

**PRIVATE PROPERTY, CULTURE, AND IDEOLOGY:
ISRAEL'S SUPREME COURT AND
THE JURISPRUDENCE OF LAND EXPROPRIATION**

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Abstract

This dissertation studies the Israeli case law of land expropriation against the social characteristics, political realities and ideologies of Israel. The study grew out of an observation that a double standard exists in the judicial treatment of property and non-property rights. Although Israel does not have a written constitution which protects civil rights, Israel's Supreme Court did not hesitate to set aside administrative actions that violate basic civil liberties such as freedom of speech, the right to demonstrate, freedom of movement and freedom of association.

Such willingness to intervene on behalf of civil freedoms has been missing from the realm of property rights. Throughout most of the country's history, the Supreme Court limited judicial review to legal technicalities, and deferred to the wide discretion vested by law in acquiring authorities. The failure of Israel's Supreme Court to treat property rights with the same affirmative stance as non-property rights is puzzling, particularly in face of the draconian substance of Israel's land expropriation law. The Israeli law of land expropriation allows uncompensated expropriation and deprives landowners of basic protection for their property rights.

In an attempt to explain the Court's behavior, this study takes the approach of interpreting judicial decision-making against its social setting. The premise that underlies the study is that the Court's performance in land expropriation cases rests on, and in turn is shaped by, the social consensus in Israeli society regarding the meaning of private property rights in land and the right of the government to take them.

Three aspects of the Israeli setting are advanced as explanations for the judicial behavior in withholding protection to private property rights in land. The first is the impact of Zionist ideology, its socialist accents and emphasis on agriculture, which fostered distrust of the institution of private ownership of land. The second is the ideology and political realities that underlay the commitment of Israel to immigrant absorption and the way these concerns were translated into a preference for collective rather than individual interests. The third aspect is the

influence of the Israeli-Arab conflict on judicial attitudes regarding the practice of land expropriation. The study suggests that competition over land control between Jews and Arabs in Israel manifested itself not only in the form of expropriation of Arab land, but also shaped how Israeli society understood land expropriations within the Jewish sector.