 50 % (Bank of Israel 2014). In addition, in 2009, the Israeli government implemented the recommendations of a public committee to enable the transfer of ownership in housing units in the urban sector, where long-term leasehold contracts have been capitalized (Hananel 2012). This in mind, the overwhelming majority of land is still government-owned.

The initial allocation of Israel Lands for residential development is done through public bids or other governmental measures that grant rights to developers, associations, or individuals. In so doing, the state may also control financial aspects of the development. In 2015, the government, seeking to meet the increasing demand for housing in view of Israel's rapid population growth, and to consequently constrain the steep increase in housing prices, announced that public bids for land would henceforth follow primarily a "Price to the Dweller" (*me-chir la-mish'taken*) model. Under this model, the state heavily subsidizes the market price of the land and awards the bid to the developer that undertakes to sell the housing units, under a predefined layout, to the end-consumers at the lowest price (Government of Israel 2015). This means that the state not only controls the supply of land for development, but also substantially impacts the price at which the housing units would be sold to eligible homebuyers. Therefore, whenever the state facilitates the allocation of land to a specific community or sector within Israeli society, and further aids in subsidizing its housing costs, it provides significant tailwind for such a sub-national group.

Second, there is a long pedigree of active support for certain types of residential communities by the State of Israel—and prior to 1948, by the leading Zionist institutions operating in Ottoman-ruled and later British-ruled Palestine, such as the General Trade Union of Hebrew Workers (*histadrut ha-ovdim*), the Jewish National Fund (JNF), and the Jewish Agency. The general effort by such institutions to purchase land, in order to promote the Jewish aspiration for a national homeland, has often relied on an active collaboration with private settlement associations. This was primarily the case with respect to the various types of agricultural settlements, such as the *kibbutz* or the *moshav*, which were provided with land and capital resources by the Zionist organizations, with the settlers providing the labor resources and assuming responsibility for the organization and management of the community (Sofer and Applebaum 2006). Operating as cooperative associations, these agricultural settlements enjoyed wide deference by the Zionist institutions, and later by the state, in holding their member selection procedures and crafting their internal governance norms. Moreover, although the economic and organizational blueprint of a settlement such as the kibbutz—originally a full-fledged socialist commune with no private property—never represented the lifestyle of most (urbanite) Israelis, these private agricultural associations were revered for realizing the ultimate Zionist ideal (Near 2008). Enjoying superior political clout at least up until the 1970s, these groups might have constituted a nominal minority of the

Jewish population, but were far from being considered as insulated cultural minorities. The cooperative associations of kibbutzim and moshavim were viewed, rather, as ideological elites.

These agricultural communities were not the only kind of groups to gain institutional support. Having recognized from early on the importance of urban settlements, the Zionist associations also supported the construction of urban residential developments designated to members of trade unions. Since the early 1930s, these residents' groups were able to formally organize as private housing cooperatives. The Zionist organizations gave a long-term lease on the land to the housing cooperative, which then granted long-term subleases in the housing units to its members. The housing cooperative held a member selection process, one that also applied to subsequent transfers of the sublease, although in practice, the selection procedures tended to be more lenient than in agricultural settlements (Rabinowitz 2003). The organizational structure of these urban cooperative associations resembled, therefore, the housing cooperatives that became popular in New York City in the early twentieth century (Hansmann 1991). But the explicit initial support by the Zionist organizations went further in affirmatively validating these private communities.

Third, the societal makeup of contemporary Israel is much more heterogeneous—ethnically, culturally, and ideologically—than it was during the days of the pre-independence Hebrew settlement (*yishuv*) and the first few decades of Israel. This is due to a large number of factors, including post-independence immigration waves, diverging birth rates across population groups, ideological turnovers, and economic developments (Mautner 2011). As of the end of 2015, about 75 % of Israel's 8.5 million residents were Jewish, 20 % Arab (most of them Muslim, with other notable sub-groups including Arab-Christian and Druze), and 5 % identified as "other"[1] (Central Bureau of Statistics 2015a). Within the Jewish population, the number of Israelis of Ashkenazi and Mizrahi descent can be divided roughly equally. As far as religiosity is concerned, about 10 % of Jews identify themselves as ultra-orthodox, 10 % as national-religious or orthodox, 36 % as "traditional," and 44 % as secular (Central Bureau of Statistics 2015b).[2] Most Israelis live in cities or smaller urban/suburban settlements, with less than 10 % living in rural settlements, such as kibbutzim or moshavim (Central Bureau of Statistics 2015c). These figures reveal, however, only part of the complexity of current Israeli society, which is further divided along economic, political, and other lines.

The potential contentions among different societal groups, alongside the broader tendency toward fragmentation, thus challenge the multiculturalism discourse that

[1]The group of "others" refers mostly to persons who were eligible to immigrate to Israel under the Israeli Law of Return as family members of Jewish immigrants, but who are not themselves recognized as Jewish. The Israeli Registry of Population regularly does not classify these residents as members of another faith.

[2]The lines between these religiosity-based groups are obviously not clear-cut, with further internal divisions existing among each one of these groups based on ethnic and theological lines (Deshen 2005; Don-Yihya 2005).

is typical of western liberal democracies. This scholarly discourse assumes the existence of a solid majority of "mainstream" society, whose values generally conform to the state's fundamental principles, alongside the existence of certain minority groups that claim autonomy or affirmative validation (Nielsen 2013). Israel's growing heterogeneity undermines, however, this majority-minority assumption (Kimmerling 2004). In a public speech in 2015, Israeli President Reuven Rivlin spoke openly about the fact that while in the past Israel consisted of a large secular Zionist majority alongside various minority groups, contemporary Israel consists of four "tribes" of roughly equal size: ultra-orthodox, national-religious, secular Jews, and Arabs (Rivlin 2015). One could engage further in internal divisions that have profound effects on Israeli society, including spatial ones. Thus, over the past few years, there is much popular discourse about the "State of Tel Aviv," portrayed as a liberal, secular, and economically-powerful bastion, which is gradually disentangling itself from Israel's outer areas (Soffer and Bystrov 2006; Amit 2016).

The growing heterogeneity of Israeli society carries obvious implications for the construction of residential communities and the demand of sub-national groups to be affirmatively validated. While not all segments of Israeli society explicitly seek to form their own territorial enclaves, questions of group identity constantly come up in the context of setting rules of eligibility and ongoing governance within residential developments, or of following certain group practices. As a matter of law and public policy, these issues require the legislative, executive, and judicial branches to address numerous issues, such as the allocation of government-owned land, the legal mandate for exclusionary group practices, the essence of urban and rural planning, and so forth.

As this chapter shows, the dilemma of residential communities in a heterogeneous society has highly dynamic features not only across regions/cities, but also within a given locality. One example concerns the city of Beit Shemesh, located about 15 miles west of Jerusalem. Starting as a small "development town" for new immigrants in the 1950s, Beit Shemesh absorbed immigrants from North America, the former Soviet Union, and Ethiopia as of the late 1980s, but began to grow dramatically as of the mid-1990s, when entire new projects were built for ultra-orthodox communities, which had to look for housing solutions outside Jerusalem (Steinberg 2015). Currently divided more or less equally among the ultra-orthodox on the one hand, and all other population groups on the other, the city is a hotbed for fiery sectorial conflicts, one of them having to do with the rapid growth of state-subsidized neighborhoods for the ultra-orthodox.

Fourth, the challenge of heterogeneity manifests itself not only in the allocation of land or in the admission or governance rules for the residential developments themselves. This challenge applies with equal force to inter-group struggles for control over the city's public spaces and its public sphere more generally. Here too, Beit Shemesh has been in the eye of the storm, with ongoing contentions between the ultra-orthodox and the city's other groups. These disputes deal, for example, with the sale of non-kosher meat products in shops across the city, separation between men and women on public transportation, or chastity dress codes and

gender separation on public sidewalks within the ultra-orthodox neighborhoods (Steinberg 2015). Some of these disputes have ended up in court.[3] These controversies gained national attention during the 2013 mayoral two-man-race, in which the ultra-orthodox candidate eventually won the election by a slim majority, following fraud allegations and a court-ordered new ballot (Yaacov 2014). Other religion-based struggles, dealing with opening businesses such as convenience stores during Shabbat and religious holidays, or with operating public transportation during these dates, are prevalent throughout Israel, including in Tel Aviv (Blank 2012).

Inter-group disputes about the city's public sphere, and their essential ties with the question of residential communities, are not unique to intra-Jewish religion-based issues. Such tensions are prominent also in Jewish-Arab 'mixed cities,' i.e., cities in which there is a significant representation of both populations, with the Central Bureau of Statistics placing the threshold at 10 %. These issues run from the daily language used and curricular choices made in the public school system to the identity-building function of street naming (Azaryahu 2012; Dvir 2012). More broadly, the production of public space, and the public sphere in general, by the government—whether national or local—may play a key role in facilitating or, rather, hindering the standing and viability of residential communities (Yiftachel and Yacobi 2003). The growing heterogeneity and dynamic process of inward migration of Jews to hitherto Arab-dominated cities, and vice versa, introduce yet more challenges for current law and policy (Sade 2015).

Building on these general observations, this chapter proceeds as follows: Sect. 2 examines three types of scenarios that deal with residential communities and urban/suburban governance. The first issue deals with the initial designation of entire cities or neighborhoods, established on Israel Lands, to a defined group or community. The second theme deals with the legal validation of admission and governance mechanisms employed by private residential associations in urban/suburban settlements located on Israel Lands. The third matter concerns group admission and governance mechanisms for real estate developments constructed on privately-owned lands. The order of discussion generally moves, therefore, from the macro-level to the micro-level, and from cases in which a certain group seeks the state's affirmative validation and special treatment, to settings in which the private group merely asks for a "hands-off" approach by the government.

Section 3 offers a normative analysis of the broader dilemmas that frame the discussion of residential communities in a heterogeneous society such as Israel. It offers some tentative principles for the future development of law and public policy.

[3]H.C.J. 953/01 Solodkin v. City of Beit Shemesh (2004) IsrSC 58(5) 595 (establishing constitutional parameters for a local government's decision whether to prevent the sale of non-kosher meat within its boundaries, based in general on the demographic features of the specific locality and in particular on its level of religious-based homogeneity); H.C.J. 746/07 Ragen v. Ministry of Transportation (2011) IsrSC 64(2) 530 (forbidding the religion-based gender separation on buses and other forms of public transportation, while leaving the door open for voluntary private arrangements).

These insights may also prove instrumental for the study of residential communities in other countries—such as in Europe—that may likely face substantial challenges in adjusting their built environments to societal changes.

2 Residential Communities in Context: Between Public and Private

2.1 Allocation of Public Lands to Designated Groups

Over the past few decades, the voluminous literature on multiculturalism in the liberal state has been dealing extensively with the claimed right of societal groups or communities to lead their distinctive lives, and the respective duty of the state to support such demands (Kymlicka 1995; Raz 1995; Shachar 2001). One of the main strands in the literature is anchored in the debate over the "right to difference," and whether the state should move beyond the dormant acceptance of different values, ideologies, and lifestyles of various sub-national groups, to actively promote diversity to expand the "range of imagined life experiences for the members of a society's core groups" (Alexander 2001). This approach has had its fair number of critics. Some have claimed that the "right to difference" discourse does nothing but entrench segregation and perpetuate discrimination against members of vulnerable groups (Ford 2005). Others argue more broadly against the alleged failures of state-sponsored multiculturalism (Joppke 1999). One particular point of contention deals with illiberal groups within a liberal state (Alexander 2002).

Territoriality and geography play a dominant role in this debate (Mitchell 2004). Calls to validate the distinctive lifestyles of indigenous groups and other cultural minorities often go beyond the state's general duty to validate their community practices—requiring the allocation of a specific territory within which the community can exercise its distinctiveness. In the context of indigenous groups in countries such as the United States, Canada, Australia, and New Zealand, these arguments have relied mainly on redressing historic injustices that were inflicted on such groups, and restoring ancestral lands these groups had traditionally occupied (Gover 2006; McHugh 2004; McNeil 2004; Waldron 2002). The case for restoring or otherwise designating lands for members of indigenous groups has also gained currency in the international arena. The 2007 U.N. Declaration of the Rights of Indigenous Peoples is one such milestone.[4] Other supranational instruments have also played a role in placing the interests of indigenous groups, as a specific subset of cultural minorities, within the corpus of international human rights law. Thus, for example, the Inter-American Court of Human Rights has issued a number of decisions, based on the right to property in the American Convention on Human

[4]United Nations Declaration on the Rights of Indigenous Peoples. U.N. doc. a/res/61/295 (13 Sep 2007). http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Accessed 13 Jan 2016.

Rights,[5] ordering member states to restore ancestral lands to indigenous communities (Lehavi 2016). For such groups, territorial exclusivity is viewed as a matter of both historic justice and cultural survival.

As the following paragraphs show, the development of Israeli law and policy on the right of cultural minorities and other sub-national groups to the designation of government-owned land has been quite haphazard, touching base occasionally with the multiculturalism discourse.

2.1.1 Bedouin Cities/Neighborhoods

The first instance in which the Israeli Supreme Court explicitly reviewed the designation of government-owned land to a predefined sub-national group was in the 1989 case of *Avitan v. Israel Land Administration*.[6] As of the late 1960s, the state had established planned towns and cities designated solely to members of the Bedouin tribes of the Negev in southern Israel (Yahel 2006). The Bedouins, consisting historically of nomadic tribes that have moved across different regions in the Middle East, have long been in dispute with the State of Israel about the nature of their entitlements in different parts of the Negev, a conflict that goes back to Ottoman-ruled and British-ruled Palestine. This property conflict has had clear political implications, and as such, stirs much controversy in the public and academic discourse (Frantzman et al. 2012). Accordingly, those who critique the state's policy toward the Bedouins suggest that establishing the planned towns, while not legitimizing dozens of de facto settlements spread throughout the Negev, serves the state in unilaterally deciding the dispute (Yiftachel et al. 2012).

The *Avitan* case raised, however, a different kind of contention. The petitioner, a Jewish Israeli living in the southern city of Beer Sheva, applied to the ILA to lease a tract of land in the newly planned town of Segev Shalom, but was denied. The ILA reasoned that the town was intended for Bedouins only. Avitan argued that this government policy amounts to illegal discrimination, especially in view of the highly beneficial long-lease terms offered by the ILA.

---

[5]Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A. S. T.S. No. 36, 1144 U.N.T.S. 143. http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf. Accessed 13 Jan 2016.

[6]H.C.J. 528/88 Avitan v. Israel Land Administration (1989) IsrSC 43(4) 297. It should be noted that a few earlier cases dealt with ethnic- or religious-based separation, such as the decision in the matter of H.C.J. 114/78 Burkan v. Minister of Finance (1979) IsrSC 32(2) 800 that upheld a governmental policy against Arabs settling within the Jewish quarter in the old city of Jerusalem. But the *Ka'adan* case had to go further than preserving or upsetting an isolated status-quo. It had to deal with the upfront designation of government land for an entire new settlement. It should also be noted that the name "Israel Land Administration" was changed to "Israel Land Authority" in 2010.

The Court upheld the governmental policy, reasoning that:

> It is a matter of the Bedouins who, for many years, have lived nomadic lives, and whose attempts to settle in permanent locations were unsuccessful, often involving violations of the law, until it came to be in the state's interest to assist them, and thereby also achieve important policy objectives. The way of life and lifestyle of nomads lacking permanent, organized settlements, with all that it entails, is what makes the Bedouins a distinct group that the respondents consider worthy of assistance and encouragement, and special, positively discriminating treatment, not the fact that they are Arabs.[7]

The Court then refers to the unique cultural traits and lifestyle of the Bedouins as requiring distinctive planning considerations. It also points to the intra-Bedouin divisions into extended families or factions, as further demonstrating the particular sensitivities of planning the town's layout to minimize strife and, accordingly, as legitimizing the exclusion of non-Bedouins.[8]

The question of the legal validity of allocating government-owned land for specific groups rose again in two high-profile cases in 2000, in which the Court came to different conclusions. The first case dealt with the designation of an entire city/town or neighborhood for Jews (or Arabs); the second, with the designation of Israel Lands for an ultra-orthodox settlement. These two settings will be discussed separately, in this order, in the following subsections.

2.1.2 Jewish or Arab Cities/Neighborhoods

In March 2000, the Court decided the *Ka'adan v. Israel Land Administration* case.[9] The case dealt with the allocation by the ILA of land in the Eron valley region to the Jewish Agency, which, collaborating with a newly-established cooperative association, set up the settlement of Katzir (about 45 miles northeast of Tel Aviv). The land was not allocated through a bid, but was awarded, rather, to those admitted as members in the cooperative association. The association, on its part, granted memberships to Jews only, with the Jewish Agency citing its historic objective, since its establishment as a corporation in Britain in 1901, to settle Jews in the land of Israel.

The Court invalidated this allocation. Citing its previous decision in *Avitan*, the court held that the separate treatment of population groups cannot be justified in the case at hand. The Court noted, first, that there has been no parallel "request for the establishment of an exclusively Arab communal settlement,"[10] thus having a clear discriminatory effect. Second, the Court suggested:

> [T]here are no characteristics distinguishing those Jews seeking to build their homes in a communal settlement through the Katzir Cooperative Association that would justify the

[7]Ibid., p. 304.

[8]Ibid., p. 305.

[9]H.C.J. 6698/95 Ka'adan v. Israel Land Administration (2000) IsrSC 54(1) 258.

[10]Ibid., pp. 279–280.

> state allocating land exclusively for the Jewish settlement… In any event, the residents of the settlement are by no means a 'distinct group.' Quite the opposite is true: Any Jew in Israel, as one of many residents, who desires to pursue a communal rural life, is apparently eligible for acceptance to the Cooperative Association. As such, the Association can be said to serve the vast majority of the Israeli public. No defining features characterize the residents of the settlement, with the exception of their nationality, which, in the circumstances before us, is a discriminatory criterion.[11]

The *Ka'adan* decision has therefore ruled that Jews do not constitute, as such, a distinctive group so as to legitimize the designated allocation of government-owned land. The Court further held that the parallel establishment of Arab-only settlements would not have cured such a wrongful distinction. The decision has naturally sparked much public and academic debate, as it touches on the core questions of the identity of Israel, defined in its basic laws as "a Jewish and Democratic State" (Gavison 2001; Zilbershatz 2001). The question of spatial segregation between Jews and Arabs in Israel remains, however, a complex issue, one that is impacted both by formal policy and by practical modes of conduct on the part of public and private actors. Most fundamentally, current disputes between Jews and Arabs in Israel about land rights, spatial segregation, and resource allocation should always be evaluated against the background of the Arab-Israeli conflict, and the Palestinian-Israeli conflict in particular. This has been the case since the early days of the Zionist movement (Katz 1994; Tuten 2005), and it continues to be the case nowadays (Holzman-Gazit 2007). The cultural and ethnic dimensions of such land-based disputes cannot be separated from the key dimension of the lingering national conflict.

Two recent developments are noteworthy in this context. First, exclusionary practices may also take place when Israel Lands are initially auctioned in a public bid (unlike the *Ka'adan* case in which the land was allocated without a bid), but the winner then seeks to market the housing units to members of a specific group or sector. This is especially the case with private "Associations for Self-Construction" (*amutut le-bniya atzmit*), referring originally to bottom-up organizations of individuals, who compete jointly in the bid with the purpose of then engaging in the not-for-profit self-development of the housing units. Such associations are entitled to enter ILA bids and enjoy tax and other benefits as compared with regular developers. In some cases, however, professional companies enter the picture by organizing such groups and managing the bidding process and then the construction, for a profit, while trying to preserve the beneficial status of such associations. In such cases, these companies may add members to the group—which are essentially regular homebuyers–after winning the bid. The risk of potential abuse has led to some regulation of such associations (Ministry of Construction and Housing 2004), but their presence in ILA bids is overall on the rise. This, in turn, has led to open disputes about the potential role of such associations in promoting residential segregation between Jews and Arabs.

[11]Ibid., p. 280.

One such case came before the District Court in Tel Aviv in 2009.[12] *Be-Emuna*—already presented in Sect. 1 as a developer catering to the Jewish national-religious sector—won an ILA bid to develop a 20-unit residential building in the Ag'ami neighborhood in Jaffa (formally part of Tel Aviv), which is traditionally inhabited by Arabs. Local Arab residents petitioned to the court, arguing that the marketing of the housing units to members of the Jewish national-religious sector served mostly to exclude Arabs, and that the land should have served, rather, to solve the growing housing needs of the local Arab population in the neighborhood. The District Court judge denied the petition, reasoning that the *Be-Emuna* won an open bid, and noting that "I find no wrongdoing in the fact that individuals organize to live in proximity to one another, so as to engage in their favored way of life."[13] The judge further criticized the petitioners for their apparent double standard in seeking to secure the land for an Arab-only development.

The Supreme Court denied the appeal by the petitioners because the matter had already become moot, but noted in *obiter dictum* that the case otherwise raised significant issues of equality and discrimination in the allocation of government land to groups with distinctive cultural or religious traits. It further hinted that members of the Jewish national-religious sector might not count as a cultural minority, especially in the urban context, but did not rule on the merits.[14]

Shortly after the case, the ILA issued new guidelines, applying equally to professional developers and Associations for Self-Construction, which forbid ILA bid winners from engaging in "wrongful discrimination" in marketing the housing units.[15] This, however, did not end the controversy, with petitioners in subsequent cases arguing that ILA bid winners continue to engage in explicit and implicit forms of discrimination. In one such case, dealing with residential developments in the otherwise 'mixed city' of Acre, Arab petitioners argued that the Associations for Self-Construction that won the bids marketed the units to national-religious Jews only. The District Court in Haifa rejected the appeal, finding that the petitioners did not establish a concrete finding of an Arab or a secular Jew denied admission to the projects.[16] One can assume that such actual controversies will continue to erupt in the Jewish-Arab context.

Another recent development may shed new light on the potential gap between the Supreme Court's ruling in *Ka'adan* and the interface between formal public policy and spatial practices in setting up cities/towns or neighborhoods designated for Jews or Arabs. At the end of 2014, the National Council for Planning and Construction, Israel's superior planning agency, approved a land use plan (National

[12]A.P. (Tel Aviv) 2002/09 Sava v. Israel Land Administration (2010) (unpublished).

[13]Ibid.

[14]A.A. 1789/10 Sava v. Israel Land Administration (2010) IsrSC (unpublished).

[15]Office of the Attorney General, letter dated July 1, 2009. http://www.acri.org.il/pdf/beemuna010709.pdf. Accessed 13 Jan 2016 (Hebrew).

[16]A.P. (Haifa) 25573-03-12 Association for Civil Rights in Israel v. Israel Land Administration (2012) (unpublished).

Plan no. 44) to establish a new city on government-owned land in the Western Galilee region. The Council's decision explicitly stipulates that the plan was prepared by the "Ministry of Construction and Housing and the Israel Lands Authority to provide housing solutions, featuring urban high-level quality of life, for the non-Jewish population in northern Israel for about 40,000 persons, on lands that are mostly owned by the state."[17]

This planning decision was considered as setting a precedent, establishing the first Arab city since 1948 (except for the Bedouin towns discussed above). As such, it enjoyed general support from members of the Arab population in view of the rapidly growing demand for housing, especially among the younger middle class (Busso 2014). In addition, in early 2016, the National Council for Planning and Construction recommended to establish a new "Community Village" (discussed in Sect. 2.2 below) designated for the Druze, a population group that is ethnically Arab but which follows a distinct religion (Hudi 2016). It remains, however, to be seen whether the designation of the new Arab city and the Druze Community Village will be formalized in ILA bids or other modes of land allocation, and whether their establishment will trigger any sort of reconsideration of the *Ka'adan* ruling.

2.1.3 Ultra-Orthodox Cities/Neighborhoods

About two months after its decision in the *Ka'adan* case, the Supreme Court handed down its decision in May 2000 in yet another matter that dealt with the legal legitimacy of an earmarked allocation of Israel Lands for an entire new settlement. This time, the nonprofit organization, *Am Hofshi* (literally meaning, "a free nation"), which advocates the cause of secular Israelis, petitioned to the Court against the designation of a new city, Elad, located about 15 miles east of Tel Aviv, to the ultra-orthodox sector.[18] The petition also attacked the preferred financial terms awarded to homebuyers in the city, including a state-subsidized loan that was to have been converted to a grant. These financial benefits were not offered by the ILA or the Ministry of Construction and Housing to homebuyers in adjacent cities intended for the general public.

The Supreme Court struck down the beneficial financial measures for homebuyers in the city of Elad, viewing such differentiation as amounting to unjustified preferential treatment. At the same time, the Court upheld the designation of the new city to the ultra-orthodox sector.

Interestingly, when the ILA and the Ministry of Construction and Housing issued the bids, they attempted to somewhat blur the specific designation of the housing units to the ultra-orthodox public, by formally defining the city as intended

[17]National Council of Planning and Construction, Minutes of meeting no. 576, dated Nov. 4, 2014, p. 15 (Hebrew).

[18]H.C.J. 4906/98 Am Hofshi Association for Freedom of Religion, Conscience, Education and Culture v. Ministry of Construction and Housing (2000) IsrSC 54(2)503.

for a population "with a religious character." The Court held that the use of this vague and broad term is merely a guise for the actual purpose of designating the city to the ultra-orthodox, but it was the true intent of the government that actually made it constitutionally legitimate.[19] The court reasoned that:

> The allocation of land to a separate settlement for the ultra-orthodox population, so as to enable it to sustain and preserve its way of life, is permissible, and in itself is not wrongful. The possibility of allocating land resources for construction to members of one population group, whose needs justify separate construction, has already been recognized by this Court in regard to another population–the Bedouin population.
>
> Recognizing the possibility of allocating land and allowing separate housing for population groups with unique characteristics, according to their needs and aspirations, is integrated with the concept that recognizes the rights of minority communities, who so desire, to maintain their distinctiveness; it is a concept that represents an approach that is currently prevalent among jurists, philosophers, and education and social professionals, according to which the individual is also entitled–among his other rights–to materialize his affiliation with a community and its special culture as part of his right to personal autonomy.[20]

The Court's approach builds, therefore, on the type of multiculturalism discourse that advocates the right of cultural minorities to receive affirmative assistance by the state, including through the allocation or reinstatement of land. In so doing, the Court also accepts the explicit or implicit assumptions, by which the group at hand is a "minority" that can be contrasted with a prevailing "majority" of mainstream society, and that the minority group's culture and way of life would be endangered if it is unable to seclude itself territorially.

I suggest, however, that the spatial and societal dimensions of ultra-orthodox residential communities need to be crafted based on the dynamic processes that typify this population sector, and Israeli society more broadly—as already noted in Sect. 1. This means, among other things, that a static "majority-minority" discourse is not necessarily representative of the current features, preferences, and constraints of housing choices for the ultra-orthodox or other sectors. The framework for analyzing such residential communities should be based, rather, on the overall view of Israel as a truly heterogeneous society, one that no longer has a clear cultural or ideological core or mainstream, and that must constantly negotiate the potential benefits and harms of sub-national homogeneity or heterogeneity within a specific city or neighborhood.

Accordingly, the public policy on the allocation of government-owned land and the establishment of cities or neighborhoods must be attuned, on the one hand, to the bottom-up preference of persons for certain types of housing and local public amenities, as observed by Charles Tiebout in his model of a "market" for local governments and of "voting with one's feet" (Tiebout 1956). On the other hand, public decision-makers (legislatures, administrative agencies, and courts) must also make certain top-down policy choices in view of the multifaceted forms of externalities or conflicts that exist both within residential communities and across them.

---

[19]Ibid., p. 508.

[20]Ibid., pp. 508–509.

Consider, first, that the ultra-orthodox population is the fastest-growing sector in Israeli society due to particularly high birth rates. An ultra-orthodox family has on average 6.5 children, over twice the rate for most other population sectors in Israel (Hleihel 2011). With ultra-orthodox couples getting married at a relatively young age (typically between 18 and 21), the relative demand for new housing far exceeds any other sector in Israeli society. In the current general state of undersupply of new housing and rising real estate prices, young ultra-orthodox couples face particularly high pressures (Tocker and Nachum-Halevi 2011). Moreover, because most ultra-orthodox families are classified as poor or lower middle-class households based on their level of income (due to multiple reasons that cannot be elaborated here), ultra-orthodox households search mostly for cheap housing. This may create a conflict between the wish of such young couples to reside in traditionally ultra-orthodox neighborhoods—preferably in proximity to their own parents or within their particular denomination or 'rabbinical court'—and the lack of available options there, which drives these households to search for cheap housing elsewhere, including in currently non-orthodox neighborhoods or cities (Shechter 2014).

The migration of ultra-orthodox families into non-religious areas generates its own set of problems. Conflicts between ultra-orthodox and other residents may take place not only within a single condominium—for example, over the use of electric-operated amenities such as elevators during Shabbat and religious holidays—but these may also pour over into the city's public spaces.

For example, ultra-orthodox households have demand for certain types of public amenities that are much less typical in neighborhoods dominated by secular or even traditional Jews. Ultra-orthodox communities require an extensive amount of ultra-orthodox nurseries and schools, synagogues, and ritual baths (*mikvaot*). In a world of scarce resources, this means that other types of public amenities, such as parks, swimming pools, or music centers, will be undersupplied. Moreover, the struggle over the city's public space—and the public sphere more generally—may also result from the ultra-orthodox objection to certain uses or practices that they deem offensive: display of non-kosher meat in butcheries or supermarkets, liberal dress codes, or the opening of businesses on Shabbat and holidays. Even if members of the ultra-orthodox group would not themselves use such amenities, the community's leaders may fear that the exposure of their members, and children in particular, to such public forms of secularism would have an adverse influence on the community's character. As mentioned above, the City of Beit Shemesh has been the focus of such open disputes (Steinberg 2015). This might make the option of separate neighborhoods *within* the same city less viable, because of the inevitable need to share some city-wide public spaces. Such conflicts may also erupt among different factions within the ultra-orthodox population, whether based on different degrees of religious rigidity (Yanovsky 2015) or on school segregation between Ashkenazi and Mizrahi factions (Shoshana 2013).

What all of this means is that the dilemma of whether to allocate government-owned land to establish ultra-orthodox cities or neighborhoods must go beyond the paradigms of cultural minorities in the modern nation-state. It must also address the dynamic features of inter-sector relations in a heterogeneous society,

and the balancing of both deontological and instrumentalist considerations on sub-national spatial homogeneity versus heterogeneity. These considerations include, among other things, the varying features of land use planning intended for different population groups (e.g., what kind of public spaces and amenities would be provided); the fear of concentrated pockets of poverty that might emerge in ultra-orthodox-only cities (Nachum-Helevi 2011); and questions of justice that come up when scarce government resources are distributed in an unequal manner. These various considerations may often run at cross-purposes.

One current example concerns the planned City of Harish, located on Israel Lands about 45 miles northeast of Tel Aviv. Originally designated for the ultra-orthodox sector, this new urban settlement generated much interest among members of other population groups. The latter protested against this sectorial favoritism, especially because ILA bids will have been designed according to the subsidized model of the "Price to the Dweller." In 2014, the National Council for Planning and Construction and the ILA responded to such petitions by opening up the new city to all sector groups and, accordingly, by resetting the city's expected growth to 60,000 inhabitants until the year 2020 and 120,000 inhabitants until 2025 (Tz'ion 2015). ILA bids are currently awarded to various contractors or Associations for Self-Construction, which may practically market the developments to different population groups, meaning that the City of Harish will likely have a significant representation of secular, national-religious, and ultra-orthodox.

The increasing demand for housing and the calls for distributive justice in allocating government land have therefore tilted current public policy toward developing Harish as a heterogeneous city, which may still include some sub-local enclaves, but not as an overwhelmingly homogenous one. At the same time, such heterogeneity may result in the future in the type of religion-based tensions that currently typify the City of Beit Shemesh. Time will tell what lessons the City of Harish will offer for the allocation of government-owned lands.

2.2 Deference to Admission and Governance Group Rules—Public Lands

This subsection moves to examine forms of settlement that are established on Israel Lands, but managed by private settlement associations that engage in extensive private ordering mechanisms. These group norms may address both admission of members and ongoing governance of the residential community. In other words, whereas the previous subsection dealt with cities or neighborhoods that are designated for specific population groups but are otherwise run through conventional forms of public governance, the form of settlement discussed in the following paragraphs adds a substantial layer of private governance. Some private ordering mechanisms were noted in Sect. 1 in the context of agricultural settlements, such as kibbutzim or moshavim, on the one hand, and urban developments, such as urban

cooperation associations, on the other. This subsection focuses on a more recent phenomenon: the "Community Village."

The Regional Council of Misgav, located in the Lower Galilee region in northern Israel, is made up of 35 settlements, six of which are Bedouin villages, and the other 29—"Community Villages" (*yishuvim ke-hilati'im*), formed mostly during the 1980s and 1990s, and currently accommodating each a few hundred households.[21] Community Villages in Misgav were established on Israel Lands. This is the result of a close collaboration between governmental and other agencies—including ILA and the Jewish Agency, which sought to promote Jewish presence in the formerly Arab-dominated region—and private organizations of founding residents. While a few of these Community Villages were initially founded to promote a very specific goal, such as the practice of transcendental meditation (the Village of Harari), most Community Villages have otherwise sought to promote the general idea of a small-scale suburban settlement, which would enjoy the tranquility of the countryside while being close enough to urban centers of employment. Unlike kibbutzim and moshavim, Community Villages do not engage in agriculture and have no formal cooperative features. At the same time, these settlements present themselves as intended to promote an active community life (Lehavi 2005).

Up until the early 2000s, admission to such Community Villages was practically governed by internal practices of admission, set up by each private settlement association, with no clear policy issued by the ILA or other governmental entities. The land was not auctioned through bids, but allocated, rather, to the association, who would then facilitate the leasing of the plot to those candidates admitted to the association. This self-generated process of member selection was soon met with resistance by candidates denied admission for what they deemed to be discriminatory or otherwise arbitrary grounds (Ziv and Tirosh 2010). Following a number of petitions submitted by such candidates, the ILA established in 2003, and then in 2007, a set of guidelines for admission, which would in turn enable the long-term lease of plots to admitted members without a public bid. This process was applied both to Community Villages and to "Expansion Neighborhoods" in kibbutzim and moshavim that basically followed the same tenure model of Community Villages and were accordingly marketed as lifestyle suburban/rural communities (Charney and Palgi 2013). Legal controversies continued, however, to erupt, leading the Israeli Parliament (Knesset) to act.

In 2011, the Knesset passed the bill, commonly known as the "Admission Committees Law."[22] According to this law, admission committees in Community Villages and Expansion Neighborhoods in kibbutzim or moshavim located in the Galilee and Negev regions, if comprising up to 400 households, would be entitled to reject a candidate based on a limited number of factors. These criteria include,

[21]For a list of the settlements and the main features of each one of them, see www.misgav.org.il. Accessed 13 Jan 2016 (Hebrew).

[22]Law to Amend the Cooperative Associations Ordinance (No. 8), 2011, S.H. 683 (Hebrew).

among other things, the applicant's "incompatibility to social life in the community" or "incongruity to the social-cultural texture of the Community Village." The determination of social "incompatibility" of a certain candidate should be based on an expert opinion.[23] A rejection could be based also on "distinctive characteristics of the Community Village or admission requirements, if these are set forth in the cooperative association's bylaws."[24] At the same time, the law prohibits the discrimination of candidates based on "race, religion, gender, nationality, disability, family status, age, parenthood, sexual orientation, country of origin, or political affiliation."[25] The admission committee is made up of five members, dominated by representatives of the Community Village, with a right of appeal to a tribunal whose members are nominated by the Minister of Construction and Housing.[26]

The new law created controversy, with its adversaries pointing to the overbroad leverage granted to admission committees in light of the vague criteria of "incompatibility" or "incongruity," and the process in which a candidate must be interviewed and evaluated by both the admission committee and external experts. The contention was that such screening mechanisms practically enable discrimination against Arabs—especially because the law applies to the Galilee and the Negev, two areas with a delicate Jewish/Arab demographic balance—and others types of candidates considered undesirable by the Community Village (Khoury 2011).

A petitioned submitted to the Supreme Court and argued before an extended panel of nine justices was denied by the majority opinion, holding that the case is unripe because the petitioners did not (yet) present evidence of actual cases suspected of wrongful discrimination.[27]

The dissenting justices pointed, in contrast, to the vagueness of the "incompatibility" and "incongruence" criteria as practically facilitating "irrelevant differentiation" among candidates.[28] The minority opinion reviewed the history of admission procedures prior to the legislation of the 2011 law, pointing to the lack of "thick" community features of the villages on the hand, and the underlying motivation of admission committees to screen "undesirable" candidates, and particularly Arabs, on the other. The dissenting judges further suggested that any substantive community features could be consolidated and expressed in the written bylaws of the association, requiring candidates to formally adhere to such terms, without having to undergo the often-arbitrary process of admission committees. This would have allowed villages to differentiate between transparent and genuine community features and constitutionally-invalid exclusion.[29] Alternatively, per the dissenting

[23]Ibid., s. 6C(c)(4).

[24]Ibid., s. 6C(a).

[25]Ibid., s. 6C(c).

[26]Ibid, s. 6B(b)–(f).

[27]H.C.J. 2311/11 Sabach v. Knesset (2014) (unpublished) (Grunis, CJ).

[28]Ibid. (Jubran, J., dissenting).

[29]Ibid., para. 80.

justices, to the extent that the village features formal forms of economic cooperation, screening mechanisms such as interviews must be purely professional.[30]

What lessons can be drawn from the case of Community Villages regarding the degree of deference that should be awarded to private residential communities located on Israel Lands? As with the case of the designation of entire cities or neighborhoods to specific population sectors, I argue that the "cultural minorities" discourse has limited applicability, if at all, as a theoretical and conceptual framework for identifying legitimate forms of exclusion on Israel Lands. The practices of Community Villages and their admission committees hardly point to groups that view themselves as secluded minorities, ones that share a certain predefined, not to say immutable, trait that isolates them from mainstream society. These groups seek, rather, to establish a lifestyle community that would provide them with what existing members subjectively view as a generally pleasant experience, one in which neighbors generate self-perceived positive externalities on one another. Such a wish is not in itself illegitimate, but it must have strict limits when such groups seek to gain control over scarce public resources.

Accordingly, I suggest that the minority opinion offers a more balanced approach for establishing privately-designed residential communities on government-owned land. To the extent that the founding group is able to articulate affirmative distinctive features of community life that may distinguish such a Community Village from other settlements, it should be able to do so in written bylaws that could withstand a more transparent review. Such a common denominator, defining the "community" aspect of the village—be it a certain type of group activity or a preference for some types of public amenities that are not commonly provided—must be based on a criterion that is not otherwise prohibited as a ground for rejecting applicants (such as religion, family status, or political affiliation). The judicial review of any affirmative core of "community"—if defined in the association's bylaws—must ensure that such features are not merely a guise for pushing out members of "undesirable" groups. In other words, the onus of proof should be reversed. It is the association that should withstand the initial burden of showing that the distinctive features of its bylaws are legitimate and reasonable, with candidates typically required only to adhere to such written terms and to meet objective terms such as financial capability. Screening processes that require social "compatibility" evaluation should be reserved for exceptional circumstances of truly cooperative settlements, such as a kibbutz or moshav.

But the limits on any such forms of exclusion in admission procedures, and ongoing rules of governance, should not stop there. In a heterogeneous society such as Israel, what truly matters is whether sub-state homogeneity is truly required to avoid hard, ongoing conflicts within the Community Village (or any other type of settlement, for that matter). It is not a matter of majority and minority. It is not a matter of the government morally preferring one form of life over the other. It is a question of whether, all things being considered, intra-local heterogeneity will result in constant clashes that cannot be reasonably settled because of conflicting

[30]Ibid., para. 81.

values and practices of different population groups. Such an analysis cannot settle for a general observation. It must examine whether, in the particular circumstances of a planned city, neighborhood, or Community Village, heterogeneity will inflict damage for all parties concerned. The presumption should be one of heterogeneity and promotion of tolerance, and it should not be easily refuted.

2.3 *Deference to Admission and Governance Group Rules—Private Lands*

Prior to studying the development of residential developments in Israel, which are located on privately-owned lands and that function as "private communities," it is essential to place this phenomenon in its broader global context. The rapid growth of Common Interest Developments (CIDs), governed by Residential Community Associations (RCAs) or Homeowner Associations (HOAs), is a well-documented phenomenon across the world (Atkinson and Blandy 2005). In western countries, this phenomenon typically refers to a residential development constructed on privately-owned land, in which the developer designs private governance mechanisms, including bylaws, which are then run and further developed by the CID's institutions: the association and its governing board (McKenzie 1994). Private communities have been proliferating also in transitional and developing countries, such as China (Pow 2007) and across Latin America (Thuillier 2005). Many of these private communities are physically gated. Such gated-ness is usually justified in considerations of personal security—i.e., protection against crime—or in the need to restrict access to the community's amenities, such as sports facilities or recreational spaces, which are financed by the CID's residents (Blakely and Snyder 1999; Low 2006). Gated communities may also have, however, an implicit or explicit purpose of social stratification. In China, for example, gated communities in quickly-developing megacities such as Shanghai are said to have been playing a role in drawing a moral distinction between the "urban" and "rural" that revolves around moral discourses on civilized modernity (Pow 2007).

In the United States, 63.4 million Americans currently live in over 323,000 CIDs. Planned unit developments (PUDs) and condominiums share almost equally in this burgeoning market.[31] As far as admission is concerned, most CIDs do not usually have strict formal screening procedures, with the exception of cooperative buildings (co-ops) in New York City, which have become (in)famous for their intrusive selection procedures (Hansmann 1991). The deference to such procedures

[31]The condominium legal design typically applies to apartment buildings, with detached housing projects usually organized as PUDs. The underlying organizational features of these two forms are quite similar (Lehavi 2015).

is grounded in the co-ops' unique legal and economic structure.[32] Condominiums in NYC and elsewhere are also witnessing some intensification of their screening procedures (Rosenblum 2014). Otherwise, socioeconomic screening may be done informally or simply through the price mechanism. Calls to view CIDs as "state actors" so as to apply public law standards to their exclusionary practices have so far remained unanswered (Kennedy 1995).

An intriguing case involving formal screening procedures, one whose conceptual framework may be applicable for designing law and policy for private communities in Israel and elsewhere, is the New Jersey court decision in *Mulligan v. Panther Valley Property Owners Association*.[33] A CID association voted to prohibit individuals registered as Tier-3 sex offenders under New Jersey's Megan's Law from residing in the CID. This decision was challenged as allegedly violating public policy, by infringing the constitutional rights of Tier-3 registrants, and by de facto deflecting such persons to neighborhoods that have no institutional exclusion mechanisms.

The court addressed the "reasonableness" of the CID's governing documents. It held that the question whether such provisions "make a large segment of the housing market unavailable" to such persons, or expose those who live in the "remaining corridor to the greater risk of harm than they might otherwise have had to confront," is largely empirical. Holding that the burden of proof lies with the plaintiff, who has established no such record, the court declined to intervene.[34]

The normative evaluation by the court of the exclusionary norm for admission is one which may be conceptualized as "quantity makes quality." The screening of a single sex-offender is not considered legally wrong per se. But if too many private communities embrace the same norm, this may generate an excessive burden both for such persons (who need to live somewhere) and for neighborhoods where no explicit screening mechanisms are intact. Such an analysis might apply to other types of screening criteria that occupy a normative middle ground. Accordingly, the legitimacy of admission procedures in private communities should be evaluated by looking not only at the specific development, but also at the potential aggregate effects of such norms.

A similar type of analysis can be made in regard to limits or restrictions imposed by CIDs on certain types of habits or activities, which may have an indirect effect of screening applicants, or even of pushing out persons already living in the CID.

---

[32]In a co-op building, the cooperative association is the owner of the building and underlying land. The members are shareholders in the association, and are entitled by virtue of their shareholding to exclusively occupy a unit in the building for a long period of time (typically, 99 years). Most co-ops also borrow money secured by a blanket mortgage on the real property, meaning that each member must make periodic payments for her ratable share of the collective mortgage. The co-op board thus has a strong incentive to screen prospective members in order to ensure that members carry their share of the collective mortgage (Schill et al. 2007).

[33]766 A.2d 1186 (N.J. Super. Ct. App. Div. 2001).

[34]Ibid., pp. 305–307.

In *Villa de Las Palmas Homeowners Association v. Terifaj*,[35] the California Supreme Court upheld a majority-approved amendment to a condominium's governing documents, which established a no-pet restriction, applicable also to current homeowners/tenants. The court viewed such a use limit as "crucial to the stable, planned environment of any shared ownership arrangement." It read the California Civil Code as settling for simple majority for such amendments, reasoning that this is required to prevent a "small number of holdouts from blocking changes regarded by the majority to be necessary to adapt to changing circumstances and thereby permit the community to retain its vitality over time."[36]

Similar disputes have arisen in the context of amendments banning smoking in CIDs, which also have a retrospective effect on current residents (Toy 2011). The need to legitimize majority-based rules may be generally justified by facilitating collective action and mitigating the perils of deadlocks and holdout behavior. But such rules, which (re)define the substantive features of the residential community, have the effect of pushing out applicants or residents whose habits do not conform. Because smoking or possession of pets is not prohibited by law, and since smokers and pet owners have to live somewhere, the normative evaluation of exclusionary rules must consider their aggregate effects on such persons on the one hand, and non-CID developments on the other.

It is now time to study such private communities in the Israeli context, and to evaluate the legitimacy of their exclusionary norms, based on the distinctive features of Israeli society. The emergence of American-style CIDs—offering leisure/recreational amenities, a self-perceived sense of luxury lifestyle, and physical enclosure alongside detailed governance mechanisms—is a relatively recent phenomenon. It began to emerge mostly in the 1990s, relying on general social trends of privatization, neoliberalism, and legitimacy for explicit expressions of wealth. Many of the leisure communities located along the Mediterranean shore, or upscale urban developments, were structured as gated communities and marketed as enclaves of luxury (Rosen and Razin 2010).

One example is Savioney Ramat Aviv, an upscale enclaved development in Tel Aviv. A key-shaped brochure, distributed in 2004, was titled: "Private" and "Savoyney Ramat Aviv. Tel Aviv's Private Neighborhood." It further read: "This is what life in the private neighborhood of Savioney Ramat Aviv will look like… It will feature a spa club, fitness center, swimming pool, and a green park, serving only the project's residents." Similar language was used for marketing other projects in the 1990s and 2000s, promoting ideas of privacy and exclusivity (Lehavi 2005).

During that time, a number of real estate entrepreneurs also started to organize and market condominium developments as designated for members of particular professions, such as high-tech and capital market professionals, pilots, or doctors (Ben-Israel 2009; Hudi 2013). Over the long run, however, it seems that none of

[35]Villa De Las Palmas Homeowners Association v Terifaj, 90 P.3d 1223 (Cal. 2004).

[36]Ibid., pp. 1228–1229.

these projects embraced formal screening procedures to verify such affiliation. The identification of a certain condominium tower as "The Pilots' Tower," for example, served mostly as a marketing tool, harnessing the prestige of a certain profession to lure potential homebuyers. At the same time, developers might engage in informal screening procedures, ones that remain under the radar of legal scrutiny. At the end of the day, market price mechanisms have proven most dominant in sorting potential homebuyers.

A different private community, which stirred much public and legal controversy when it was established in the late 1990s, is the Andromeda Hill project, located in the heart of Jaffa, on land leased from the Greek-Orthodox Patriarchy, and overlooking the Mediterranean coast. Originally marketed mostly to wealthy foreign residents as a lifestyle community, the developer advertised the project as "a city within a city, surrounded by a wall and secured 24 h a day" (Lehavi 2005). With the project disentangling itself from its immediate surroundings, which are inhabited by Arabs of lower socioeconomic status, critics viewed the project as embedding exclusionary gentrification while also featuring ethnic-based seclusion (Monterescu and Fabian 2003). In a 2007 decision, the Magistrate Court in Tel Aviv ordered the developer to implement the project's land use plan by granting public access to the development's open spaces through two gates that would be opened daily between 08:00 and 22:00, following a security check.[37] Practically, however, the presence of such gates deters most neighbors and walkers-by from exercising their right of access, preserving Andromeda Hill as essentially a gated community.

Urban private communities have not become, however, the new norm in Israel's cities, including in the affluent parts of the Tel Aviv metropolitan area. Most luxury developments comprise single condominium towers (or two interconnected ones) and provide club amenities such as indoor pools or fitness centers, but do not purport to construct a distinctive substance of "community" beyond a general sense of luxury. Accordingly, the overwhelming majority of such developments do not feature formal admission procedures. The developer may engage in informal modes of sorting, but these do not last over time, as there are no organizational limits on resale or on renting out units. The composition of tenants is thus governed mostly by market mechanisms, meaning that whereas general socioeconomic attributes play a crucial role, other dividing lines take a backseat. Moreover, such luxury condominiums have not (yet) embraced use restrictions such as on pet possession or smoking in the housing units, as discussed above in the context of the United States. This is, of course, not to say that disputes do not arise in such condominiums over common amenities or other governance issues, but these conflicts have to do mostly with financial matters and general norms of orderly behavior (Groissman 2011), and less with principled struggles over distinctive community features based on religion, ideology, etc.

[37]C.M. (Tel Aviv) 200681/04 Jaffa for Human Rights Association v. Andromeda Hill Management Company (2007) (unpublished).

Two lessons can be drawn from the study of current urban private communities in Israel for the future design of law and policy on residential communities established on private lands.

First, the presence of self-perceived urban private communities tends to be sporadic and limited in scope. To start with, the overall amount of privately-owned land in Israel is limited (less than 7 %). Moreover, urban private communities largely remain inaccessible to homebuyers outside of the luxury market. This is due largely to the high costs of maintenance, including payment of insurance premiums for tort liability in common amenities, which make private communities a mixed blessing for middle-class homeowners (Nachum-Halevi 2010).

Therefore, to the extent that "quantity makes quality" in normatively evaluating certain types of exclusionary practices and norms of residential communities, it seems that urban private communities are still far from reaching a critical mass that should raise grave concerns about multifaceted social stratification. Unlike the case of residential communities on publicly-owned lands, urban private communities do not seem to explicitly engage in drawing boundaries along racial, ethnic, religious or other grounds that cut through society's different sectors. True, economic disparities may indirectly run along such lines in a society in which economic power is unequally distributed across different sectors. But to the extent that such a phenomenon has not yet infiltrated Israel's middle-class households, its overall societal impact is limited. Borrowing from the language of the New Jersey *Mulligan* case discussed above, luxury private communities do not "make a large segment of the housing market unavailable" to other homebuyers/tenants.

Second, to the extent that one can discern a visible impact on Israel's cities as a result of urban private communities, it seems to lie rather in the physical enclosure of such communities. Constructing walled communities in the heart of cities carries substantial externalities for other city residents, making cities less walkable, decreasing the number of open spaces, increasing traffic congestion, and otherwise diminishing the city's openness. This is especially true of a city such as Tel Aviv, which is otherwise a cultural and economic magnet for persons across Israel. A similar effect applies to the blocking of access to public beaches by leisure communities located along the Mediterranean coast. The physical effects of enclosure are, therefore, both quantitatively and qualitatively more significant than their aggregate effect on residential choices. Moreover, adequate regulation on the physical layout or other significant outward-looking dimensions of residential communities falls squarely within the government's police power, without broadly undermining the distinction between public and private property. This has been the case in just about every market-based economy that regulates land use. At this point in time, Israeli law and policy need not go, however, to the next level, seeing private residential communities as a quasi "state actor" in view of their overall effect on social stratification.

3 Toward a Principled Normative Analysis of Residential Communities in Israel

The future design of law and public policy on residential communities in a heterogeneous society such as Israel must move away from the paradigms of the multiculturalism discourse. Rather than seeking to identify "cultural minorities" and to juxtapose them with the nation-state as represented by a clear majority of "mainstream society," Israel requires a different type of balancing between a multitude of population groups, cutting across religious, ethnic, ideological, and economic lines. The Israeli Supreme Court may have had a different idea in mind when it identified the Bedouins in its 1989 *Avitan* decision, and the ultra-orthodox in its 2000 *Am Hofshi* decision, as cultural minorities, but this view is largely obsolete in contemporary Israeli society. Israel is now a truly heterogeneous society, in which no clear-cut "mainstream" can be identified.

Moreover, in a country dominated by government landownership, public decision-makers play a full-fledged role in identifying the existence of genuine group- or sector-level common denominators, and in deciding whether such distinctive features necessitate the earmarked allocation of land or the granting of group-level autonomy for admission and governance rules.

The law and policy on territorial homogeneity versus heterogeneity must combine moral and social principles with practical considerations. This means that public decision-makers at the national and local levels must, on the one hand, do everything within their power to prevent the exacerbation of social fragmentation and to use their formal and educational power to foster tolerance, respect, and to actively combat xenophobia and inter-group animosity. At the same time, decision-makers must also consider the nature and scope of inter-group tension that could arise in heterogeneous cities, towns, or neighborhoods, and whether the only way to mitigate severe, ongoing conflicts would be to facilitate some sort of territorial boundary-drawing.

I argue that the general policy rule should be one of heterogeneity, one that places the onus of persuasion on decision-makers and representatives of population groups that seek to validate sector-specific residential communities. Such an onus could only be lifted when those who advocate separation or group autonomy can demonstrate that the group shares affirmative community features rather than merely suspicion toward others; that such features are translated into ongoing collaboration and shared practices in both the residential structures and public spaces around them; that the allocation of land for such a residential community will not simply promote economic favoritism in a world of scarce resources; and that group rules on admission and governance would be narrowly tailored to promote community rather than merely exclusion.

These general normative criteria should be translated into a number of policy principles, which should be backed in turn by adequate legal rules, in designing residential communities.

First, any sort of government support for residential communities, whether in the form of allocating land for a predefined group, granting private associations with

substantial leeway in setting up rules of admission or ongoing governance in rural or suburban/urban settlements, or financially assisting in setting up a residential community, must be subject to norms of distributive justice or inter-group fairness in resource allocation.

This means, for example, that if the government decides to allocate land for a new ultra-orthodox city (assuming that such designation is otherwise considered legitimate based on the general criteria set forth above), any such allocation must spell out the housing needs of the ultra-orthodox sector, and make sure that other current or upcoming government plans would meet the demand for housing of other population groups—whether by earmarked allocation or projects intended for the public at large. The ruling in the *Am Hofshi* case, which struck down the financially-preferential treatment to homeowners in the City of Elad, must lead to a broader principle of proportionate allocation of land to population groups, based on demographic trends. The Court's language in *Avitan*, by which certain cultural minorities deserve preferential treatment, while implicitly assuming that other population groups would simply get along, cannot be sustained in a truly heterogeneous society, in which most lands are publicly-owned.

Second, the spatial choice between homogeneity and heterogeneity should not follow a single dimension or model. The question as to whether ultra-orthodox, Bedouin, national-religious, or secular communities, for that matter, should live apart or together may change across different regions and across time. As noted, time will tell whether the inter-group dynamics in the City of Harish will play out differently than in the City of Beit Shemesh, and if more attention should be paid to place-specific details before crafting a general strategy by which "it is better off to have towns and cities designated solely for the ultra-orthodox," or any other policy for that matter.

Moreover, in considering heterogeneity versus homogeneity, one could think about at least three potential models: (1) city-wide homogeneity—i.e., the designation of an entire city to a single population group, as is the case in Elad; (2) neighborhood- or block-wide homogeneity within a city-wide heterogeneity—i.e., the designation of different sub-local areas to specific groups, as is currently the case in Beit Shemesh; and (3) block- or neighborhood-wide heterogeneity—meaning that there are no group-specific allocations of public land whatsoever. As for the third alternative, one may further distinguish between a potential Singapore-style policy that affirmatively intervenes to ensure inter-group integration at the block or neighborhood level,[38] and a "hands-off" approach that does not

[38]Under the Ethnic Integration Policy (EIP) in Singapore—which, like Israel, is dominated by public landownership and the granting of long-term capitalized leases to individuals (Haila 2000)—public housing projects impose an ethnic integration within each block or neighborhood. This policy requires non-Malaysian households of Singapore Permanent Residents (SPR) to be within the SPR quota, set at 5 % as the neighborhood level, and 8 % at the block level. According to Singapore's Housing and Development Board: "The SPR Quota ensures that SPR families can better integrate into the local community. Malaysians are excluded from this quota because of their close cultural and historical similarities with Singaporeans" (Singapore Housing and Development Board 2016).

sanction the development of group-specific projects, while not intervening in market and purely-personal household choices.

In choosing among the different models along the homogeneity-heterogeneity spectrum, both normative and practical considerations come into play. I generally subscribe to the argument by which cities, and particularly big ones, should increase "the capacity of all metropolitan residents… to live in a world filled with those they find unfamiliar, strange, even offensive" (Frug 1999). In this sense, big cities are not only quantitatively but also qualitatively different from towns or other small-scale settlements. Cities play a key role in enabling heterogeneous societies to foster a civilized dialogue among different population groups, and to highlight potential commonalities that may nevertheless emerge across such groups.

Accordingly, to the extent that territorial differentiation is required to avoid conflict and to promote genuine group-level common denominators, it is presumably preferable to facilitate this in small-scale settlements or at the neighborhood-level within an otherwise heterogeneous city. There are also practical considerations for supporting neighborhood-level homogeneity over a city-wide one: cities are not only about residential projects. They are also centers of employment, commerce, and entertainment that become possible due to agglomeration effects. Having purely separate cities decreases employment opportunities and may increase economic disparities. Such constraints cannot be simply ignored by the wish for "seamless" interactions. True, those very common amenities and public spaces may themselves become places of contention. It could be that quarrels over the sale of non-kosher meat, public transportation on Shabbat and religious holidays, or dress codes cannot be resolved solely at the neighborhood level. The choice of designating entirely separate cities should be exercised, however, only as a last resort.

The normative case for heterogeneity seems to be particularly strong in the case of Jewish-Arab interactions. Despite their many challenges, 'mixed cities' in Israel have generally proven to be attainable, providing opportunities for some level of dialogue and bridge-building. One important example is that of bilingual schools, in which Jewish and Arab children study in Both Hebrew and Arabic, with the curriculum addressing Jewish, Muslim, and Christian holidays and other significant dates and events (Skup 2016). The potential for coexistence that can originate in such joint elementary education should be a major factor to consider in planning for new cities.

Third, to the extent that a private association wishes to engage in setting up rules of admission and governance in a settlement established on public land, such as in the case of Community Villages or Expansion Neighborhoods in kibbutzim or moshavim, it should be required to do so primarily through transparent written bylaws that spell out the distinctive nature of the residential community. The association should not be entitled to hide behind vague procedures that purport to measure "incompatibility" or "incongruity" to social life without holding existing members accountable to the same criteria. One may fear that spelling out distinctive community features in written bylaws may make societal discourse in Israel more blunt and divisive than it already is. I beg to differ. When such written bylaws are

concerned, many norms should be easy enough to handle by courts or public opinion. Rules that draw lines based on religious, ethnic, political and other grounds, explicitly prohibited by the Admission Committees Law, would not be there to start with. Other rules that try to indirectly attain such wrongful segregation through allegedly-neutral norms would also likely come under scrutiny.

Consider a hypothetical rule by which a Community Village defines itself as dedicated to the nourishment and collective enjoyment of classical music, and assume further that the love for classical music is not distributed equally across different population groups. To the extent, however, that such a rule is merely written down in the bylaws as a tactical move, it might quickly prove a mixed blessing. The founders may soon find out that lovers of classical music do not come only from a single population group, thereby undermining unfounded prejudice that the founders might have had toward "others." Moreover, such a commitment would have to be a credible one, requiring the group to show that it indeed invests time and resources to nourish classical music. Over the long run, the Community Village gets stuck with, well, classical music.

In this sense, Community Villages would fare similarly to CIDs that identify themselves as following a certain habit or activity, such as "golf communities." Indeed, statistically speaking, the love of golf may not be distributed equally across all population groups (Strahilevitz 2006). But such a criterion allows persons, who may not fit the stereotype, to opt into the group rather than being kept away from the community because of irrelevant, often immutable traits. At the other end, it requires CID members to continuously spend considerable amounts of money to maintain a golf course. Residents of a luxury CID probably may do so without much effort. However, these luxury CIDs should not be of much concern if our normative evaluation of such an exclusionary practice is one of "quantity makes quality." In contrast, such a financial commitment would probably make this common theme unattractive for middle-class developments that adopt such a criterion as merely an indirect mechanism for attaining segregation driven by religious, ethnic, or racial grounds. Residential communities should make members accountable to their self-defined commonality.

References

Alexander, J. C. (2001). Theorizing the "modes of incorporation": Assimilation, hyphenation, and multiculturalism as varieties of civil participation. *Sociological Theory, 19*(3), 237–249.

Alexander, L. (2002). Illiberalism all the way down: Illiberal groups and two conceptions of liberalism. *Journal of Contemporary Legal Issues, 12*, 625–636.

Amit, H. (2016). Does the state of Tel Aviv really exist? *Haaretz*. http://www.themarker.com/markerweek/1.2822610 (Hebrew).

Atkinson, R., & Blandy, S. (2005). Introduction: International perspectives on the new enclavism and the rise of gated communities. *Housing Studies, 20*(2), 177–186.

Azaryahu, M. (2012). *Named after—the history and politics of street naming in Israel*. Jerusalem: Karmel Press (Hebrew).

Bank of Israel. (2014). Annual report 2013. http://www.boi.org.il. Retrieved 13 January 2016 (Hebrew).
Ben-Israel, A. (2009). End to screening homebuyers? Mazuz considers ruling out "high-tech towers." *Globes*. http://www.globes.co.il/news/article.aspx?did=1000481299 (Hebrew).
Blakely, E. J., & Snyder, M. G. (1999). *Fortress America: Gated communities in the United States*. Washington, DC and Cambridge, MA: Brookings Institution Press, Lincoln Institute of Land Policy.
Blank, Y. (2012). Localising religion in a Jewish state. *Israel Law Review, 45*, 291–321.
Blumenthal, I. (2015). Offensive ad plays on racial divisions between Israel's Jews. *Ynet news.com*. http://www.ynetnews.com/articles/0,7340,L-4733028,00.html
Busso, N. (2014). National council for planning and construction approves new Arab city in the western Galilee. *The Marker—Haaretz*. http://www.themarker.com/realestate/1.2476801 (Hebrew).
Busso, N. (2015). After racial video, attorney general orders to look into cancelling *Be-Emuna's* win of bid. *The Marker—Haaretz*. http://www.themarker.com/realestate/1.2789483 (Hebrew).
Central Bureau of Statistics. (2015a). Population of Israel on the eve of 2016—8.5 million. Press release 355/2015. www.cbs.gov.il. Retrieved 13 January 2016 (Hebrew).
Central Bureau of Statistics. (2015b). Social survey 2013. Publication no. 1594. http://www.cbs.gov.il/webpub/pub/text_page.html?publ=6&CYear=2013&CMonth=1. Retrieved 13 January 2016 (Hebrew).
Central Bureau of Statistics. (2015c). Israel statistical yearbook, Table 2.21: Localities and population, by type of locality and population group. http://www.cbs.gov.il/shnaton66/st02_21x.pdf. Retrieved 13 January 2016.
Charney, I., & Palgi, M. (2013). Sorting procedures in enclosed rural communities: Admitting 'people like us' into renewing kibbutzim in northern Israel. *Journal of Rural Studies, 31*, 47–54.
Deshen, S. (2005). The emergence of the Israeli sephardi ultra-orthodox movement. *Jewish Social Studies, 11*(2), 77–101.
Don-Yihya, E. (2005). Orthodox Jewry in Israel and in North America. *Israel Studies, 10*(1), 157–187.
Dvir, N. (2012). The politics behind street naming. *Haaretz*. http://www.haaretz.co.il/gallery/architecture/1.1741219 (Hebrew).
Ford, R. T. (2005). *Racial culture: A critique*. Princeton and Oxford: Princeton University Press.
Frug, G. E. (1999). *City making: Building communities without building walls*. Princeton and Oxford: Princeton University Press.
Frantzman, S. J., Yahel, H., & Kark, R. (2012). Contested indigeneity: The development of an indigenous discourse on the Bedouin of the Negev, Israel. *Israel Studies, 17*(1), 78–104.
Gavison, R. (2001). Zionism in Israel: After the Ka'adan case. *Law and Government, 6*, 25–51 (Hebrew).
Groissman, N. (2011). The 'juice' of top towers. *Calcalist*. http://www.calcalist.co.il/local/articles/0,7340,L-3509209,00.html (Hebrew).
Gover, K. (2006). An Indian trust for the twenty-first century. *Natural Resources Journal, 46*, 317–374.
Government of Israel. (2015). Me-chir la-mishtaken (Price to the dweller). http://www.dira-il.co.il/ . Retrieved 13 January 2016 (Hebrew).
Gravé-Lazi, L. (2015). Real estate company advertises housing project free of non-Ashkenazi Jews. *The Jerusalem Post*. http://www.jpost.com/Israel-News/Real-Estate-company-advertises-housing-project-free-of-non-Ashkenazi-Jews-435826
Haila, A. (2000). Real estate in global cities: Singapore and Hong Kong as property states. *Urban Studies, 37*(12), 2241–2256.
Hananel, R. (2012). The end of agricultural supremacy: The 2009 reform of Israel's national land policy. *Israel Studies Review, 27*(2), 143–165.
Hansmann, H. (1991). Condominium and cooperative housing: Transactional efficiency, tax subsidies, and tenure choice. *Journal of Legal Studies, 20*(1), 25–71.

Hleihel, A. (2011). Fertility among Jewish and Muslim women in Israel, by level of religiosity, 1979–2009. Central Bureau of Statistics, working paper no. 60. www.cbs.gov.il/publications/pw60.pdf. Retrieved 13 January 2016. (Hebrew).
Holzman-Gazit, Y. (2007). *Land expropriation in Israel: Law, culture and society*. Aldershot: Ashgate.
Hudi, U. (2013). What do pilots, young people, doctors—And housing prices have in common? *Globes*. http://www.globes.co.il/news/article.aspx?did=1000899787 (Hebrew).
Hudi, U. (2016). Recommendation: Establish a new Druze settlement in the lower Galilee. *Globes*. http://www.globes.co.il/news/article.aspx?did=1001093285 (Hebrew).
Israel Land Authority. (2013). General information. http://www.mmi.gov.il/envelope/indexeng.asp?page=/static/eng/f_general.html. Retrieved 13 January 2016.
Joppke, C. (1999). *Immigration and the nation-state: The United States, Germany, and Great Britain*. Oxford: Oxford University Press.
Katz, Y. (1994). *The "business" of settlement: Private entrepreneurship in the Jewish settlement of Palestine, 1900–1914*. Jerusalem and Ramat-Gan: Magnes Press (The Hebrew University) and Bar-Ilan University Press.
Kennedy, D. J. (1995). Residential associations as state actors. *Yale Law Journal, 105*, 761–793.
Khoury, J. (2011). Concerns remain over defanged admission panel law. *Haaretz*. http://www.haaretz.com/concerns-remain-over-defanged-admission-panel-law-1.359244
Kimmerling, B. (2004). *Immigrants, settlers, natives: The Israeli state and society between cultural pluralism and cultural wars*. Tel Aviv: Am Oved (Hebrew).
Kymlicka, W. (Ed.). (1995). *The rights of minority cultures*. New York: Oxford University Press.
Lehavi, A. (2005). New residential communities in Israel: Between privatization and exclusion. *Din U'dvarim, 2*, 63–140 (Hebrew).
Lehavi, A. (2015). Law, collective action and culture: Condominium governance in comparative perspective. *Asia Pacific Law Review, 23*(2), 5–35.
Lehavi, A. (2016). Land law in the age of globalization and land grabbing. In M. Graziadei, L. Smith (Eds.), *Research handbook on comparative property law*. Cheltenham: Edward Elgar (in press).
Low, S. (2006). How private interests take over public space: Zoning, taxes, and incorporation of gated communities. In S. Low & N. Smith (Eds.), *The politics of public space* (pp. 81–103). New York: Routledge.
Mautner, M. (2011). *Law and the culture of Israel*. Oxford: Oxford University Press.
McHugh, P. G. (2004). Aboriginal title in New Zealand: A retrospect and prospect. *New Zealand Journal of Public and International Law, 2*, 139–202.
McKenzie, E. (1994). *Privatopia: Homeowner associations and the rise of residential private government*. New Haven and London: Yale University Press.
McNeil, K. (2004). The vulnerability of indigenous land rights in Australia and Canada. *Osgoode Hall Law Journal, 42*, 271–301.
Ministry of Construction and Housing. (2004). Guidelines for allocation of land to associations. http://www.moch.gov.il/SiteCollectionDocuments/nehalim/nohal_0707.pdf. Retrieved 13 January 2016 (Hebrew).
Mitchell, K. (2004). Geographies of identity: Multiculturalism unplugged. *Progress in Human Geography, 28*(5), 641–651.
Monterescu, D., & Fabian, R. (2003). The golden cage: On gentrification and globalization in the luxurious Andromeda gated community in Jaffa. *Theory and Criticism, 23*, 141–178 (Hebrew).
Nachum-Helavi, R. (2010). Ownership of private open spaces: The appreciation turned into a net burden. *The Marker—Haaretz*. http://www.themarker.com/realestate/1.564087 (Hebrew).
Near, H. (2008). *The Kibbutz movement: A history (two volumes)*. Oxford: The Littman Library of Jewish Civilization.
Nielsen, M. E. J. (2013). Multiculturalism and legal autonomy for cultural minorities. *Nordic Journal of Applied Ethics, 7*(2), 67–84.
Pow, C. P. (2007). Securing the 'civilised' enclaves: Gated communities and the moral geographies of exclusion in (post-)socialist Shanghai. *Urban Studies, 44*(8), 1539–1558.

Rabinowitz, D. (2003). The forgotten option: urban cooperative housing. In Y. Shenhav (Ed.), *Space, land, home* (pp. 113–141). Jerusalem and Tel Aviv: Van Leer Institute and Hakibbutz Hameuchad (Hebrew).

Raz, J. (1995). *Ethics in the public domain: Essays in the morality of law and politics*. Oxford: Clarendon Press.

Rivlin, R. (2015). *Address to the 15th Annual Herzliya Conference*, 7 June 2015. http://www.president.gov.il/English/ThePresident/Speeches/Pages/news_070615_01.aspx. Retrieved 13 January 2016.

Rosen, G., & Razin, E. N. (2010). Gated residential developments in Israel: Community utopias or exclusive member clubs. In A. Lehavi (Ed.), *Gated communities* (pp. 41–81). Tel Aviv: Nevo Press (Hebrew).

Rosenblum, C. (2014). Co-ops chill, condos don't. *New York Times*. http://www.nytimes.com/2014/01/26/realestate/co-ops-chill-condos-dont.html?_r=0

Sade, S. (2015). The Arabs are flocking from Beit Hanina to Ramat Aviv. *The Marker—Haaretz*. http://www.themarker.com/markerweek/1.2801164 (Hebrew).

Schill, M. H., Voicu, I., & Miller, J. (2007). The condominium versus cooperative puzzle: An empirical analysis of housing in New York City. *Journal of Legal Studies, 36*(2), 275–324.

Shachar, A. (2001). *Multicultural jurisdictions: Cultural differences and women's rights*. Cambridge: Cambridge University Press.

Shechter, A. (2014). Anxious about their fate: The housing distress in the ultra-orthodox sector reaches a boiling point. *The Marker—Haaretz*. http://www.themarker.com/markerweek/1.2219916 (Hebrew).

Shoshana, A. (2013). Space, heterogeneity, and everyday life: Ultra-orthodox heterotopia in Israel. *Journal of Contemporary Ethnography, 43*(5), 527–555.

Singapore Housing and Development Board. (2016). Ethnic integration policy and SPR quota. http://www.hdb.gov.sg/cs/infoweb/residential/buying-a-flat/resale/ethnic-integration-policy-and-spr-quota. Retrieved 13 January 2016.

Skup, Y. (2016). Speaking two languages: Parents and Tel Aviv municipality clash over bilingual education in Jaffa. *Haaretz*. http://www.haaretz.co.il/news/education/1.2833104 (Hebrew).

Sofer, M., & Applebaum, L. (2006). The rural space in Israel in search of renewed identity: The case of the *moshav*. *Journal of Rural Studies, 22*, 323–336.

Soffer, A., & Bystrov, E. (2006). Tel Aviv state: A threat to Israel. http://geo.haifa.ac.il/~ch-strategy/publications/english/Tel_Aviv_State.pdf. Retrieved 13 January 2016.

Steinberg, J. (2015). The growing pains of Beit Shemesh. *The Times of Israel*. http://www.timesofisrael.com/the-growing-pains-of-beit-shemesh/

Strahilevitz, L. J. (2006). Exclusionary amenities in residential communities. *Virginia Law Review, 92*, 437–499.

Thuillier, G. (2005). Gated communities in the metropolitan area of Buenos Aires, Argentina: A challenge for town planning. *Housing Studies, 20*(2), 255–271.

Tiebout, C. M. (1956). A pure theory of local expenditures. *Journal of Political Economy, 64*(5), 416–424.

Tocker, N., & Nachum-Halevi, R. (2011). The barrel bomb of housing distress: The battle between the secular and ultra-orthodox is alive and kicking. *The Marker—Haaretz* http://www.themarker.com/news/tent-protest/1.675471 (Hebrew).

Toy, V. S. (2011). Upper west side condo votes to ban smoking. *New York Times*. http://www.nytimes.com/2011/05/15/realestate/upper-west-side-condo-votes-to-ban-smoking.html

Tuten, E. E. (2005). *Between capital and land: The Jewish National Fund's finances and land-purchase priorities in Palestine, 1939–1945*. New York: Routledge.

Tz'ion, H. (2015). Turned into a city: One billion NIS will be invested in developing Harish. *Ynet news*. http://www.ynet.co.il/articles/0,7340,L-4741362,00.html (Hebrew).

Waldron, J. (2002). Redressing historic injustice. *University of Toronto Law Journal, 52*, 135–160.

Yaacov, Y. (2014). Shas candidate wins Beit Shemesh election with 51 %. *Times of Israel*. http://www.timesofisrael.com/shas-candidate-said-to-be-winning-beit-shemesh-vote/

Yahel, H. (2006). Land disputes between the Negev Bedouin and Israel. *Israel Studies, 11*(2), 1–22.
Yanovsky, R. (2015). The halacha police of Beit Shemesh: Violence against residents who are 'not ultra-orthodox enough.' *Ynet news* http://www.ynet.co.il/articles/0,7340,L-4734610,00.html (Hebrew).
Yaron, L. (2016). Precedent: Construction company fined for racial video. *Haaretz*. http://www.haaretz.co.il/news/law/1.2875674 (Hebrew).
Yiftachel, O., Kedar, S., & Amara, A. (2012). A new look at the "dead Negev" doctrine: Property rights in the Bedouin space. *Law and Government, 14*, 7–147 (Hebrew).
Yiftachel, O., & Yacobi, H. (2003). Urban ethnocracy: Ethnicization and the production of space in an Israeli 'mixed city'. *Environment and Planning D: Society and Space, 21*, 673–693.
Zilbershatz, Y. (2001). Residential separatism due to ethnic-national affiliation: Is it only the right of the minority? *Law and Government, 6*, 87–107 (Hebrew).
Ziv, N., & Tirosh, N. (2010). The legal battle against selection of applicants to community villages: The catch in a broad net. In A. Lehavi (Ed.), *Gated communities* (pp. 311–360). Tel Aviv: Nevo Press (Hebrew).

Cases

Israel
A.A. 1789/10 Sava v. Israel Land Administration (2010) IsrSC (unpublished).
A.P. (Haifa) 25573-03-12 Association for Civil Rights in Israel v. Israel Land Administration (2012) (unpublished).
A.P. (Tel Aviv) 2002/09 Sava v. Israel Land Administration (2010) (unpublished).
C.M. (Tel Aviv) 200681/04 Jaffa for Human Rights Association v. Andromeda Hill Management Company (2007) (unpublished).
H.C.J. 4906/98 Am Hofshi Association for Freedom of Religion, Conscience, Education and Culture v. Ministry of Construction and Housing (2000) IsrSC 54(2)503.
H.C.J. 528/88 Avitan v. Israel Land Administration (1989) IsrSC 43(4) 297.
H.C.J. 114/78 Burkan v. Minister of Finance (1979) IsrSC 32(2) 800.
H.C.J. 746/07 Ragen v. Ministry of Transportation (2011) IsrSC 64(2) 530.
H.C.J. 953/01 Solodkin v. City of Beit Shemesh (2004) IsrSC 58(5) 595.
United States
Mulligan v. Panther Valley Property Owners Association 766 A.2d 1186 (N.J. Super. Ct. App. Div. 2001).
Villa De Las Palmas Homeowners Association v Terifaj, 90 P.3d 1223 (Cal. 2004).