The gradual abolition of the public leasehold system in Israel and Canberra: what lessons can be learned?

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Abstract

The ‘public leasehold system’ (PLS) in Israel and in Canberra was designed against the backdrop of 19th century social reform ideology. Recurring changes during the 20th century brought about practical abolition of the PLS. This paper attempts to review the PLS. A comparison of the two case studies helps to identify the inherent weaknesses, and suggests that PLS’s failure to provide adequate compensation for an individual’s risk bearing is its main drawback. Nevertheless, the PLS has virtues that makes it suitable to overcome difficulties in initial development. There is room to reconsider the PLS-based scheme as an applicable policy tool.

Keywords: Public leasehold; Israel; Canberra; Property rights; Land policy

Introduction

The conceptualization of land property rights is in a constant state of flux (Booth, 2002). While the role of land as a definer of status was much reduced in the 20th century, land continues to constitute a major store of value. Land policies have a profound effect on the distribution of resources and on personal wealth. Thus, land remains an important fulcrum in the pursuit of happiness (Geisler, 1995) and land policies deserve extended and focused attention.

This paper focuses on the public leasehold system (hereafter PLS). It is a unique land management regime that was designed by a particular social reform ideology. The PLS was implemented during the first quarter of the 20th century both in the Jewish settlement in Palestine, later to become the State of Israel, and in Canberra, the federal capital of Australia. The PLS introduced an innovative arrangement that divided bundles of land property rights between two contractors, individuals as lessees and the public as owner. Plots of publicly owned land were leased to individuals for a limited period of time, to be developed for a specified land use. In this context, the founding fathers of the State of Israel and Canberra were inspired by the ideology of the American social reformer Henry George.

Towards the end of the 20th century, both the Israel and Canberra leasing systems underwent a series of changes so that over time public property rights were relinquished to the lessees (Neutze, 1987; Bourassa et al., 1996; Weisman, 1998; Barak-Erez, 1998; Alterman, 1998). Over the course of the 20th century, public property rights have been eroded and at the culmination of this process, the private property rights of the lessee under the PLS became very similar to the property rights under the freehold system. These changes led to bewilderment and consequently to wealth-capture efforts. These in turn led to a sequence of amendments in the PLS, causing disputes in both Israel and Canberra.

For example, during the 1990s in Canberra, a series of short-lasting decisions were made. The calculation method for betterment collection was changed often: on February 1990, April 1992 and September 1993 (Bourassa et al., 1997). In Israel, the Israel Land Council (ILC) decisions about agricultural lessees’ compensation for land-use rezoning were subject to frequent amendments (ILC decisions: 533, 611, 666, and 727). The latter was recently nullified by the High Court of Justice following the petitions of various NGOs. Inevitably, the repeated disputes over PLS interpretation and
implementation have soiled the PLS reputation as an efficient and equitable land regime. Land policy researchers report on pressures to replace the leasehold system in various countries (Lai, 1998 for Hong Kong; Werczberger and Borukhov, 1999 for Israel).

There seems to be no doubt that the PLS, as originally conceived in Israel and Canberra, has reached its end. This paper does not advocate PLS recovery nor does it grieve its loss. We follow Booth (2002) who suggested that lessons learned from past events can provide insights that are relevant for planning debates in the 21st century. Thus, the purpose of the dual post-mortem of the PLS case studies presented here is to extract useful lessons from the unique, and thus potentially instructive, PLS experience in order to enrich the current knowledge base that is shared by policy makers and planners.

In this paper, the processes that led to the abolition of the PLS in both Israel and Canberra are traced and compared. The paper presents the various milestones of these changes. The inherent weaknesses of the PLS are identified, and subsequently, several complementary causes for the PLS abolition are suggested.

This scrutiny reveals the fragility of the PLS. It nevertheless contends that the fractures in the PLS start to appear concurrently with the achievement of maturity in the land market. Based on the analysis in this paper, an alternative approach is proposed. Accordingly, the PLS should be implemented at the initial stages of the development of a national or regional land management system. At the early stages of evolution, the advantages that stem from the PLS are most crucial. Over time, property rights should be gradually relinquished to lessees. In a way, the proposed land development program (hereafter, PLS based) is actually a controlled simulation of the processes that occurred in Israel and Canberra. Hong and Lam (1998) indicated several regions where land is publicly owned and hence suitable for the implementation of a PLS. The PLS-based development program may be effective in the case of distressed areas, where other development plans have been found insufficient, such as in the cases of the Land Renaissance Zones in Michigan (see Sands, 2002). Few of these zones in Michigan are publicly owned. However, property rights needed for the development could be purchased. Therefore, land tenure should not serve as a prerequisite for the implementation of a PLS.

The paper includes several sections. Following the introduction, the second section presents the ideas of Henry George and the historic circumstances that brought about the implementation of a PLS in Israel and in Canberra. The third section presents a comparison between the processes that took place in both Israel and Canberra and caused the abolition of the original leasehold system’s foundations. The fourth section considers possible explanations for the abolition of the PLS and the lessons that can be learnt from the “social experiment” of the PLS. The fifth section proposes improved mechanism for its implementation in the future. The sixth section concludes the paper.

The backdrop

Henry George—social reforms and land nationalization

There is little doubt that the social reformer Henry George was a source of inspiration for the PLS in Israel and in Canberra. George, who lived in San Francisco during the California gold rush of the 1870s, saw land speculators accruing huge profits. The public attributed these “unearned” or “undeserved” profits to simple luck, market manipulation, or timing, rather than to landowners’ skills or efforts.

The conviction that broad access to land and property is a cure for privation and social turmoil was shared by the American founding fathers of all political persuasions. Social reformers such as Henry George injected originality into the land–poverty nexus (Geisler, 1995). In his book “Progress and Poverty”, George (1886) claimed that the principal source of the gap between rich and poor stems from landowners’ ability to keep in their hands a large share of the wealth that was created by the efforts of the entire society. As a mechanism to overcome the adverse effects of private land ownership, George proposed the imposition of a tax that would be equal to the land rent. He called it a “single tax” because he expected that the tax yield would be sufficient to finance all governmental activities. George’s ideas stem from his belief in social justice. George considered the objective of land tax, not so much to raise revenue, as to break the power of the land speculators and to promote equitable and fair land development.

George was dedicated to the mission of spreading his ideas and traveled to different places. In 1890 he visited South Africa, Australia and New Zealand. By this time, these countries were experiencing similar phenomena to the California boom, with enormous “unearned” profits going to particular landowners, and thus George’s arguments fell on attentive ears. These countries did not yet have the rigidity related to entrenched tax systems, and amendments could be incorporated easily into the tax schemes. George’s ideas of land value taxation were adopted and operated in parts of Australia and New Zealand. Land taxation schemes that draw on George’s ideas were also operated in parts of Denmark, and in a few cities in the USA (Wuench et al., 2000).

The innovation of the PLS originated in George’s ideas. The leasehold tenure under which land reverts to the lessor at the end of the term was not novel and innovative in itself and was widely used long before the introduction of the PLS. It provided the landlord with
control over the use to which the land was put and enabled landlords to form contractual relationship with their lessees (Booth, 2002). The idea that the lessor is the public was the innovative part of the PLS. The term ‘public’ needs some clarification. According to Lai (1998) it would be wrong to describe: “nationalized land as ‘public land’ because no member of the public has any right to use, derive income or transfer land without the state’s license or endorsement”. Barzel (1997, p. 99–101) created a clear distinction between the ‘public domain’ and property under government control. He concludes: “When the costs of metering and policing assets’ attributes exceed the valuations, such assets or attributes will be relinquished into the public domain and become common property. Such common property is property people choose not to own.” When a property is shared by a group of people, as in the case of the English village common, the use of the property is restricted to the group and it is managed as a private property. Ostensibly, it would be simpler to describe ownership under the PLS as ‘nationally owned’. Yet, at least in the complicated reality of Israel, the use of the term ‘nationally owned’ directs the spotlight to an additional problem of the PLS.

While Israel is a state of two nationalities, the PLS in Israel was established prior to the state and its intention was to carry out Zionist objectives. This PLS objective, serving Jewish and not Arab aspirations, is controversial (Yiftachel, 1999). Despite these imperfections, the use of the term ‘public’ is widespread, and so it will be used throughout the rest of this paper.

Implementation of the PLS in Israel

The Zionist movement laid the foundations for the State of Israel, starting at the end of the 19th century. It called for the establishment of Jewish autonomous communities. In order to carry out its land policy, the Jewish National Fund (JNF) was established at the fifth Zionist congress in 1901. The JNF was to collect donations from the Jewish Diaspora for the purpose of purchasing land in Palestine, the historic homeland of the Jewish people. According to Kark (1989–1990), the ideas of George were the backdrop of the organization. Accordingly, the guidelines of JNF land policy included stipulations that (1) land would stay under the Jewish people’s common ownership in perpetuity, and (2) land would be leased to Jewish settlers for a period of 49 years.

The JNF continued to operate as an independent body until 1961, much after the establishment of the State of Israel in 1948. In 1961, an agreement was signed between JNF and the State of Israel that defined the realm of authority of each organization and instituted a common council, the ILC. The ILC was authorized to introduce amendments to land policy legislation. The Israel Land Administration (ILA) was instituted as the body responsible to carry out land policy and to manage non-private land. As part of the agreement, the State of Israel accepted the principle that prohibits the sale of publicly owned land (i.e., state-owned land or JNF-owned land), and anchored it as a fundamental law. As a result of the agreement, about 90% of the State’s geographic area is under public ownership and subject to the control of the ILA.

Implementation of the PLS in Canberra

In Australia, the establishment of the national capital (Australian Capital Territory—ACT) was the result of negotiations that led to the creation of the Commonwealth of Australia by the existing six colonies. According to Neutze (1987), the founding fathers of Canberra were influenced by the ideas of George. They were convinced that the increase in the value of land following the building of the new national capital should accrue to the government, rather than to private landowners (Bourassa et al., 1996). A rural area of 2332 km² would be bought by the federation for the purpose of building the ACT. The resulting public land would be leased to individuals for urban use for a period of 99 years and for agricultural use for a period of 25 years.

The commonwealth launched an international competition for the preparation of a city plan in 1911. The architect Walter Burley Griffin of Chicago was awarded first prize and was appointed to be the city planner. The first leases were issued in 1927, at the very same year that Parliament House was opened. The development of Canberra was a very slow process. In 1954 there were more public servants in Melbourne than in Canberra (Linge, 1975). In 1958, the government established the National Capital Development Commission (NCDC). In 1989 the ACT was granted self-government and responsibility for managing all land, except that required by the Commonwealth. At the beginning of the plan, the ACT area was inhabited by a rural population of about 1000 people (Linge, 1975). The population grew from 50,000 in 1960 to 100,000 in 1967 and has soared to about 300,000 in the 1990s.

The gradual abolition of the PLS

In both countries, the PLS original lease contracts limited the property rights of the lessees. Land was leased for a defined period of time in exchange for annual rent payments. Leasing contracts that delineated the property rights between the lessees and the lessors were signed. Over time however, the public lessees’ property rights bundle became very similar to that entitled by a freehold. In Israel, the process of property
rights expansion has been termed “camouflaged” privatization (Weisman, 1998), quasi-privatization (Bar- 
ak-Erez, 1998), “sprawling” privatization (Alterman, 1998) and de facto privatization (Werczberger and 
Borukhov, 1999). In Australia it has been claimed that “Canberra leases are in fact more secure than freehold.” (Bourassa et al., 1997).

How was the PLS abolished? The exploration presented here focuses on four elements that were incorporated in the PLS and distinguish it from a freehold system: (1) pre-specified duration of property rights; (2) periodical payments of rent; (3) entitlement of the ‘public’ to betterment; (4) contractual land-use planning. The abolition process occurred by a gradual removing of these fundamental building blocks. The major milestones of the changes in the PLS establish- ments in Israel and Canberra are reviewed below and summarized in Table 1.

Shift from a defined-lease period to perpetual leasing

The determination of ‘defined-lease period’ and the setting of a reasonable duration are basic elements in the PLS. Lai (1998, p. 257) claims that, “The real difference between freehold and leasehold interests lies in the fact that the duration of the land interests which subsist in freehold is unspecified and those in leasehold are pre- 
specified.” With the creeping prolongation of the leasing period, the distinction between leasing and ownership became obscure.

According to Israel’s PLS, the period of urban land lease was set at 49 years, following the biblical idea of ‘jubilee’. According to the ‘defined leasing period’ the lease expiration is accompanied by the return of the land to the owners and the cancellation of the lessee’s rights over it. A public committee, chaired by Goldenberg, was appointed to examine land policy objectives. Its report published in 1986 recommended an automatic extension of the urban leasing period for another 49 years. Decision No. 269 of the ILC ratified this recommenda-

tion.

Another public committee, chaired by Tzaban, proposed in 1997 a further extension for urban residential land leasehold, from a period of 98 years to a period of 196 years. Decision No. 848 of the ILC ratified this recommendation as well. The prolongation of the leases does not accord with the legislative prohibition of the PLS on public landselling. Weisman (1987) claims that, the legislative prohibition of the PLS on public land selling should also prohibit long-term

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<td>An initiative claim for compensation based on improved land use was rejected from the very start.</td>
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<td>In 1930s, a laissez faire approach was adopted as a measure to tackle recession. Later, the non-interventionist policy continues in prosperous Canberra.</td>
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leasing, since the extension of the lease beyond a reasonable period makes it impossible to distinguish between leasing and ownership.

In Canberra the urban land lease period was set at not more than 99 years. In the 1980s, the non-residential lessees were permitted to renew their leases prior to their maturity on paying a modest fee. Residential lessees could renew their leases on maturity without further payment. **Bourassa et al. (1997)** claim that Canberra leases, especially those for residential purposes, had become leases in perpetuity.

*From annual rent payments to a single payment*

Under the original PLS, the annual execution of payment by the lessees to the landowners’ representatives serves to remind the lessees about their dependency on landowners. A shift to a single, up-front, payment lessens the sense of dependence and deepens the lessee’s sense of ownership. In both Israel and Canberra there was a process of shifting from annual payments, calculated as a percentage of the lease value, to a single payment at the beginning of leasing period. In Israel the change occurred with the shift to ‘capitalized leasing’.

In Canberra it was associated with the shift from a ‘rental leasehold’ to a ‘premium leasehold’ system. It is noteworthy that the leasehold system in Hong Kong went through a similar process. **Hong and Lam (1998)** suggest that these changes can be attributed to the government’s desire to reduce transaction costs.

In Israel the shift to a single up-front payment occurred gradually by progressive increases of the ‘capitalized’ portion of the lease. ‘Capitalized’ leases mean that the future stream of lease payments was replaced by a single sum to be paid at the beginning of the lease period. The capitalization procedure was motivated by the need to fill the empty public purse, and was introduced as a measure to transfer part of the land acquisition burden to construction firms. It became urgent during periods in which the State of Israel had to cope with the absorption of mass immigration. In 1965, the ILC decided that depending on the lessee’s decision, the capitalized portion would be between 40% and 80% of the lease value. In 1973, the ILC accepted a decision that enabled full capitalization of the lease payments for the whole first period of leasing. During the 1990s, fully ‘capitalized’ leases that release the lessee from any annual payments became prevalent. According to a decision of the ILC, a lessee of a fully capitalized lease pays 91% of the land value at the time that the lease is issued. This calculation is based on a rental rate of 5% of the land value for a period of 49 years, under capitalization of 5% (**Vitkon, 1993**).

In Canberra, the original PLS leases had a reserve capital value and were sold at auctions with the rent for the first 20 years set at 5% of the sum bid. In order to win a lease only a single year’s land rent had to be paid at the time of the auction—only 5% of the amount bid. This arrangement opened the way to irresponsible speculators. One recommendation of the Public Accounts Committee which was implemented in 1935 was that any bid in excess of the reserve price should be paid in cash premium. The objective was to discourage very high bidding by buyers, who heavily discounted the land rents that they would have to pay in the future. The cash premium continued to be a feature of Canberra leases, while the annual payments for the leases became negligible (**Neutze, 1987**). Starting in 1970, following the abolition of land rates caused by high inflation, some of the increase in value resulting from a change in use has been recovered through a betterment charge that is equivalent of the premium paid for a rent-free lease. The additional premium is payable when permission is granted to use the lease for a more valuable purpose (**Bourassa et al., 1997**).

*Right to collect betterment and the obligation to compensate against its loss*

The PLS is based on the supposition that land values increase mainly because of the efforts made by society. According to the PLS, lessees are not entitled to betterment that was created during their leasing period. Moreover, they are not entitled to compensation for the loss of the betterment. Yet in reality, it turned out that a compromise with the perception of public right over betterment was a necessity. The issue of betterment entitlement under the PLS is two-fold: first, the lessees’ entitlement for betterment, and secondly the lessees’ entitlement for compensation against expected betterment loss. Any recognition of gains by lessees in their stake in the accrued betterment of the landed property, means huge capital gains for them. Hence, not surprisingly, PLS stakeholders are induced to engage in wealth capturing efforts. In both places, as time passed, recognition in the rights of lessees to enjoy some of the fruits of betterment was introduced. Nevertheless, the two cases differ in relation to the way the issue of compensation against expected betterment loss was tackled. While the issue was decidedly resolved in Canberra at an early stage, in Israel it generated a legal entanglement accompanied by a debate concerning wealth distribution and equality in Israeli society.

*Recognition of lessees’ right to betterment*

In Israel, two means were created to collect betterment from the lessees: ‘Consent fees’ (**Dmei Haskama**) and ‘Approval fees’ (**Dmei Heiter**). Under JNF leases, a speculation problem arose already in the 1930s. Lessees were selling their leases to others so as to collect huge windfalls that resulted from the growth of the Jewish
population in Palestine and land profitability (Granot (Granovsky), 1938). In order to overcome the contractual loophole that made the speculative selling of leases possible, a provision was inserted into the leases requiring that in cases of ownership transfer, or leased property improvement, the consent of the JNF is required. Furthermore, the lessee would be charged ‘consent fees’. Thus, ‘consent fees’ was a tool designed to correct previous flaws that allowed lessees to enjoy betterment. According to a decision of the ILC the new arrangement of fully ‘capitalized’ leases releases the lessee from the obligation to pay ‘consent fees’ when the lease is being sold.

In addition, ILA collects ‘approval fees’ in cases in which the lease is granted with additional development rights. The rate of this levy is determined from time to time by decisions of the ILC, and is usually half of the expected increase in property value. The Tzaban Public Committee, recommended in 1995 to ease ‘approval fees’ on residential urban land, and at the same time to use the fees as an incentive to promote development. It suggested that the ‘approval fees’ would be canceled for the first 5 years after plan approval, and would start to accumulate at a rate of 10% per year from the 6th year on, until it reaches the rate of 50%. In the case of high-rise residential urban areas, the ILC gave up its right to collect ‘approval fees’—decision No. 790 (Alterman, 1999).

In Canberra, two kinds of levies were imposed on lessees: land rent to provide a return to the Commonwealth as landowners, and land rates to cover the cost of municipal services provision. Rates were adjusted annually and ratable values every 3–5 years. Land rents were adjusted once every 20 years. The long duration before re-evaluation of land rents resulted in a peculiar situation. Owners of lots that were similar to each other in every respect except that they had been auctioned at different times paid very different land rents. In 1970, it was announced that land rents would be reduced to a peppercorn rent (effectively abolished), and that the loss in revenue would be made up by substantial increases in the level of rates (Neutze, 1987). Following the abolition of land rents, some of the increase in value resulting from a change in land use has been recovered through a betterment charge. The additional charge is payable when permission has been granted to use the lease for a more valuable purpose. The charge was set at a half of the increase in the value of the lease as a result of the permitted change in use, less $1500. Until 1989 the ACT was under the administration of the Federal Government and relied on federal resources. When self-government was established in 1989 there was a need to increase revenues from local resources, and hence a new betterment calculation method was introduced. Betterment collection became a controversial issue in Canberra. The calculation method of the betterment was changed frequently: in February 1990, April 1992, and September 1993 (Bourassa et al., 1997).

**Lessees’ eligibility for compensation against expected betterment loss**

The case of compensation paid to a lessee against his physical investments in the property is different from the case of compensation against deprivation from anticipated betterment. Compensation against physical investment does not contradict the public leasehold philosophy. Moreover, compensation is necessary in order to encourage the lessee to invest in the land. Compensation against anticipated betterment loss, e.g. in the case where land is returned to public hands and reassigned to a more profitable use, does contradict the PLS philosophy. An issue that creates a controversy in the PLS, is the eligibility of agricultural lessees to compensation when the land they have leased is in demand for more profitable, non-agricultural land uses.

In Israel the claims of agricultural lessees for compensation according to the amended land-use value have grown into a legal entanglement. The standard agricultural leases assert that in the case of land-use change, the lease will be terminated and the lessee will be entitled to a limited compensation intended mainly to compensate the lessee for the loss of physical investment. In the early 1990s, following a huge wave of immigration from the former Soviet Union to Israel, there was an urgent need for land for urban development. Some difficulties arose with the process of agricultural land-use rezoning. A procedure that involved bargaining with the agricultural lessees over the compensation became common and impeded development of non-agricultural land uses. Under pressure to resolve the problem of land shortage, the ILC enacted a decision in 1992 (No. 533) that offered agricultural lessees an incentive to release land. This decision meant to set a uniform compensation formula for cooperative settlements whose land was designated for other uses, or to enable the lessees, or someone acting on their behalf, to initiate land-use rezoning and to enjoy part of the betterment.

Decision No. 533 of the ILA was described by Justice Theodor Orr as one with a ‘revolutionary characteristic’ (Kibbutz, 2002). For the first time, it enabled agricultural lessees to receive compensation based on the amended land-use value on top of the regular compensation for agricultural lease loss. The sums of money involved were significant. The compensation scale for the loss of agricultural land use varies from around US$1000 per dunam² of unirrigated land to US$5500 per dunam of the most intensive crop; while the compensation according to the new arrangement estimated to amount $54,000–108,000 per dunam for land.

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²Dunam is roughly quarter acre or 1000 m².
situated in the high-demand areas of Israel! (Kibbutz, 2002). Real estate entrepreneurs were quick to grasp the new opportunities opened by this decision and joined settlement’s leaders in order to initiate projects that required a change in land use (Barshishat and Fietelson, 1998). The compensation arrangement, that involves substantial wealth distribution, had evoked opposition from various interest groups and stirred a substantial controversy. Time after time, decisions about the compensation arrangement for farmers were amended (ILC decisions: 533, 611, 666, and 727), up until the court overturned the ILA’s arrangement as unreasonable.

Two organizations appealed to the High Court of Justice with petitions against the compensation arrangement. The Society for the Protection of Nature in Israel argued that the compensation arrangement ignored important societal interests by forgoing the preservation of open spaces, and in this aspect stands in contradiction to the planning policy adopted by the Israeli planning system. Moreover, the petitioner claimed that the compensation arrangement stimulates agricultural lessees to pursue land-use changes for the agricultural land leased in their possession. The second organization that appealed against the decision was the New Dialogue (also known as the Mizrahi Democratic Rainbow)—an organization established to promote equality and social justice in Israel. The New Dialogue charged that the ILA’s decisions unjustly discriminated in favor of the agricultural sector by awarding the agricultural lessees monetary compensation far in excess of the standard rate.

On September 2002, a panel of seven judges unanimously accepted the petitions and ruled the ILA decisions illegal. Justice Theodor Orr emphasized in the court’s decision that the ILA is the public’s trustee for state lands, and must therefore manage these lands for the benefit of the entire public, rather than awarding excessive benefits to particular sectors. In spite of the court’s decisive resolution it is doubtful that this court decision will be the last round in this sabre rattling.

It seems that in Canberra rural lessees have never seriously attempted to secure urban development rights. Bourassa et al. (1996) report a case in the 1970s when the owners of the last freehold property in the vicinity of Canberra tried to claim for the value of the land as urban development. Their claims were rejected with the provisions of the legislation (Seat of Government (administration) Act 1910).

**PLS as a tool to control land-use planning**

The idea that public ownership will ease rezoning is one of the main arguments for the PLS. By including conditions in the lease about the kind and intensity of use permitted, public ownership of land that can be developed can facilitate control of urban development (Werezberger and Borukhov, 1999). According to the original PLS in both cases, land was leased for a specific land use that was determined in accordance to a broad planning conception. It seems that in both cases, the lessor preferred to compromise land-use control. In Israel, non-compliant conduct has become the convention on land leased for agriculture. Thus, land-use changes, without a planning permit, are especially common on agricultural leased land. The sovereign attitude of the cooperative settlements over their leased land is demonstrated by the fact that they have been establishing commercial land uses without waiting for ILA permits. Recently, legislation halted legal proceedings against lessees who violated the terms of their agricultural leases (Barak-Erez, 1998).

The purpose clauses of the first Canberra leases were used to put flesh on the bones of Burley Griffin’s plan for Canberra. Leases were issued for use of a site for the purposes shown in the plan. Effectively, these clauses performed the function that statutory land-use controls play elsewhere in Australia. There were two causes for planning compromise in Canberra:

1. In many of the early leases, the land-use clause was defined in a broad way. This obscurity later caused legal problems, e.g. when owners of ‘residential’ leases claimed the right to develop flats or motels.
2. In the harsh economic climate of the 1930s, businesses were often permitted to use their leases for any purpose that could bring a profit. Later the laissez faire approach continued in prosperous Canberra.

**Summary of the abolition process**

Despite the differences between Israel and Canberra, it can be concluded that similar processes have occurred in both places. Incremental changes were introduced over time to the leasehold systems and caused lessees’ property rights to be de facto very close to the property rights of freehold.

It is apparent that the PLS was emptied of its original content. While a PLS in its original form introduced a quite coherent land system management, the processes that took place in both cases created some sort of the ‘hybrid’ system. While the PLS actually remains as a title, the ‘hybrid’ PLS is composed of some leasehold elements and some freehold elements. Obviously, the resulting ‘hybrid’ systems lack a systematic structure.
and hence have the potential to provoke wealth-capture behavior and lingering disputes. The process of the PLS abolition poses a question about the sustainability of the PLS and calls for further investigation of the forces that acted to abolish it.

**Weaknesses of the PLS**

Several complementary causes can be suggested to explain the PLS abolition. The common thread among all the suggested causes is the vagueness of the term “public” and the ambiguity of the term “public welfare”.

Two factors can be suggested. The “public” is heterogeneous and is composed of different groups with conflicting interests. It is not a single, homogeneous group. Furthermore, the organization established to implement the PLS developed its own interests that do not necessarily accord well with “public” interest.

Another argument concerns an intrinsic deficiency of the PLS. It fails to acknowledge the role of a compensation mechanism for risk bearing. Assuming that the public land authority acts as a ‘benevolent ruler’, and as such seeks what is best for “public welfare”, there is a conflict between its obligation to capture land value and the need to compensate entrepreneurial lessees for their efforts.

**Amorphous identity of the “public”**

**Fracturing effect of interest groups**

The gradual increases in the property rights won by the agricultural lessees in Israel made a crucial contribution to the abolition process of the PLS. Burak-Erez (1998) explained this phenomenon by reference to public choice theory. The well-organized interest groups of agricultural lessees managed to use their power to bias public decisions in their favor. The ILC was granted almost unlimited sovereignty and there were almost no constraints on its authority. ILC delegates were appointed by the government and there were no limitations on the government concerning the appointment of delegates, at least not until it was criticized by the State Comptroller (1994). The agricultural sector, mainly through the cooperative movements, was a major player in the establishment of the State of Israel and gained political power that extended beyond its representation in the state’s population. At times, the delegates were representatives of agricultural interest groups. Though the agricultural sector lost its excessive power in other governmental institutions, it succeeded in maintaining its dominance in the ILC. During the 1990s, a series of decisions, accepted by the ILC substantially enlarged the property rights bundle of the agricultural lessees. The ILC decision that allowed compensation to agricultural lessees according to changed land uses, afforded agricultural lessees lucrative gains.

**Profit-seeking behavior of the public lessor**

No matter how the “public” group is defined, there is a need to establish an organization that will represent its interests. Organizations, by their nature, aspire to gain power and to grow. Thus, organizations tend to develop interests of their own. As such interests develop, the dual contract between the public and the lessees becomes a three-sided contract among the public, the lessees and the organization that represents the public.

Discrepancies between the public welfare and the public leasehold authority might occur when the authority adopts the behavior of a profit-seeking organization. Ben-Artzi (1993) criticized ILA conduct as a body that seeks profit maximization and claims that the original intentions of the PLS were corrupted by ILA practice. During the 1990s, ILA was criticized for acting like a monopoly and causing land prices to rise (Eckstein, 1995; Eckstein and Perlman, 1997).

In Canberra the Federal Capital Commission (FCC), that was responsible for the development of Canberra from 1925 to 1930, was also responsible for a shortage of serviced allotments. The FCC was accused of restricting the supply of land in order to keep up the price (Neutze, 1987).

Thus, while the PLS was considered to be a panacea against land speculation, claims that the public land authority was responsible for speculation were raised by observers of leasehold systems in both places. Unlike in Israel and in Canberra, the leasehold system in Hong Kong was not established because of ideological considerations (Lai, 1998). The description of Hong and Lam (1998) of the emergence of oligopolies in Hong Kong’s property markets is noteworthy. The events in Hong Kong demonstrate that interest groups were able to adversely manipulate the leasehold system and to turn it into a vehicle of speculation. These experiences suggest that social goals could not be achieved by reliance on any scheme of land system management solely, and there is a need for continuous supervision and control of such a system.

**Ambiguity of “public welfare”**

**Failure to compensate according to efforts**

Better understanding of the PLS conceptualization may be achieved by studying the economic circumstances of the 19th century that form the background of the PLS philosophy. Two notions are noteworthy. First, in the 19th century land ownership was concentrated in the hands of few landowners that saw profits from the progress that was achieved by the masses’ efforts. The wrongfulness of this system stems from the fact that individuals were not compensated according to their
relative efforts. Second, during the 19th century the property rights entitled by freeholds were broader than those entitled by modern freeholds. A distinctive element between the 19th century freehold conceptualization and current freehold conceptualization is the stance of statutory planning authorities. Modern freehold conceptualization entails greater recognition of public rights in landed private rights, as part of this recognition, future development rights were nationalized and any development is conditioned by planning authorities’ permission (Booth, 2002).

The PLS philosophy was influenced by the reality of the 19th century. First, there was a continued rise in land prices. Second, this rise in prices originated from the efforts of society; meaning that even if the landlord was idle, the price of land continued to rise. The translation of Henry George’s ideas to practice through the innovation of the PLS was a leap from one extreme to the other. Simultaneously, property rights over land betterment and future planning were taken from private hands and nationalized. Here too, the PLS was wrongly influenced by the 19th century freehold system. Individuals were not compensated according to their relative efforts or contribution. The innovative PLS failed to acknowledge the significance of individuals’ efforts and to incorporate a compensation mechanism for risk bearing.

Relinquished property rights as a cure

There is a conflict between the role of the public landlord, charged with the collection of betterments in order to increase revenues and the role of the public authority in charge of development. The conflicting multiplicity of roles of the public sector is not unique to the PLS. It is a characteristic of modern planning. Booth (2002, p. 168) refers to the problematic role of the public sector as a developer: ‘the public sector has become heavily implicated in the development process in a way that partially negates its role as an impartial arbitrator of the public good.’

From the reviews of the two case studies in the previous section it can be learned that public land authorities have deliberately relinquished betterment into the hands of individual lessees. This was not done as a result of feebleness and hesitance, but as a matter of choice, because the public land authorities saw the need to incorporate some elements of the ‘risk and return’ mechanism into the PLS. Were the land authority to fulfill its obligation to collect betterment, this practice may have impeded development. By means of an economic model, Evans (1983) demonstrated that the higher the betterment tax, the greater the adverse effect that it will have on urban development. The trade-off between the two roles of the public lessor is a key factor for the understanding of PLS abolition process.

In contrast, it is useful to consider the case of the 1862 Homestead Act in the USA (Barzel, 1997, pp. 122–123). Here property rights were transferred to frontier settlers as compensation for risk bearing. As a consequence of the Homestead Act, land prices were set substantially below market prices. Two constraints were imposed on homesteaders: (1) they had to occupy the homestead for at least 5 years, and (2) they had to improve the land before acquiring the right to sell it. Apparently, the government sacrificed the maximum income that could have been earned. By selling the frontier land to settlers at a marginal price the government prompted the creation of defense buffers that reduced the cost of protecting the inner areas and increased their value. The 1862 Homestead Act incorporated a procedure of the gradual formation of property rights.

In the original PLS there was no such procedure. Nevertheless, the formation process of lessees’ property rights in Israel and Canberra could be explained as public recognition in the rights of pioneers, who had coped with major difficulties in the first stages of development. According to Efrat (1998) the agricultural lessees claim that their rights over the land gain validity from their possession and cultivation over the years. Similarly, Neutze (1987, p. 159) claims that, to a considerable degree, the conduct of the authorities over redevelopment rights in Canberra stems from political considerations: “While a private ground landlord can be fairly ruthless in dealing with lessees when their sites can be more appropriately used for other purposes it is more difficult for a democratically elected government to act in that way, even in Canberra. The minister for Territories regards an important part of his role to be to look after the interests of Canberrans, and his department administers leases. Even though the NCDC has not been in any way directly responsible to the local electorate it has inevitably been sensitive to the views of local people and, especially in periods when the economy is slack, of local business interests.” Thus, in both places the practice of betterment collection implies that the public lessor had preferred to put on the public authority ‘hat’ by yielding on betterment income to investors.

Lessons learned from PLS’ implementations

PLS—success or a failure?

The PLS reflected the spirit of revolutionary social ideas that flourished at the beginning of the 20th century. As such, the PLS has an idealistic appeal; its abolition is associated with nostalgic grief: “Demographic, social and economic changes have in the course of time eroded the previous national consensus, which emphasized collective values, such as Zionism, social solidarity and immigrant absorption...” (Werczberger
and Borukhov, 1999, p. 136). Yet, it is important to examine the PLS not as an ideology, but as a policy tool that was set to achieve specific targets.

According to this perspective, the Israel and Canberra cases can be examined as examples of development plans, and even if there was no master plan introduced, both plans were carried out in light of clearly defined targets. In the case of Israel, the target was to return the Jewish people from the Diaspora to its homeland. In the case of Canberra, the target was to build a flourishing capital that would serve as the administrative center of the federation. There is no doubt that these two missions were accomplished successfully; indeed that these missions achieved their targets can be seen through the high land prices and the willingness of ‘settlers’ to continue their investment in land. At this point the end of the PLS has arrived.

The advantages of the PLS can be gleamed from a comparison of the settlement processes in Israel and Canberra in relation to other settlement processes that occurred under the freehold system, such as the settlement of the West in the USA. Land speculation in the USA, as described by Dovenbarger (1981) and Gates (1996), caused suffering to the Western pioneers, while enriching the landlords that stayed in the East. Dovenbarger (1981, p. 13) portrays the disposition of land speculation in Tennessee during the second half of the 18th century: ‘without taking the risks, the best speculators could reap profits denied to the immigrants who assumed the dangers. These early immigrants sometimes saw a surprising portion of their families and friends murdered by Indians. The speculators, arriving later, survived long enough to enjoy the fruits of their profits.’ The PLS in Israel and in Canberra was effective in preventing large-scale speculation of external speculators. Such a situation might have held-up the development pace and deprived settlers of their assets.

**Advantages of a PLS-based development scheme**

A major flaw of the PLS as a policy tool, as it was originally set up in Israel and Canberra, was its lack of flexibility. The fact that the PLS is anchored by a social ideology contributed to its firmness and encouraged the tendency to falsify it. However, the historical lesson suggests that the PLS proved its advantageous structure for initial development. Therefore, it is worthwhile examining the PLS qualities as a policy tool per se.

Lai (1998) emphasized the merits of the leasehold system as a vehicle of contractual planning and describes the advantages of leases over statutory zoning. In the case of development based on private investment the planning process have to be consensual. Planning legislation can never force a proprietor to develop a use contemplated unilaterally by the government planners. This is while “conditions regarding land use and building forms specified in a lease are always mutually agreed on an equal basis between the government as the landlord on the one hand and the lessee on the other. The conditions defined by the lease are for voluntary acceptance as a matter of contract” (Lai, 1998, p. 262). The consensual and voluntary nature of the planning process in the PLS provide it with advantageous factors for forward planning.

The PLS is a useful tool to overcome difficulties during the first stages of settlement or development. Implementation of the PLS at the early stages of development may prevent some classic market failures. It helps with coordinating the settlers to overcome the ‘prisoner’s dilemma’. It depicts a situation where coordinated actions give rise to a superior outcome. Settlers and entrepreneurs in new settlements and development program initiatives face the Prisoner’s Dilemma. If only a few take the initiative and the program fails to assemble the critical mass needed, these few will lose their investment. Since individuals by nature are averse to risk, the Prisoner Dilemma jeopardizes the establishment of prospective enterprises and justifies some intervention of control authorities. The PLS provides the planners with tools to control the development timing and land uses, and thus it is suitable to resolve the Prisoner Dilemma.

The PLS enables the planners to be selective about the settlers or entrepreneurs, and at the same time provides penalties for breach of lease. The land authority has the power to repossess the lease where the lessee fails to comply with the lease terms. In some circumstances repossession may be conceived as a threat to lessees’ property rights. Yet, in the case of an initiative development it serves to reinforce the property rights of the entrepreneurial lessees. The repossession threat eliminates speculative behavior based on a “sit-and-wait” strategy.

Moreover, the PLS may be a useful tool for removing financial barriers to enterprise for households and small business. Under the PLS, the entrepreneur is not required to pay the value of the land at the beginning of the development. To a great degree, the periodic payments system may save small entrepreneurs from excessive exposure to financial risk. The PLS provides opportunities on equal terms to households and/or entrepreneurs with limited resources. As such, the PLS is also a vehicle that encourages start-ups and impedes the creation of monopolies or oligopolies in a new development.

Considering the given inherent advantages of the PLS it is worthwhile to examine the possibility to revive it and to create schemes that are drawn from the PLS, or are PLS based. As a development tool the PLS-based program is not committed to any rigid ideology. In
juxtaposition to the consensual nature of its planning process, it opens the way for modifications and fine-tuning. Based on the case studies’ experience explored above, in order to turn the PLS-based arrangement to one that is sustainable, it is important to introduce some mechanism for risk-bearing compensation. A scheme for property rights concessions should be spelled out from the start. Property rights would be relinquished to the settlers or entrepreneurs as benchmarks that were set at the beginning are reached. The benchmarks should be derived from the program’s targets. For instance, if the purpose of the program was to revitalize and populate a distressed region, the benchmark should be related to population size or density. Once the benchmark is achieved, the settlers should be given the right to sell their properties with reduced betterment fees. In a sense, this process is a simulation of the actual processes that took place in the study cases of Israel and Canberra.

The PLS-based scheme would be more beneficial if it was related to local management, which is set to control a well-defined geographical area. A local land authority that is committed to induce progress will be able to balance better than a national authority between the need to capture betterment and the need to establish impetus for development. Supposedly, a local land authority will be more responsive to local problems and will be able to come up with custom solutions. A local authority is more capable to maneuver through difficult times without falling into arbitrary solutions or developing a seemingly biased position.

The proposed PLS-based program presents an old–new approach that may be useful especially for the settling of new regions and redevelopment of distressed areas. Hong and Lam (1998) suggested several regions where land is publicly owned and hence suitable for the implementation of PLS. In as much as the outlined program may be conceived as somewhat drastic, since it does not comply with the existing planning paradigms of many Western countries, it is worth considering it in the light of conventional programs’ incapability. For example, Sands (2002) critically analyzed the performance of Michigan’s Renaissance Zones. This initiative relied on the elimination of taxes to attract investment and employment to distressed areas. Sands (2002, p. 18) concluded that “The Zones have not produced a paradigm shift in the economic prospects of distressed communities. The elimination of State and local taxes is clearly not sufficient in and of itself to make difficult or undesirable sites attractive to private investors.” Few of the Michigan zones are publicly owned; however, the land tenure of the area should not be seen as an obstacle to PLS-based schemes. After all, the entire area of Canberra and some of the land of the State of Israel were purchased to enable the implementation of the PLS.

Conclusions

The PLS evolved similarly in Israel and in Canberra. The original statute of the PLS was based on 19th century ideological foundations. While the ideological glow at the backdrop of the PLS has contributed to its appeal, it made for its rigidity. The PLS’s ideology-inspired rigid framework has induced a course of inevitable amendments that have falsified and distorted its original intentions. Eventually, the PLS label remained, while it was emptied of its contents by the gradual dismantling of its fundamentals. The gap between the label and the actual practice has opened the way to different interpretations and disputes. The disputes have spoiled the position of the PLS, and have given rise to calls for the replacement of the PLS.

According to the original PLS, plots of publicly owned land were leased to individuals for a pre-specified period of time, to be developed for a specified land use. The lessee was obliged to pay annual fee for the plot. This was meant to reflect the ongoing value of the plot. The annual fee was designed as a mechanism to capture betterment to the public purse. The reviews of the two case studies reveal that in both cases PLS building blocks were dismantled over time; the limited duration has turned into a never-ending extension; the annual payments that symbolized the landlord–tenant relationships vanished; betterment capture has turned into a matter of negotiation; and zoning was compromised. The PLS in Canberra proved to be more durable than the PLS in Israel regarding the case of lessees’ demands for compensation against expected betterment loss. While in the case of Canberra a similar attempt was reported overruled from the very start, in Israel this issue has turned into a legal entanglement that has long occupied the news headlines.

Several factors combined to erode the framework of the PLS. Foremost was the fracturing effect of well-organized interest groups that managed to increase the relative share of their parties; second, the profit-seeking behavior of the public lessor that developed a self-interest. But, most important, the PLS does not incorporate a mechanism of ‘risk and return’, and as such the PLS failed to provide impetus for risk bearing. Relinquishing property rights to the lessees stems from the need to provide incentives during harsh economic climates. Relinquishing property rights over to pioneers reflects society’s recognition of their contribution and may be seen as a repair of former injustice.

Although currently the PLS stands as the source of an endless dispute, hindsight provides us better insight into its roles in the history of both Israel and Canberra. These two initiatives were clearly set up to meet specific
objectives, namely, to establish the State of Israel as the homeland of the Jewish people and Canberra as capital of Australia. Despite difficulties and poor foundations these two initiatives gained ground and became prosperous. The PLS saved the pioneers from abusive land speculation, such as that experienced by the pioneers in the West of the USA. Clearly, the PLS as a policy tool has some merits that deserve consideration. PLS-based schemes might be advantageous planning schemes for revitalizing geographically defined distressed areas and the establishment of new settlements. Unlocking the PLS from the grip of ideology will enable the introduction of flexibility and responsiveness into PLS-based schemes.

One lesson to be learned from the PLS experiences in Israel and Canberra concerns the irreversible change of property rights definition over time. The main drawback of the 19th century’s milieu, the lack of mechanism for adequate compensation for individual’s efforts, was inducted into the PLS. Thus, although the PLS philosophers sought to repair the 19th century deficient system, in a way they inherited its flaw and conveyed it to the PLS. The PLS ideology anchored this defect and hence it was imposed and maintained in the 20th century.

The above lessons gained cast doubts over the possibility and the desirability of setting maintainable definitions of property rights for the next generations. This perception calls for caution in regard to agreements that try to mold relationships beyond the foreseeable future. For example, Wiebe and Meinzen-Dick (1998, p. 209) reports: “A number of states in the United States have established farmland protection programs since the 1970s, buying agricultural conservation easements for an average of about US$1700 per acre (US$4199 per hectare) from willing landowners who agree to keep their land permanently in agricultural production rather than develop it.” In light of the lessons learned from the PLS experience about the precariousness of such agreements in the course of time, there is doubt whether future generations will accept this meaning of the term “permanently”. Without a doubt, the attempt to dictate to future generations is problematic, and hence it is preferable to limit the validity of such agreement within a reasonable period.

References


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