

# Re-romanticizing Commons and Community in Israeli Discourse: Social, Economic, and Political Motives

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*Public discourse in Israel is taking a somewhat surprising turn in its vacillation between individualism and collectivism. While mainstream public opinion in the 1980s and 1990s pointed to the failures of common- and public-property regimes, elected officials, entrepreneurs, and consumers are nowadays singing the praises of commons and communities. The re-romanticizing of commons and community is driven by a number of explicit and implicit motives, which also underscore, however, the limits of a full-fledged return to common-property regimes. This article highlights three instances of the reemergence of the commons- and community-discourse across the Israeli landscape.*

*First, while the old-style “cooperative kibbutz” suffered a substantial decline in past decades, the evolution of a new type of midlevel communitarianism in the “renewing kibbutz” has led to a growing demand to join the ranks of such kibbutzim.*

*Second is the development of urban shared office-space compounds such as WeWork, and the next phase of urban commons: co-living buildings.*

*Third, the emergence of “community villages” on state-owned lands, located mostly in Israel’s peripheral areas, has been praised by governmental agencies and residents alike as restoring a key*

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*role for community for middle-class families. But this advocacy may also be driven by exclusionary social and political motives, as applicants may be turned down based on open-ended criteria, such as “incompatibility with social life in the community” or incongruity with its “social-cultural texture.”*

*These case studies serve as a basis for offering new theoretical tools for thinking about the commons, fifty years after The Tragedy of the Commons presented their apparent failures. A fresh theory of commons and community could highlight how the revived discourse attests to the need to design a new set of balances between the perils of commons and anticommons, between values of anonymity and familiarity, and between governance by hierarchy and egalitarian rules.*

## INTRODUCTION

In a speech before members of the real-estate industry in November 2016, Tel Aviv Mayor Ron Huldai laid out his vision for the future of Tel Aviv.<sup>1</sup> Noting the ever-growing migration of population from rural areas to big cities across the world, and the challenges that increased density poses for urbanites’ quality of life, Huldai suggested that the recipe for urban success might lie in remodeling the city neighborhood as an “urban kibbutz.” Reminiscing about growing up in a kibbutz, in which all common amenities and services were provided by the kibbutz and located well within walking distance, Huldai suggested that cities today should aim at providing their residents with the best services at the lowest cost, and that such services should be generally accessible by bike or within walking distance not exceeding thirty minutes.

“The kibbutz was born 200 years too early, so it failed. For the same reason, it is also expected to make a comeback suitable for our times,” said Huldai.<sup>2</sup> His vision addressed not only redesigning the city’s public infrastructure or restoring a sense of community in its public spaces. It also had to do with private residential developments in a city marked by ever-growing demand and subsequently by soaring prices. Cooperative economics could be part of privately-owned apartment buildings. “Why should each apartment have a large dining area that stands empty most of the time when we could make

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1 Ron Huldai, Mayor, Tel Aviv Mun., Speech at an event launching the activity of the Urban Land Institute (ULI) in Israel (Nov. 21, 2016).

2 *Id.*

reservations at a community dining room and host our guests there? Why shouldn't we watch television in a community space?" he wondered.<sup>3</sup>

Whether this ambitious vision will take shape remains to be seen. To be sure, Mr. Huldai is far from being a born-again socialist or communist, either rhetorically or practically. Running Israel's commercial and financial hub, the Mayor wants Tel Aviv to continue to rely on private entrepreneurship, cosmopolitan appeal, and individual freedom that have gained it its prominence. The point is, rather, that introducing some forms of common property and promoting a sense of community in cities and elsewhere across the Israeli landscape need not necessarily be at odds with a market-driven contemporary society that does not simply fall back on its collectivist past.

This article identifies the reemergence of a public discourse about commons and communities across the Israeli landscape, focusing on three case studies that underscore the diversity of contexts in which this phenomenon arises. Part I provides background on land privatization and the reaction to it in Israel. Part II describes the "renewing kibbutz" — which strikes a middle ground between the old-style collectivism of the "cooperative kibbutz" and full-scale privatization of kibbutz assets — and the success of this interim model in attracting former members who had left the kibbutz, as well as urbanite newcomers; Part III presents co-working complexes, in which companies such as WeWork convert industrial spaces or office buildings into shared office compounds, in which space is rented out to individuals and businesses on a per-desk basis or in semi-open offices, alongside the provision of common amenities such as secretarial services, digital networks, and conference rooms. WeWork is now planning the next phase of the urban commons experience: co-living; Part IV portrays "community villages" on state-owned lands, typically including up to a few hundred households, and featuring the tension between the need to define the community's affirmative essence and the potential abuse of screening mechanisms. For each of these case studies, the article examines the extent to which the re-romanticizing of commons and communality reflects a genuine normative inclination, or whether this discourse merely serves as a pretext for other motives, such as social exclusion. Part V discusses how, beyond the Israeli context, these case studies serve as a basis for offering new theoretical tools for thinking about the commons, fifty years after Garrett Hardin's *The Tragedy of the Commons* presented their apparent failures,<sup>4</sup> and for designing policy tools for reintroducing common-property regimes that seek to serve the current needs of market-based economies. In particular, understanding the explicit

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3 *Id.*

4 Garret Hardin, *The Tragedy of the Commons*, 162 *Sci.* 1243 (1968).

and implicit motives behind the recent appeal and even re-romanticizing of commons and community attests to the prospects and perils of this new discourse. The new configurations of common property and other property regimes that seek to facilitate communality also flesh out the need to design a new set of balances between the relative perils of commons and anticommons, between values of anonymity and familiarity, and between asset governance by hierarchy and egalitarian rules.

## I. REVIVING THE COMMONS- AND COMMUNITY-DISOURSE ACROSS THE ISRAELI LANDSCAPE

During the 1980s and 1990s, privatization became a hot-button issue among Israeli decision-makers, businesses, the media, and public opinion at large.<sup>5</sup> Authors often point to the 1977 turnover of political power to the Likud party from the Labor movement, which had been in control since the establishment of Israel in 1948, as the genesis of privatization processes.<sup>6</sup> Israel indeed undertook several privatization reforms since then, including liberalization of its trade and monetary policy,<sup>7</sup> partial privatization of welfare services,<sup>8</sup> and outsourcing in the defense sector.<sup>9</sup> Accordingly, the financial decline of the kibbutzim and moshavim, the two prominent types of cooperative agricultural settlements — a crisis that became apparent as of the late 1970s — was attributed to the loss of their political clout in the aftermath of the Likud party's rise to power. The shift in political agendas allegedly ran in parallel with the economic failure of common-property regimes and decline in the profitability of agriculture as a source of income.<sup>10</sup>

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5 See also AVI BEN-BASSAT, *THE ISRAELI ECONOMY 1985-1998: FROM GOVERNMENT INTERVENTION TO MARKET ECONOMICS* (2002).

6 Daphne Barak-Erez, *Applying Administrative Law to Privatization in Israel*, in *ISRAELI REPORTS TO THE XVI INTERNATIONAL CONGRESS OF COMPARATIVE LAW 47* (Alfredo Mordechai Rabello ed., 2006).

7 Steven Plaut, *Israeli Socialist Dreams vs. Capitalist Realities*, 23 *MIDDLE EAST Q.* 1, 9-10 (2016).

8 Joseph Katan & Ariela Lowenstein, *Privatization Trends in Welfare Services and Their Impact Upon Israel as a Welfare State*, in *THE WELFARE STATE IN POST-INDUSTRIAL SOCIETY: A GLOBAL PERSPECTIVE* 311 (Jason L. Powell & Jon Hendricks eds., 2009).

9 Guy Seidman, *From Nationalization to Privatization: The Case of the IDF*, 36 *ARMED FORCES & SOC.* 716 (2010).

10 See, e.g., ELIEZER BEN-RAFAEL, *CRISIS AND TRANSFORMATION: THE KIBBUTZ AT THE CENTURY'S END* (1997).

That said, pinpointing the beginning of privatization processes to that specific time period, or portraying the shift from collectivism to individualism as a clear-cut policy shift, fails to properly depict a much more complicated picture, and may be dismissed at least partly as a popular myth.

To start with, academic research comparing the period 1968-1977 (prior to the political turnover) with the subsequent period 1978-1987 has demonstrated that political ideology did not in itself account for the government's actual propensity, or lack thereof, toward privatization.<sup>11</sup> There were no significant differences between Labor and Likud in the number, type, or actual implementation of privatization policies, with only a slight variation on the propensity to either sell complete state-owned enterprises (Labor) or engage in partial sales of state assets (Likud). Budgetary pressure was probably a much more deciding factor in promoting privatization.<sup>12</sup>

Later periods also manifest a more complex approach toward privatization as a matter of both rhetoric and public policy. Alongside the practical problems that privatization schemes in various sectors have come across due, *inter alia*, to problems of protectionism and trade-union holdouts in some instances,<sup>13</sup> and rent-capturing by powerful corporations in other instances,<sup>14</sup> public opinion has always been half-hearted about the increasing prominence of the market economy.

While Israel's main engine of growth since the early 2000s has been the high-tech industry — clearly dominated by private entrepreneurship and reliant on the liberalization of markets for services<sup>15</sup> — and private consumption has been increasing almost consistently,<sup>16</sup> Israeli public opinion is reluctant to fully embrace a free-market rhetoric and forego the concept of a welfare state and government's perceived obligation to provide public healthcare, K-12 free education, transfer payments, and so forth.<sup>17</sup> Israel has never experienced

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11 M. Harris et al., *Ideology and Privatization Policy in Israel*, 15 ENV'T & PLAN.: POL. & SPACE 363 (1997).

12 *Id.* at 368-69.

13 Plaut, *supra* note 7, at 10-11.

14 Avi Bar Eli, *Can Leviathan be Prevented From Swallowing Israel's Gas Market?*, HAARETZ, Mar. 2, 2017, <https://www.haaretz.com/israel-news/business/1.774765>.

15 The concept of Israel as a "start-up nation," relying for its growth on private innovation and entrepreneurship, especially in the high-tech industry, has been introduced and popularized in DAN SENOR & SAUL SINGER, *START-UP NATION: THE STORY OF ISRAEL'S ECONOMIC MIRACLE* (2011).

16 National Accounts, Private Consumption Tables, BANK OF ISRAEL, <http://www.boi.org.il/en/DataAndStatistics/Pages/MainPage.aspx?Level=3&Sid=2&SubjectType=2>.

17 Plaut, *supra* note 7, at 2-3.

a Thatcher- or Reagan-like era of wholesale privatization, and mainstream politics and public opinion do not advocate such policy.

Housing serves as a vivid illustration of the ambiguous approach that Israeli public opinion has had toward privatization. Unveiling current developments in the housing market, against the historical background of Israel's housing policy, may also explain the significant role that common- and public-property play in Israel and why a "commons discourse" is resurfacing now.

To start with, 93% of the land in Israel is owned by the state or one of its affiliates.<sup>18</sup> Statutorily defined as "Israel Lands," and comprising about 4,820,500 acres,<sup>19</sup> such lands are subject to specific legal and regulatory rules, and are managed by the Israel Land Authority (ILA). Despite several reforms, enabling the transfer of ownership in housing units in some urban areas, the overwhelming majority of land is still government-owned. However, private persons are typically awarded long-term capitalized leaseholds in urban Israel Lands.<sup>20</sup>

The initial allocation of Israel Lands for residential development is done through public bids or other governmental measures that grant such rights to developers, associations, or individuals. In so doing, the state may also control financial aspects of the development.<sup>21</sup> This means that the state not only controls the supply of land for development, but is also expected to substantially impact the price at which the housing units will be sold to eligible homebuyers. Current data indicates that the actual number of subsidized

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18 These affiliates include the Development Authority (a state agency) and the Jewish National Fund (JNF), a private corporation that has transferred the management of its lands to the state. See YIFAT HOLZMAN-GAZIT, *LAND EXPROPRIATION IN ISRAEL: LAW, CULTURE AND SOCIETY* 55-59 (2007).

19 ISRAEL LAND AUTHORITY, <http://land.gov.il/en/Pages/AboutUs.aspx> (last visited Jan. 12, 2018).

20 Ravit Hananel, *The End of Agricultural Supremacy: The 2009 Reform of Israel's National Land Policy*, 27 *ISR. STUD. REV.* 143 (2012).

21 In 2015, the national government, seeking to meet the ever-growing demand for housing in light 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" (*mechir la-mishtaken*) 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. See MECHIR LA-MISHTAKEN [PRICE TO THE DWELLER], <http://www.dira.gov.il/Pages/HomePage.aspx> (last visited Jan. 12, 2018).

housing units is lower than expected.<sup>22</sup> But it is the very commitment of the government, on one hand, and public opinion's expectation of the provision of newly-built apartments through heavy public subsidies, on the other, that shows how privatization of housing is not conceived in Israeli discourse as being at odds with the call for strong public involvement.

These dynamics follow the 2011 social protest across Israel's cities, which was mostly a middle-class movement focused on housing, in which government was called upon by protesters to take active steps to bring down real-estate prices in high-demand areas.<sup>23</sup> Public discourse in the context of housing is therefore very much in favor of the upside of privatization (property rights), but is nevertheless reluctant to accept its downside (market-driven pricing). This ambiguity in Israeli discourse may explain why certain kinds of private-property models, which feature some aspects of common- and public-property, may be considered attractive by many households.

Before moving to the three contemporary case studies in the following Parts, and in order to more fully grasp the lasting presence of commons in Israeli discourse, one should briefly consider the ways in which the concept of community has been linked with various types of common-property features throughout Israel's history. This concept played a major role in promoting genuine forms of commons, but it has also been used as a pretext for enabling certain mechanisms of exclusion — a growing concern given the current heterogeneity of Israeli society.

The binding of concepts of community with the formation of common- and public-property regimes, within the Jewish population of Israel, goes back to the 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 active collaboration with cooperative settlement associations. This was primarily the case with respect to the various types of agricultural settlements, such as the kibbutz or the moshav,<sup>24</sup> which were provided with land and capital

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22 Anat Danieli, *Shnataim Letochnit Mechir Lamishtaken: Ma nivna, vekama kiblu mafteach?* [Two Years to Price to the Dweller Program: What has been Built and How Many Received a Key?], CALCALIST, June 7, 2017, [http://www.calcalist.co.il/real\\_estate/articles/0,7340,L-3714645,00.html?ref=yenet](http://www.calcalist.co.il/real_estate/articles/0,7340,L-3714645,00.html?ref=yenet).

23 Plaut, *supra* note 7, at 7-8.

24 For the organizational features of the moshav, not discussed in detail in the present article, see Michael Sofer & Levia Applebaum, *The Rural Space in Israel in Search of Renewed Identity: The Case of the Moshav*, 22 J. RURAL STUD. 323 (2006). Generally speaking, the basic unit of the moshav is the family farm. All

resources by the Zionist organizations, with the settlers providing the labor resources and assuming responsibility for the organization and management of the community. As cooperative associations, these agricultural settlements enjoyed considerable deference from the Zionist institutions, and later 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.<sup>25</sup>

These agricultural communities were not the only kind of groups to gain institutional support for bringing together elements of common property and communality in the emerging nation. Having recognized from early on the importance of urban settlements, the Zionist institutions also supported the construction of urban residential developments designated for members of trade unions.<sup>26</sup> Since the early 1930s, these residents' groups were able to formally organize as 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.<sup>27</sup> The elements of communality and group governance were thus intertwined with an institutional setting, which combined elements of common- and public-control with private-property rights in the urban context. From a broader societal and political perspective, the "commons discourse" played a constitutive role in the Zionist enterprise.

The intertwining of the concept of community with common-property forms of governance and control in the residential context takes a somewhat different shape in contemporary Israel. This is particularly so because current Israeli society is much more heterogeneous — ethnically, culturally, and ideologically — than it was during the days of the pre-independence Hebrew

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units in the same moshav were originally based on a similar farm structure and received the same allocation of public resources. A system of cooperation and mutual aid was established to handle joint purchasing and marketing, underwrite loans to individual farmers and to the moshav community as a whole, and provide assistance in times of crisis. *Id.*, at 328-329.

25 See *infra* Part II.

26 Dan Rabinowitz, *Ha'Optzia Shenishkeha: Ha'Shikun Ha'Ironi Ha'Shitufi* [*The Forgotten Option: Urban Cooperative Housing*], in MERHAV, ADAMA, BAIT [SPACE, LAND, HOME] 113 (Yehuda Shenhav, ed., 2003).

27 *Id.*



settlement (*yishuv*) and the first few decades of Israel. This is due to a large number of factors, including post-independence immigration waves, divergent birth rates across population groups, ideological turnovers, and economic developments.<sup>28</sup> In a public speech in 2015, Israeli President Reuven Rivlin spoke 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.<sup>29</sup> Some commentators go further in dividing Israeli society into various “tribes” or sectors that are growing constantly apart — physically and conceptually — from one another.<sup>30</sup> This process carries obvious implications for the ways in which old and new forms of common-property regimes become tied with concepts of “community” as both an inward-looking mechanism for group consolidation and an outward-looking mechanism for the exclusion of “undesirables.”<sup>31</sup> In view of such societal changes, the following Parts exhibit new/renewed forms of common property and other regimes that purport to foster community.

## II. COMMONS AND COMMUNALITY IN THE RENEWING KIBBUTZ

“The kibbutz is back to the old days, only without the bad parts,” said Oren Enoch, community manager of *Erez* and *Gat*, two kibbutzim in the south of Israel, in a 2017 interview.<sup>32</sup> Like his counterparts in about 270 kibbutzim in

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28 MENACHEM MAUTNER, *LAW AND THE CULTURE OF ISRAEL* (2011).

29 Reuven Rivlin, President, St. Isr., Address to the 15th annual Herzliya conference (June 7, 2015), [http://www.president.gov.il/English/ThePresident/Speeches/Pages/news\\_070615\\_01.aspx](http://www.president.gov.il/English/ThePresident/Speeches/Pages/news_070615_01.aspx).

30 AMNON RUBINSTEIN, *SHIVTEY MEDINAT ISRAEL: BEY'ACHAD VELECHUD — LIBERALISM VERAV TARBUTIUT BE'ISRAEL [TRIBES OF ISRAEL: TOGETHER AND APART — LIBERALISM AND MULTICULTURALISM IN THE JEWISH STATE]* 13-14 (2017).

31 I have elsewhere elaborated on the present state of residential communities in the heterogeneous Israeli society. Amnon Lehavi, *Residential Communities in a Heterogeneous Society: The Case of Israel*, in *PRIVATE COMMUNITIES AND URBAN GOVERNANCE: THEORETICAL AND COMPARATIVE PERSPECTIVES* 95-125 (Amnon Lehavi ed., 2016).

32 Noa Spiegel, *Hakibbutz Chozer Lema Shehaia Pa'am, Bli Hadvarim Haraim [The Kibbutz is back to the Old Days, Only without the Bad Parts]*, HAARETZ, May 30, 2017, <https://www.haaretz.co.il/news/education/.premium-MAGAZINE-1.4138699>.

Israel,<sup>33</sup> Enoch has witnessed a recent surge of interest in joining the ranks of kibbutzim, and an impressive rate of population growth deriving both from increased birth rates within kibbutzim and migration into kibbutzim. As of the end of 2015, the overall population in Israeli kibbutzim was at an all-time record: 166,000 persons.<sup>34</sup>

To understand the renewed appeal of kibbutzim, one needs to consider the trajectory of this world-renowned form of (limited) common-property regime<sup>35</sup> since its genesis, in particular the rise and fall of the “cooperative kibbutz” and the later emergence of the “renewing kibbutz.”

Originating in 1910, the cooperative kibbutz is often considered the quintessential example of an enduring form of a secular intentional community that maintains a quintessential common-property regime. The agriculture-based kibbutzim played a major role during the formative years before and after the 1948 establishment of the State of Israel, and were viewed by the Israeli leadership as realizing the ultimate Zionist ideal.<sup>36</sup> The cooperative kibbutz is statutorily defined as a “settlement which is based on the ideas of collective ownership, self-work, and equal sharing in production, consumption, and education.”<sup>37</sup> The communal and egalitarian nature of the kibbutz manifested itself in all areas of life, as the socialist ideology originally implemented attributed to the collective enterprise a central distinctive quality, which went beyond — and often came at the expense of — satisfying individual preferences and interests.<sup>38</sup> The cooperative regime has been enforced through

33 The official count of kibbutzim slightly diverges among different sources, because of variations in the categorization of certain villages. The Central Bureau of Statistics lists 268 kibbutzim as of the end of 2015. See CENT. BUREAU OF STATISTICS, LOCALITIES AND POPULATION, BY TYPE OF LOCALITY AND POPULATION GROUP (2016) (ISR.), [http://www.cbs.gov.il/shnaton67/st02\\_21x.pdf](http://www.cbs.gov.il/shnaton67/st02_21x.pdf). The Kibbutzim Movement provides a list of 282 kibbutzim, divided into several subcategories, in a dataset last updated April 19, 2016. See THE KIBBUTZIM MOVEMENT, [http://old-www.kibbutz.org.il/multimedia/sal/media/6657/f5\\_160419\\_sivug\\_kibbutzim.pdf](http://old-www.kibbutz.org.il/multimedia/sal/media/6657/f5_160419_sivug_kibbutzim.pdf) (last visited Aug. 27, 2017).

34 *Demographics*, 14 KIBBUTZIM MOVEMENT Y.B. 27, [http://old-www.kibbutz.org.il/multimedia/sal/media/8275/f5\\_170322\\_shnaton\\_kibbutzim\\_2015.pdf](http://old-www.kibbutz.org.il/multimedia/sal/media/8275/f5_170322_shnaton_kibbutzim_2015.pdf) (last visited Aug. 27, 2017) [hereinafter KIBBUTZIM YEARBOOK 2015/16].

35 The term “common-property regime” (or “limited common-property regime”) refers to a setting in which an identifiable group collectively holds a formal property right to an asset, while excluding nonmembers. See *infra* note 124.

36 Henry Near, *The Kibbutz Movement: A History* (2008).

37 Cooperative Associations Regulations (Types of Associations), 5756-1995 § 2(5)(a).

38 YONINA TALMON, *FAMILY AND COMMUNITY IN THE KIBBUTZ* 207-08 (1972).

various mechanisms of social control, including substantial limits on entry to and exit from membership in the kibbutz,<sup>39</sup> as well as other types of formal and informal norms.<sup>40</sup>

The kibbutz movement is currently in the midst of a process of dramatic change, which has led to the evolution of a new type of kibbutz, now formally known as the “renewing kibbutz,” alongside the old-style cooperative kibbutz. The renewing kibbutz started out as a spontaneous, informal phenomenon in numerous cooperative kibbutzim as of the 1980s in response to an ongoing crisis.<sup>41</sup> Prominent among the economic and political causes of this crisis were the sharp decline in the profitability of agriculture; internal mismanagement that brought many kibbutzim to the verge of insolvency; loss of governmental favoritism with the rise to power of the Likud party in 1977; and real-estate pressures following the rise in demand for land for residential and commercial developments, especially impacting kibbutzim located near high-demand urban areas. No less important were socioideological factors: the demise in the fundamental socialist ethos among the younger generations; an internal tension due to the growing gaps in productivity among various members (especially after many turned to nonagricultural pursuits outside the kibbutz, but had to keep passing on their entire salaries to the kibbutz); and the desire of many middle-age members to bequeath assets to their children in an era of economic uncertainty. Such processes led to substantial rates of member withdrawal and mounting pressures for change.<sup>42</sup>

As a result, numerous kibbutzim started to carry out grassroots organizational reforms, including setting up a differential personal budget system; partial privatization of certain services such as healthcare, education, and meals; allocation of individual shares in the kibbutz’s productive assets; and the taking of initial steps to change the kibbutz’s land tenure system. These spontaneous changes posed substantial difficulties not only because such changes were not formally approved beforehand by the kibbutzim’s national organizations, but

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39 Israeli courts have rarely interfered with membership decisions made by kibbutzim, including decisions to remove members, in view of these cooperative associations’ allegedly voluntary nature and the judicially-recognized importance of maintaining social harmony and collective discipline. *See, e.g.*, H CJ 4222/95 Palatin v. Registrar of Cooperative Associations 52(5) PD 614, 620 (1998) (opinion of Dorner J., at ¶ 8); CA 8398/00 Katz v. Kibbutz Ein-Tzurim 56(6) PD 602, 623 (2002) (opinion of Shtrasberg Cohen J., at ¶ 22).

40 Michal Palgi, *Organization in Kibbutz Industry*, in *CRISIS IN THE ISRAELI KIBBUTZ* 41, 53-55 (Uriel Leviatan, Hugh Oliver & Jack Quarter eds., 1998).

41 *See* PUB. COMM. ON KIBBUTZIM, A REPORT ON THE KIBBUTZIM 24–39 (2003) (Isr.), [http://www.kibbutz.org.il/tnua/sivug/040401\\_doch\\_sivug.doc](http://www.kibbutz.org.il/tnua/sivug/040401_doch_sivug.doc).

42 *See* BEN-RAFAEL, *supra* note 10.

also because they allegedly conflicted with the formal definition of the kibbutz in various statutes, regulations, and agreements made with governmental and other public entities.<sup>43</sup>

To resolve the issue, the Israeli Cabinet appointed a public committee which was asked to review these *de facto* changes and to offer a new formal policy. In 2004, the Cabinet approved the committee's recommendations, which largely validated the grassroots modes of change.<sup>44</sup> Consequently, the applicable legislation and administrative regulations were amended in 2006 to formally incorporate the renewing kibbutz as a new type of cooperative association, alongside the cooperative kibbutz. The renewing kibbutz is characterized by one or more of the following features, which reflect its updated stance on the role of the commons in contemporary kibbutzim.

*Differential salaries.* The renewing kibbutz may allocate individual budgets to its members pursuant to the "extent of their contribution, positions, and [time-based] seniority."<sup>45</sup> This provision, aimed at motivating individual productivity, is subject to the duty of the kibbutz to maintain a "safety net" mechanism in the allocation of funds, ensuring a minimal reciprocal guarantee among members and providing for the needs of the elderly and the disabled.<sup>46</sup> What this essentially means is that kibbutzim members get to keep the lion's share of their salaries (whether these are earned in workplaces outside the kibbutz, or in it), but are required to make substantial payments to facilitate the internal transfer mechanism ("safety net"). Each kibbutz sets the rate of such internal contributions, and accordingly the degree of salary differentiation. As of the end of 2015, 75% of kibbutzim had switched to the "safety net" model, 18% still maintained the fully cooperative model, and 7% of kibbutzim had embraced an interim budgetary structure.<sup>47</sup>

*Privatization of housing units.* The second prong of the renewing kibbutz model enables the kibbutz to award private rights to its members in the housing units. Originally, cooperative kibbutzim entered short-term renewable agreements with the ILA, with the use generally restricted to agriculture and ancillary uses (including, for that matter, housing units). Because of

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43 See AMNON LEHAVI, THE CONSTRUCTION OF PROPERTY: NORMS, INSTITUTIONS, CHALLENGES 113-28 (2013).

44 The Israeli Cabinet approved the recommendations in 30th Isr. Gov't, Decision no. 1736 (Mar. 28, 2004), <http://www.pmo.gov.il/Secretary/GovDecisions/2004/Pages/des1736.aspx>.

45 Cooperative Associations Regulations (Types of Associations), 5756-1995 § 2(5)(b)(1).

46 Cooperative Associations Regulations (Reciprocal Guarantee in a Renewing Kibbutz), 5766-2005.

47 KIBBUTZIM YEARBOOK 2015/16, *supra* note 34, at 30.

the collective nature of the cooperative kibbutz, individual members were not parties to the lease agreements, and had no individual rights in the land whatsoever, including in the housing units.

The conversion of the short-term collective leases into a series of long-term individually-based ones therefore necessitated consent by the state, alongside internal restructuring in the kibbutz. The ILA gave its initial consent in 1996 for such a transition, according to which individual leases would be entered for the various housing units, whereas the rest of the kibbutz's area would continue to be leased collectively.<sup>48</sup> This initial decision had little practical effect, not only because it preceded the formal redefinition of the kibbutz in Israeli statutory law, but also because it set up substantial capitalization fees that were too high for most kibbutzim members.

In 2005, the Cabinet approved the recommendations of another public committee appointed to review the issue.<sup>49</sup> According to the new policy — implemented through decisions by the ILA Council in 2007 — each member family is allocated one housing unit for a capitalization fee of 3.75% of the tract's full market value, and it can make the tract alienable for an additional payment of 29.25%.<sup>50</sup> This decision was upheld by the Supreme Court in June 2011.<sup>51</sup> As of the end of 2015, 53% of kibbutzim had already completed or were in the midst of the process of privatizing the housing units, 33% were deliberating whether to do so, with 14% sticking to the old model.<sup>52</sup> A recent set of ILA decisions, passed in 2016 and 2017, updates the various aspects of privatization of the housing units, and these are expected to further streamline the process.<sup>53</sup>

*Allocation of shares in the kibbutz's productive assets.* The final prong of the transition from the pure common-property model to the hybrid format provided by the renewing kibbutz deals with the property rights in the kibbutz's productive assets, such as its industrial enterprises. Allocation of property rights in such assets is allowed, provided that individual members will not

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48 Israel Lands Council, Decision no. 751 (Feb. 27, 1996).

49 REPORT OF THE COMMITTEE FOR THE REVIEW OF RIGHTS IN RESIDENTIAL AREAS IN AGRICULTURAL SETTLEMENTS (Dec. 2005).

50 Israel Lands Council, Decision no. 979 (March 27, 2007); Israel Lands Council, Decision no. 1101 (Mar. 27, 2007).

51 HCJ 1027/04 Independent Cities Forum v. Israel Lands Council (June 9, 2011), Israel Supreme Court Database (in Hebrew), <https://supreme.court.gov.il/Pages/fullsearch.aspx>.

52 KIBBUTZIM YEARBOOK 2015/16, *supra* note 34, at 31.

53 Israel Lands Council, Decision no. 1456 (Apr. 18, 2016); Israel Lands Council, Decision no. 1488 (Sept. 5, 2016); Israel Lands Council, Decision no. 1504 (Jan. 1, 2017).

be able to jointly gain corporate control of any specific enterprise, meaning typically that the kibbutz will retain more than fifty percent of the shares. The distribution of shares will be made “in accordance with egalitarian criteria and in equal manner,” subject to a distribution of 50% of the assets according to the member’s seniority.<sup>54</sup> The kibbutz may also set caps on the overall holding of individual members following subsequent transfers, as well as a right of first refusal in favor of the kibbutz in case of such transfer. According to a variation on this model, a renewing kibbutz may entitle individual members to enjoy a share of the fruits (right to income) from the assets, rather than directly transferring stock ownership to members.<sup>55</sup>

The renewing kibbutz, which offers a new template for combining elements of commons and communality with the partial privatization of rights to assets, seems to be faring substantially well. This is so both among current members of kibbutzim and those seeking admission — many of them younger generations who had previously moved outside the then-cooperative kibbutz.

According to Nir Meir, general secretary of the kibbutzim movement, the institutional renewal of kibbutzim “made their lifestyle much more attractive.”<sup>56</sup> Next to the perceived quality of primary- and secondary-education in kibbutzim — although members are required to pay substantial amounts for such education — and the value of living in detached housing in a pastoral setting, current and new members in kibbutzim attach much value to the preservation of a close-knit community and the introduction of the economic “safety net” model. The move to differential salaries and partial privatization of housing units and productive assets, alongside preservation of substantial economic, psychological, and social common elements, makes the renewing kibbutz a desirable option for many, in particular those who had previously left the kibbutz.

“Once, the prevailing notion was that only those who didn’t make it outside, went back,” said Liat Meck, who returned to Kibbutz Mevo Hama in the Golan Heights after living for a few years in Jerusalem. “Today, however, this is completely untrue. People return with a different mindset, from a point of strength, a desire for a quality of life.”<sup>57</sup> Alon and Ayelet Barash moved to Kibbutz Kadarim with their two daughters from the city of Kfar Saba: “We wanted to be in a real community. Our main driving force was that this

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54 Cooperative Associations Regulations (Attribution of Productive Assets in a Renewing Kibbutz), 5766-2005 § 3.

55 KIBBUTZIM YEARBOOK 2015/16, *supra* note 34, at 31.

56 Quoted in Spiegel, *supra* note 32.

57 *Id.*

really existed in a kibbutz ... we understood that this is really a community.”<sup>58</sup> At the same time, the renewing kibbutz offers a less pressing interpersonal framework than the old-style cooperative kibbutz. “Today you can live in your corner, if this is what you would like. The culture here is great. The scenery is amazing. We belong to those who pay happily the community taxes. You really get value for your money,” said Maayan Michelson, who returned to Kibbutz Mizra with her spouse after many years.<sup>59</sup> Public opinion polls held in renewing kibbutzim point to an overall positive view of the changes made in such kibbutzim.<sup>60</sup> The economic and social structure of kibbutzim may also prove attractive at a later stage in the life cycle. Recent data shows that senior citizens living in kibbutzim are more active socially than their counterparts in cities, and that they also enjoy better access to medical services and economic security, due also to the “safety net” mechanism that remains intact in renewing kibbutzim.<sup>61</sup>

The revival of the commons in the kibbutzim, in both discourse and practice, relies therefore on their ability — in what started out largely as a bottom-up process — to create a new structure of property rights, collective decision-making, and social and psychological network. Renewing kibbutzim recraft the common-property element through the subjection of differential salaries to the preservation of a “safety net” and a subsequent reciprocal guarantee, and through partial privatization of housing units and productive assets, while maintaining a substantial collective stake-holding. This institutional shift goes hand in hand with creating a new balance between individualism and

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58 Noa Spiegel, *HaKibbutznikim Hozrim LiHyot BeYahad* [*The Kibbutznikim Go Back to Living Together*], HAARETZ, (Dec. 5, 2014), [https://www.haaretz.co.il/news/local/.premium-1.2504992?=&ts=\\_1515847451963](https://www.haaretz.co.il/news/local/.premium-1.2504992?=&ts=_1515847451963).

59 Quoted in Spiegel, *supra* note 32.

60 See MICHAL PALGI & ELIETTE ORCHAN, SEKER DA'AT KAHAL BAKIBBUTZIM BESHNAT 2016 VEHAZAGAT SHINUIM BEAMADOT LEORECH HASHANIM [PUBLIC OPINION POLL IN KIBBUTZIM FOR 2016 AND A REVIEW OF CHANGES IN POSITIONS OVER THE YEARS] (Institute for the Study of the Kibbutz and the Cooperative Idea, University of Haifa, June., 2016) (Isr.), <http://kibbutz.haifa.ac.il/images/publications/public%20opinion%202016.pdf>.

61 Haim Bior, *HiZdakantem? Shaveh Lachem LaAvor LeKibbutz* [*Growing Old? It Might be Worthwhile to Move to a Kibbutz*], HAARETZ (Feb. 5, 2015) (Isr.), <https://www.themarket.com/career/1.2558289>. That said, the issue of pension payments to elderly members remains one of the most troubling issues for kibbutzim. See Eli Ashkenazi, *HaVikkuach Al HaPensia BaKibbutzim Maamik Et HaShever Bein Dor HaMeyasdim LaTzeirim* [*The Argument Over Pensions Deepens the Rift Between the Generation of Founders and Young Members*], HAARETZ (Nov. 19, 2013), <https://www.haaretz.co.il/news/education/.premium-1.2169045>.

collectivism, and fostering interdependence without coercion or limits on exit — typical of other forms of close-knit communities such as the cooperative kibbutz.<sup>62</sup> The economic and social setup of renewing kibbutzim still falls far short of meeting the preferences of those who seek the urban life and/or those who value private property and individualism. It serves mostly those who value a midlevel collective lifestyle along its various dimensions. The proprietary and institutional setup of the renewing kibbutz therefore runs along similar lines to contemporary models of co-housing in other countries, such as the United States, where members in such communities seek to balance between privacy in the family housing unit and nurturing various forms of sharing and close social ties.<sup>63</sup>

### III. URBAN COMMONS AS A MARKET COMMODITY: CO-WORKING, CO-LIVING

The “sharing economy” has become one of the catchiest terms-of-art over the past few years, with businesses such as Airbnb and Uber viewed as having the capacity to fundamentally change at least some aspects of the world economy.<sup>64</sup> The very use of the term, “sharing economy,”<sup>65</sup> has at least initially played a role in normatively painting this rapidly-growing phenomenon. It was seen by some not only as enabling more efficient and sustainable use of resources, but moreover as representing an ideal of community-building that defies the conventional models of arm’s-length capitalist markets and private property.<sup>66</sup> With time, however, it became clear that the term may be

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62 For such coercion mechanisms, see Robert C. Ellickson, *Property in Land*, 102 *YALE L.J.* 1315, 1361 (1993).

63 See, e.g., Tom Werde, *There’s Community and Consensus. But It’s No Commune*, *N.Y. TIMES*, (Jan. 20, 2018), <https://www.nytimes.com/2018/01/20/business/cohousing-communities.html>.

64 See, e.g., BRAD STONE, *THE UPSTARTS: HOW UBER, AIRBNB, AND THE KILLER COMPANIES OF THE NEW SILICON VALLEY ARE CHANGING THE WORLD* (2017).

65 *The Rise of the Sharing Economy*, *ECONOMIST*, (Mar. 9, 2013), <http://www.economist.com/node/21573104>.

66 See, e.g., Juliet B. Schor & Connor J. Fitzmaurice, *Collaborating and Connecting: The Emergence of the Sharing Economy*, in *HANDBOOK OF RESEARCH ON SUSTAINABLE CONSUMPTION* 410, 414-15 (Lucia A. Reisch & John Thøgersen eds., 2015) (identifying one of the motivations for the sharing economy in that “many participants are ideologically committed to the concepts of sharing and collaborating, and many have critiques of market provision, especially in services”).



a misnomer, at least with respect to some types of services or goods provided through digital and other intermediary platforms<sup>67</sup> that represent yet another “variety of capitalism.”<sup>68</sup> Alternative terms such as “on-demand economy” or “peer-to-peer economy”<sup>69</sup> seem to better grasp the fact that most such businesses are driven mostly by private-property regimes and profit-making motives, while also allowing nonprofessional persons to enter the market on the supply side by letting out rooms or apartments, driving other persons, providing services on the basis of exchange, etc.

Whether this new form of capitalism is more efficient and just, as compared with conventional markets, remains a hotly-debated issue, touching on the various axes along which this new economy operates. These axes include the competition between old-style providers (*e.g.*, hotels or licensed taxis) and new ones; the legal relations between the profit-driven corporations that run the platforms (*e.g.*, Uber), the individual providers of the services that rely on the platform, and the persons receiving the services; and the overall social, economic, and environmental impacts of such transactions on the domestic and global spheres.<sup>70</sup> These bigger questions remain outside the scope of this article. What matters, however, is that such features of the “on-demand economy” cannot be seen as inherently promoting societal or economic concepts of communitarianism, egalitarianism, or social justice. These dealings are simply a new variety of arm’s-length market transactions driven by private property and the pursuit of profit.

A more salient case for the “sharing economy” as truly promoting ideas of commons and commonality can be made for the growing involvement of cities in directly initiating or in facilitating forms of citizen collaboration or

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67 See Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87 (2016) (dubbing it “the platform economy”).

68 Rashmi Dyal-Chand, *Regulating Sharing: The Sharing Economy as an Alternative Capitalist System*, 90 TUL. L. REV. (2015) (describing the “sharing for profit” model as a variety of capitalism, one in which “individuals renting rooms, back seats, or specialty equipment are microentrepreneurs operating tiny, often part-time, businesses”).

69 See, *e.g.*, Robin Chase, *Who Benefits from the Peer-to-Peer Economy?*, HARV. BUS. REV. (July 28, 2015), <https://hbr.org/2015/07/who-benefits-from-the-peer-to-peer-economy>.

70 Uber has been a particular point of focus for these various types of public-policy debates and subsequent legal battles. See, *e.g.*, Sam Levin, *Uber Lawsuits Timeline: Company Ordered to Pay Out \$161.9M Since 2009*, THE GUARDIAN, Apr. 13, 2016; Heather Kelly, *Uber’s Never-Ending Stream of Lawsuits*, CNN TECH, (Aug. 11, 2016), <http://money.cnn.com/2016/08/11/technology/uber-lawsuits/index.html>.

the sharing of human and material resources. Generally speaking, cities are the site within which most physical aspects of the on-demand or peer-to-peer dealings take place. The agglomeration effect, proximity, and density of cities make demand for such goods or services particularly relevant. The “sharing economy” is largely an urban phenomenon.<sup>71</sup> Consequently, cities are constantly faced with public-policy dilemmas in exercising their regulatory powers to deal with the various aspects of the on-demand economy.<sup>72</sup>

Some cities do not settle, however, for merely responding to the decentralized market forces of the peer-to-peer economy. Cities such as Amsterdam and Seoul view the sharing economy as a strategic tool for promoting the social and economic viability of the city and the wellbeing of their residents.<sup>73</sup> Amsterdam was pronounced as the first “sharing city” in Europe in 2015, following a collaboration between the city and the Dutch company ShareNL.<sup>74</sup> The purpose of Amsterdam Sharing City is to “seize the opportunities that the sharing economy offers in the areas of sustainability, social cohesion and economy.”<sup>75</sup> To do so, the city also employs its own resources. For example, it makes available at no charge underused city-owned office spaces for on-demand use by organizations “that are working for a social purpose.”<sup>76</sup> The same applies also to the use of municipal cars and tools.<sup>77</sup> The Amsterdam City Pass currently connects over 180,000 residents — many of them elderly or on low incomes — to for-free or reduced-rate sharing economy services, such as Thuisafgehaald (meal-sharing) and Peerby (asset-sharing).<sup>78</sup>

Similarly, the Sharing City Seoul project is a collaboration among the city of Seoul, nonprofit organizations, and private companies, seeking to mitigate “various social challenges by promoting the shared use of both public and private resources,” by enabling residents to “share idle resources, revive local

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71 Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 *YALE L. & POL. REV.* 215 (2016).

72 *Id.* at 238-58 (depicting these policy questions as an “urban governance challenge”).

73 Neta Halperin, *The City and Co.*, *THE MARKER MAG.*, March 6, 2017, at 126, <https://www.themarker.com/magazine/MAGAZINE-1.3898446>.

74 *Amsterdam Sharing City*, SHARNEL, <http://www.sharenl.nl/amsterdam-sharing-city/> (last visited Aug. 27, 2017).

75 *Id.*

76 *Amsterdam has Created a Free Airbnb for City-Owned Buildings*, APOLITICAL (Dec. 1, 2016), <https://apolitical.co/amsterdam-airbnb-state-assets-municipal-offices/>.

77 *Id.*

78 *Amsterdam Sharing City Projects*, SHARNEL, <http://www.sharenl.nl/amsterdam-sharing-city-projects> (last visited Aug. 27, 2017).

economy [sic], and restore communities.”<sup>79</sup> Sharing City Seoul includes projects such as Sinrim Agit, turning an abandoned senior citizen center building into a community center,<sup>80</sup> and Nanum Car, a car-sharing service provided by private companies, in collaboration with the city, which offers credits or reduced rates to disabled persons and low-income households.<sup>81</sup> The city of Seoul currently sponsors 63 sharing services projects.<sup>82</sup>

Following this lead by vanguard cities such as Amsterdam and Seoul, decision-makers, nonprofit organizations, and private entrepreneurs in Israel have started more recently to explore how the private initiative of technology-based startup companies engaged in the peer-to-peer economy can be aligned with public-policy considerations of cities and community-building goals promoted by NGOs. A report published in September 2016 by the Israeli forum *WEconomize* surveys the current landscape of sharing economy platforms active in Israel, and considers how such platforms could be utilized to confront urban challenges and shape municipal policies.<sup>83</sup>

Direct public involvement in the sharing economy is still in its infancy. In 2011 Tel Aviv introduced the Tel-O-Fun bicycle rental service, by which city-owned bicycles are made available to residents and visitors for paid daily or weekly subscriptions, with bicycles being picked up from and returned to any of the docking stations scattered through the city.<sup>84</sup> In the summer of 2017, Tel Aviv City launched the AutoTel car-sharing service, which makes available 220 cars-on-demand for subscription holders, with the city designating about 440 public parking spaces in which shared cars can be picked up and dropped off.<sup>85</sup> It remains to be seen whether other cities in Israel will soon follow suit, and in particular, if public resources will be employed, to generate

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79 *Sharing City Seoul*, SHARE HUB, <http://sharehub.kr/homeEn/shareHomeEn.do> (last visited Apr. 23, 2018).

80 *Sinrim Agit*, SHARE HUB (Dec. 25, 2015), [http://sharehub.kr/sharestoryEn/news\\_view.do?storySeq=138](http://sharehub.kr/sharestoryEn/news_view.do?storySeq=138).

81 *Nanum Car*, SHARE HUB (Dec. 25, 2015), [http://sharehub.kr/sharestoryEn/news\\_view.do?storySeq=139](http://sharehub.kr/sharestoryEn/news_view.do?storySeq=139).

82 *Sharing City Seoul, Solve Urban Problems Through Sharing*, SHARE HUB <http://sharehub.kr/sharecityseoul/whatis.do> (last visited Apr. 23, 2018).

83 YAIR FRIEDMAN, ZAFRIR BLOCH-DAVID & EYAL BLOCH, *THE SHARING ECONOMY AND THE WINDOW OF OPPORTUNITIES IN ISRAEL* (Sep. 2016), <http://weconomize.com/images/pdf/WEconomize-israel-report-2016.pdf>.

84 *Tel-O-Fun Bicycle Rental Service*, TEL AVIV YAFO, <https://www.tel-aviv.gov.il/en/Live/Transportation/Pages/Bicycles.aspx> (last visited Aug. 27, 2017).

85 *AutoTel*, TEL AVIV YAFO, <https://www.autotel.co.il/benefits/> (last visited Jan. 14, 2018). See also, *Tel Aviv will be the Pioneer of Shared Cars in Israel*, WALLA NEWS, (Apr. 6, 2016), <http://cars.walla.co.il/item/2950571>.

a true sense of community through shared use of different types of goods, services, and spaces.

The remainder of this Part focuses on the increasing market share of shared office spaces in Israel, and whether this phenomenon entails genuine features of commons and communality. The companies operating shared office spaces throughout the world usually operate in the following manner: They take out a cut-rate long-term lease on one or more floors of an office building, chop up the space into smaller parcels, and rent out single desks to individuals or tailored semi-open spaces to companies of various sizes, while offering common amenities, such as secretarial services, conference rooms, digital networks, coffee lounges, and even social get-togethers.<sup>86</sup>

While not unique to the Israeli landscape, the case of shared office spaces in urban cores has a distinct Israeli angle. WeWork, currently the biggest provider of shared office spaces in the world — valued at close to 20 billion U.S. dollars and operating shared office spaces in dozens of cities across the world — was cofounded by Israeli entrepreneur Adam Neumann.<sup>87</sup> Neumann attributes to his experience of growing up in a kibbutz his embrace of the essential role of community, which he has said drove the establishment of WeWork: “[t]he fulfillment I felt being part of a community was so real, gave me such strength to deal with my own personal challenges, that it’s always ingrained in me that being together is better than being alone.”<sup>88</sup> WeWork started out in New York’s SoHo neighborhood under the name of Green Desk, testing the innovative model of setting up office spaces for those who “want to work cheek-by-jowl with each other”<sup>89</sup> in a city that exemplifies more than any other both urban life and market capitalism. Neumann reported that a senior member of New York’s high-tech industry once told him that they had “brought the energies of the kibbutz and Tel Aviv to the Big Apple.”<sup>90</sup>

While one may be skeptical about the promotion of community as a driving force in what is essentially a market-driven for-profit business model, there is no doubt that some renters do attach value to the creation of spontaneous professional and social networks as a result of the physical sharing of space.

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86 Alex Konrad, *Inside the Phenomenal Rise of WeWork*, FORBES, (Nov. 5, 2014), <https://www.forbes.com/sites/alexkonrad/2014/11/05/the-rise-of-wework/#7e4fe3306f8b>.

87 Meir Orbach, *WeWork Will Be Issued in the Stock Exchange. I Don’t Know When, But This Will Happen*, CALCALIST (Mar. 12, 2017), <https://www.calcalist.co.il/internet/articles/0,7340,L-3709375,00.html>.

88 Lizzie Widdicombe, *Happy Together: Why Give Up Dorm Life?*, THE NEW YORKER, (May 16, 2016), <http://www.newyorker.com/magazine/2016/05/16/the-rise-of-the-co-living-startup>.

89 Konrad, *supra* note 86.

90 Orbach, *supra* note 87.

The shared office spaces located within dense urban areas do manage to create a new balance between intimacy and familiarity, and to align cost-cutting motives with the positive effects of synergy between like-minded professionals who happen to share the same space. Israel, for one, is seeing a dramatic growth in the number of shared space office compounds. According to current estimates, their number is expected to double from 110 in 2017 to about 220 by the end of 2018.<sup>91</sup> While the physical layout of office floors carved up into smaller parcels and the level of physical proximity and interpersonal ties diverges between the different locations, at least some spaces, especially those located in the heart of Tel Aviv, do feature stronger components of “community” fostered by social events and spontaneous networks.<sup>92</sup>

WeWork and other companies are now seeking to take the concept of urban shared space to the next step, from “co-working” to “co-living.” In 2016, WeWork launched its first co-living space at 110 Wall Street in New York. The 20-floor complex, housing about 600 people, features fully-furnished units (either studio, one-bedroom or two-bedroom apartments, with a private kitchen and at least one private bathroom) alongside common spaces at each floor, cleaning and laundry services, and community events such as fitness classes and potluck dinners.<sup>93</sup> The project caters to “busy professionals who want a ready-made community.”<sup>94</sup> By the year 2019, WeLive expects to have 10.3 million square feet, housing 34,000 people.<sup>95</sup> As of 2017, WeLive’s New York studios were priced slightly above market, but a premium for amenities and the lack of a long-term lease are pushing up demand, while the question of how to quantify the value of the “community” component remains to be resolved. Other real estate companies, such as Common — which offers what it calls “flexible, community-based housing” — seem to cater to a slightly

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91 Estimate made by Mr. Tomer Berkowitz, Business Development Chief, S.G.S. Real Estate Ltd., address at an Alumni Event at IDC Herzliya: Future of the Co-Working Market (May 9, 2017) (data on file with author).

92 Rotem Spiegel, founder, Merkspace, address at an Alumni Event at IDC Herzliya: Future of the Co-Working Market (May 9, 2017). *See also* MERKSPACE (last visited Jan. 21, 2018) <http://www.merkspace.com/>.

93 Sarah Kessler, *From WeWork to WeLive: Startup Moves Members Into its First Residential Building*, FAST COMPANY (Jan. 11, 2016), [www.fastcompany.com/3055325/from-wework-to-welive-company-moves-members-into-its-first-residential-building](http://www.fastcompany.com/3055325/from-wework-to-welive-company-moves-members-into-its-first-residential-building).

94 Alison Griswold, *WeWork is Testing How Much People Will Pay to Live in Its Experimental Co-living Space on Wall Street*, QUARTZ (Dec. 21, 2016) <https://qz.com/866845/wework-is-testing-how-much-people-will-pay-to-live-in-its-experimental-co-living-space-on-wall-street/>.

95 Widdicombe, *supra* note 88.

different crowd.<sup>96</sup> Instead of signing a lease, residents at Common buildings in three Brooklyn locations sign up for “membership.” In 2016, they paid on average 1,800 U.S. dollars a month for a furnished bedroom, common areas, such as bathrooms, kitchens, and living areas, and services such as laundry, cleaning, and cable telecommunications. According to a 2016 report in the *New Yorker*, “[t]he company solves what it calls ‘the tragedy of the commons’ — waiting for the cable guy and hiring housecleaners.”<sup>97</sup> Common’s activities and get-togethers add to the experience of such “roommate communities.”<sup>98</sup>

In early 2018, WeWork and the City of Tel Aviv announced a collaboration aimed at bringing the WeLive concept to Tel Aviv. The designated project, to be located in an emerging business hub in the city, will involve the construction of a 17-story building and will require the municipality to introduce new flexibility into its zoning and building codes in order to accommodate this new housing concept.<sup>99</sup> If this project materializes, it could resonate well, at least to some extent, with the vision that Tel Aviv Mayor Huldai laid out for bringing the kibbutz into Tel Aviv.<sup>100</sup>

#### IV. COMMUNITY VILLAGES: CONSTRUCTION OF COMMUNITY OR PRETEXT FOR EXCLUSION

This Part moves on to studying a relatively recent form of suburban/rural settlement established on Israel Lands: the community village. It studies whether concepts of commons and community truly typify such villages, and how gaps between rhetoric and practice have featured so far in public and legal discourse.

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, the other 29 being “community villages” (*yishuvim kehilatiim*), formed mostly during the 1980s and 1990s, and currently accommodating a few hundred households each.<sup>101</sup> Community villages in Misgav were established on Israel Lands as a joint enterprise of governmental and other

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96 *Id.*

97 *Id.*

98 *Id.* (citing the vision of Common’s founder and CEO, Brad Hargreaves).

99 Asaf Shalev & Nimrod Busso, *Tel Aviv City Hall, WeWork Collaborate to Bring Co-Living to Town*, CALCALIST (Jan. 10, 2018), <https://www.calcalistech.com/ctech/articles/0,7340,L-3729289,00.html>.

100 *See supra* text accompanying notes 1-3.

101 For a list of the community villages, see *Misgav Map*, MISGAV REG’L COUNCIL, [www.misgav.org.il](http://www.misgav.org.il) (last visited June 25, 2017). *See also*, *Information on Misgav*

agencies — including ILA and the Jewish Agency, which sought to promote the Jewish presence in the formerly Arab-dominated region — and private associations of the founding residents.

While a few of these community villages were initially founded to promote a very specific goal that brought together their residents, such as the practice of transcendental meditation in the community village of *Hararit*,<sup>102</sup> most community villages have merely sought to promote the general idea of a small-scale suburban settlement, enjoying the tranquility of the countryside while being close to urban centers of employment. Unlike kibbutzim and moshavim, community villages do not engage in agriculture and have no economic cooperative features. At the same time, these villages present themselves as intended to promote an active community life. According to the Misgav regional council's website: "Life in Misgav takes place within the framework of a community village. Against the background of the wonderful landscape of Northern Israel, the regional council of Misgav nourishes a unique community. A community you can be part of."<sup>103</sup>

I suggest, however, that the case of community villages exposes a major gap between the rhetoric of communality and the true motives that drive the institutional setup of such villages. In other words, the romanticizing of the concept of community serves in large part as a pretext for exclusionary practices.

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 rather allocated to the Jewish Agency, which 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 on what they deemed to be discriminatory or otherwise arbitrary grounds.<sup>104</sup> The most high-profile case during that era, *Ka'adan v. Israel Land Administration*,<sup>105</sup> was decided in March 2000. *Ka'adan* dealt with the allocation by the ILA of

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*Villages*, YANIV REAL ESTATE & ENTREPRENEURSHIP, <http://yaniv-nadlan.co.il/index.php/information-to-the-communities-of-misgav> (last visited Aug. 27, 2017).

102 *Hararit*, MISGAV REG'L COUNCIL, <http://www.misgav.org.il/objDoc.asp?PID=227&OID=14456&DivID=1&docMode=setMap>. (last visited Jan. 21, 2018).

103 *Community Village*, MISGAV REG'L COUNCIL, <http://www.misgav.org.il/objDoc.asp?PID=455514&OID=455532> (last visited Jan. 21, 2018).

104 Neta Ziv & Chen Tirosh, *The Legal Battle Against Selection of Applicants to Community Villages: The Catch in a Broad Net*, in GATED COMMUNITIES 311 (Amnon Lehavi, ed., 2010).

105 H CJ 6698/95 *Ka'adan v. Israel Land Administration* 54(1) PD 258 (2000) (Isr.).

land in the Eron valley region to the Jewish Agency to set up the community village of Katzir (about 45 miles northeast of Tel Aviv). As mentioned above, the land was allocated by the ILA through the Jewish Agency to those persons admitted as members in the cooperative association. In practical terms, the Katzir cooperative association granted membership to Jews only, with the Jewish Agency on its part citing its historic objective, since its 1901 establishment as a private corporation in Britain, to settle Jews in the land of Israel.

The Israeli Supreme Court invalidated this allocation. The Court held that the separate treatment of population groups cannot be justified in the case at hand. The Court noted, first, that there had been no parallel “request for the establishment of an exclusively Arab communal settlement,”<sup>106</sup> wherefore the allocation would clearly have a 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 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.<sup>107</sup>

Following this landmark case, as well as a number of other petitions submitted by candidates arguing for other instances of discrimination, 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 communities.<sup>108</sup> Legal controversies, however, continued to erupt, leading the Israeli Parliament (Knesset) to act.

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106 *Id.* at 279-80.

107 *Id.* at 280.

108 Igal Charney & Michal Palgi, *Sorting Procedures in Enclosed Rural Communities: Admitting ‘People Like Us’ into Renewing Kibbutzim in Northern Israel*, 31 J. RURAL STUD. 47 (2013).



In 2011, the Knesset passed the bill, commonly known as the “Admission Committees Law.”<sup>109</sup> 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, are entitled to reject a candidate based on a limited number of factors. These criteria include, among other things, the applicant’s “incompatibility with social life in the community” or “incongruity with the social-cultural texture of the community village.” The determination of social “incompatibility” of a certain candidate should be based on an expert opinion.<sup>110</sup> A rejection can be based also on “distinctive characteristics of the community village or admission requirements, if these are set forth in the cooperative association’s bylaws.”<sup>111</sup> At the same time, the law prohibits discrimination against candidates based on “race, religion, gender, nationality, disability, family status, age, parenthood, sexual orientation, country of origin, or political affiliation.”<sup>112</sup> 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.<sup>113</sup>

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” with community life, and the process whereby 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 other types of candidates considered undesirable by the community village.<sup>114</sup>

A petition submitted to the Supreme Court — *Sabach v. The Knesset*, which was 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.<sup>115</sup>

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109 Bill Amending the Cooperative Associations Ordinance (No. 8), 2011, SH 683.

110 *Id.* at § 6C(c)(4).

111 *Id.* at § 6C(a).

112 *Id.* at § 6C(c).

113 *Id.* at § 6B(b)-(f).

114 Jack Houry, *Concerns Remain Over Defanged Admission Panel Law*, HAARETZ, May 2, 2011, <http://www.haaretz.com/concerns-remain-over-defanged-admission-panel-law-1.359244>.

115 HCJ. 2311/11 *Sabach v. The Knesset* (Sep. 17, 2014), Israel Supreme Court Database (in Hebrew) (Grunis, J.), <https://supreme.court.gov.il/Pages/fullsearch.aspx>.

The dissenting justices pointed, in contrast, to the vagueness of the “incompatibility” and “incongruence” criteria as practically facilitating “irrelevant differentiation” among candidates.<sup>116</sup> The minority opinion reviewed the history of admission procedures prior to the legislation of the 2011 statute, pointing to the lack of “thick” community features of the villages on the one hand, and the underlying motivation of admission committees to screen “undesirable” candidates, 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 admission committee process. This would have allowed villages to differentiate between transparent and genuine community features and constitutionally-invalid modes of exclusion.<sup>117</sup> Alternatively, per the dissenting justices, to the extent that the village features genuine forms of economic cooperation and interdependence, screening mechanisms such as interviews must be purely professional.<sup>118</sup>

I consider the minority opinion to have rightfully identified the gap between the rhetoric and practice of community villages in their quest to reinvigorate community life. Community villages are driven mostly by the desire to establish a suburban/rural lifestyle community, 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 — in this case, Israel Lands that are not being allocated through an open auction.

To the extent that the cooperative association 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 shoulder the initial burden of showing that the distinctive features of its bylaws

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116 *Id.* (Jubran, J., dissenting).

117 *Id.* at ¶ 80.

118 *Id.* at ¶ 81.

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 moshav<sup>119</sup> or a kibbutz (whether a renewing kibbutz or a cooperative one).

## V. ISRAEL AT 70, HARDIN AT 50: TOWARD A CURRENT THEORY OF THE COMMONS

### A. The (Un)Common Grounds for Reviving the Commons

The case studies surveyed above point to the various motives that drive the renewed interest in commons and community in Israeli discourse, and to the potential gaps that exist between the rhetoric of commons and communality and the actual setups of asset governance, member composition, and genuine ideological/normative commitment. The renewing kibbutz appeals largely to individuals and households who value the comforting sense of an economic “safety net,” the social and psychological benefits of extensive interpersonal networks, and the institutional arrangements that enable the renewing kibbutz to provide a subsidized rural/suburban lifestyle to its members. At the same time, such persons — many of them former members of cooperative kibbutzim — were previously deterred by the focus of the cooperative kibbutz on group discipline at the expense of any individual liberty, the economic inefficiency experienced mostly by productive members (due to problems of overuse and underinvestment by less productive members), and the intergenerational insecurity stemming from not being able to bequeath any substantial assets.

In contrast, the appeal of urban commons surveyed in Part III illustrates the ways in which increased urban density, rising real-estate prices, the changing nature of various professions, and technological innovation are reorienting demand for services, goods, and space across cities. The co-working model is first and foremost market- and profit-driven, allowing entrepreneurs to maximize rents per square foot, while offering customers the cost-cutting benefits of economizing on their effective workspace and ‘outsourcing’ the provision of certain services (e.g., secretarial services) and spaces (e.g., conference rooms) to on-demand provision by the entrepreneur. The opportunity for the creation of spontaneous interpersonal and professional networks and any entrepreneur-organized social activities are more of an add-on to the otherwise effective economic model. Co-living experiments are more challenging in this

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119 For the basic features of the moshav, see *supra* note 24.

respect. Urban co-living experiences are traditionally associated with poor or immigrant households or with the college experience in Western countries<sup>120</sup> and state-provided housing in socialist countries (such as communal apartments in the Soviet Union).<sup>121</sup> In contrast, the potential for market-driven choices of co-living models in Israel and elsewhere seems viable mostly in high-demand urban cores, in which young professionals benefit from the convenience of service provision (e.g., laundry and cleaning) and the occasional benefits of social get-togethers, as long as such points of common encounters do not undermine the preservation of individual space and comfort of urban living.

The community village represents an entirely different set of driving factors for reintroducing concepts of commons and communality in Israeli discourse. Lacking any substantial economic features of interdependence among villagers, and in most cases missing also a genuine set of ideological or normative shared values that truly sets villagers apart as a community, the use of the term “community” seems to be dominated by an outward-looking motive. Next to the perfectly legitimate desire for a pleasant suburban/rural experience of living in detached homes in a pastoral setting, the formalization of the “community” concept serves primarily as a basis for screening mechanisms. From a broader social perspective, such mechanisms are employed by current members of the community villages in an attempt to shield themselves from the self-perceived negative effects of Israeli society’s growing heterogeneity. The half-hearted attempts of administrative agencies and courts to distinguish legitimate attempts to form newly-made communities from legally-indefensible forms of exclusion have so far achieved modest results.

The next sections move on to exploring the broader theoretical and policy-based lessons that can be drawn from the renewed interest in commons and communities across urban and suburban/rural settings, and to showing how such concepts can benefit market-driven institutional and legal design.

## **B. Markets and the Rebalancing of Commons and Anticommons**

Hardin’s work, which is the subject of this symposium issue, highlights the inherent failures of an open-access regime (which he referred to as ‘commons’),<sup>122</sup> whereby self-interest incentives to overuse the resource and to underinvest in it will lead to its inevitable depletion.

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120 Widdicombe, *supra* note 88.

121 See Amnon Lehari, *Law, Collective Action, and Culture: Condominium Governance in Comparative Perspective*, 23 ASIA PACIFIC L. REV. 5, 31 (2015).

122 Hardin, *supra* note 4.

The risk of overuse and underinvestment can also plague what property lawyers refer to as a (limited) common-property regime, in which an identifiable group of persons collectively holds a formal property right to an asset, while excluding nonmembers.<sup>123</sup> Internal problems of slack, opportunism and other kinds of non-cooperative behavior could result in a deterioration of the resource or in internal rent-seeking by members who have practical leverage over others. The cooperative kibbutz suffered such problems when it was unable to take action against the decreasing productivity of some of its members, who nevertheless demanded their equal share in the outputs.

These problems became particularly pertinent when informal norms were no longer effective as a reinforcing mechanism for the formal rules of such close-knit communities.<sup>124</sup> To prevent such a “tragedy of the commons” (in the sense of common-property regimes), legal systems must constantly develop rules that combat opportunism and freeriding;<sup>125</sup> set up institutional mechanisms for monitoring and enforcing group norms;<sup>126</sup> and prevent rent-seeking by group members who hold superior power and access to information, such as in the context of controlling shareholders who engage in self-dealing and other modes of agency problems.<sup>127</sup>

Alongside the extensive literature on the perils of commons (and potential ways to mitigate such risks), the literature on anticommons has shown how the over-fragmentation of private property rights can also lead to inefficient and unjust results, from potential deadlocks among adjacent landowners about how to restructure rights to allow for effective redevelopment, to the undersupply of biomedical innovation due to exclusive patents over fragments of knowhow.<sup>128</sup>

The case study of new urban commons, in particular the success of shared office spaces — even from a purely business perspective, regardless of any social benefits of “community” — demonstrates how changing market conditions can lead to a reevaluation of the comparative advantages of private

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123 Carol Rose has termed this “limited common property.” See Carol M. Rose, *The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems*, 83 MINN. L. REV. 129, 139 (1998).

124 Ellickson, *supra* note 62, at 1347-48.

125 Hanoch Dagan & Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549 (2001).

126 ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 42-43 (1990).

127 Amnon Lehari, *Concepts of Power: Majority Control and Accountability in Private Legal Organizations*, 8 VA. BUS. L. J. 1 (2014).

128 MICHAEL HELLER, *THE GRIDLOCK ECONOMY: HOW TOO MUCH OWNERSHIP WRECKS MARKETS, STOPS INNOVATION, AND COSTS LIVES* (2008).

versus common property (or, otherwise presented, as a reconsideration of the comparative perils of commons versus anticommons problems). In many respects, shifting market demand and other exogenous changes can result in the rescaling of the scope of effect of pertinent market activities, and consequently in the realignment of different property regimes that seek to match such rescaling. Ellickson's demarcation of "small events," "medium events" and "big events" as key to assessing the potential institutional advantages of private- versus common-property regimes largely envisioned agricultural lands or single-home subdivisions.<sup>129</sup> Multi-apartment buildings in cities offer a different type of scaling, which has led to the legal development of the condominium that also meets the demand for commonly-owned spaces and amenities.<sup>130</sup> Shared office spaces in high-demand urban cores offer yet another change in scale.

As for the latter setting, increasing density, rising real-estate prices, and the rapid dissemination of technology and information are changing the efficient balancing point between exclusive and shared use of tangible and intangible assets in the workplace. As long as the shared asset is properly run, whether by a do-it-all entrepreneur who controls an entire office complex, by a city government or a public-private partnership that operates bikes or cars on-demand, or by self-governance of the co-users, the renewed interest in commons simply makes sense from a purely cost/benefit perspective. While the new urban commons are not prototypically common property in the sense that they are controlled and managed by a private or public owner, users are able to effectively share such rescaled resources. The new co-living models seek to take multiunit buildings one step further (some would say, one step back) by rescaling the scope and governance of daily activities such as doing laundry, cooking, having a beer, or watching TV.

### **C. Society and the Rebalancing of Anonymity and Familiarity**

The different settings discussed in the Israeli context highlight how the balance between individualism and collectivism, or between the taste for anonymity versus the benefits of familiarity and social networks, may change over time in both rural/suburban and urban areas. The reemergence of a "commons discourse," whether in the business hubs of big cities such as Tel Aviv or in the pastoral setting of the renewing kibbutz, illustrates both the breadth of the

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129 Ellickson, *supra* note 62, at 1327-35.

130 Henry Hansmann, *Condominium and Cooperative Housing: Transactional Efficiency, Tax Subsidies, and Tenure Choice*, 20 J. LEGAL STUD. 25, 28-29, 62-63 (1991).

spectrum and the fact that spontaneous networks and other types of occasional or midlevel interpersonal ties can prove to be a valuable asset also among somewhat heterogeneous crowds. Property platforms that combine common elements with private interests can work to facilitate such a middle stance between anonymity and familiarity, between “I” and “we.”

The cooperative kibbutz embraced an all-encompassing collectivism, which relied on long-term (coercive) interdependence that sought to preserve the homogeneity of its members. The renewing kibbutz offers a different template, in which the midlevel resource-sharing is complemented and reinforced by a genuine sense of togetherness that falls far short of an all-encompassing “general will.” This interim model caters to those who are interested in a genuine sense of community at the occasional price of undermining their individualism and autonomy. In contrast, community villages do not offer a reliable inward-looking organizational structure that seeks to facilitate familiarity, close-knit ties, and interdependence at the expense of individual liberty. The feature of “community” is operative mostly as an outward-looking mechanism, one which seeks to justify screening mechanisms that undermine the anonymity of applicants.

The social aspect of a commons- or community-discourse is obviously not a new phenomenon also in cities. Jane Jacobs’ seminal depiction of spontaneous networks among neighbors in city neighborhoods shows that some level of heterogeneity is not at odds with the ability to develop significant levels of social capital,<sup>131</sup> and that the preservation of urban anonymity in some contexts does not mean that persons cannot interact in apartment buildings, workplaces, and the streets.<sup>132</sup> The co-working experience, once reserved for blue- and white-collar workers in the same firm, is now extended to the new economy, while city professionals, working individually or in small startups, are now able to benefit from the synergic effects of physical and professional proximity to others, with common amenities and spaces being the site of such spontaneous networks. Once again, the new types of co-living urban models feature a more ambitious social experiment. It remains to be seen whether this will prove one step too much for those urbanites who still value a substantial degree of privacy and preservation of anonymity.

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131 JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

132 GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* (1999).

#### **D. Governance and the Rebalancing of Hierarchy and Egalitarianism**

As a matter of institutional and legal design, the various forms of commons and community featured in this article rely on very different templates. The renewing kibbutz is a self-managed cooperative association, in which members directly participate in the governance of the kibbutz as a collective entity, particularly in decision-making about commonly-owned assets, from the general budget, to the productive assets, and up to common spaces and amenities left intact in the renewing kibbutz. While the common-property assets and interests are brought under “vertical integration”<sup>133</sup> through the institution of the cooperative association, the renewing kibbutz is not run like a standard firm. Its commitment to egalitarianism, while not as all-encompassing as that of the cooperative kibbutz, finds expression not only in the inalienable one member/one vote principle, but moreover, in its inherent obligation to channel funds in support of its internal “safety net” and its built-in limits on excessive privatization of property interests. As such, the renewing kibbutz seeks to balance the goal of efficient self-management through the crafting of mechanisms that combat shirking or opportunism, with its commitment to egalitarian rules.

The focus of the community village lies in what seems to be its most cherished common property: its ability to screen new entrants through the power vested in its cooperative association by current statutory law and administrative regulation. This facet of common control is governed by its representative body: the admission committee. Whether this type of common property is legitimately exercised as a normative matter is a different question altogether.

The new urban commons, in particular shared office space complexes, exhibit an entirely different institutional and legal setup. WeWork and its counterparts own the lease for the entire complex and compartmentalize it into some chunks that are exclusively used by sub-lessees/tenants and other chunks that are jointly used by the sub-lessees through top-down coordination mechanisms operated by the company (e.g., time-based allocation of conference rooms). Therefore, while sub-lessees/tenants practically share the use of these spaces and amenities, they neither formally own a joint property interest in the shared asset, nor do they collectively control its use or time-based allocation independently of the lessor. In purely formal terms, these shared assets are not really common property. They are “commons” in the sense that they are practically shared by different users conjointly or across designated time slots. But these assets are governed and managed by vertical integration mechanisms,

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133 OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM* 56, 78 (1985).



operated by a single, profit-driven company. These assets are about providing services, not about egalitarian rules or collective decision-making.

## CONCLUSION

The renewed interest in various forms of commons and communality across the Israeli landscape cannot be dismissed as merely nostalgic or as lip-service for legitimizing covert forms of discrimination. While such a potential abuse cannot be wholly ruled out (as the case of community villages may demonstrate), this recent phenomenon attests to the constant demand for new types of property regimes in the face of changing economic, social, and technological realities. While Harold Demsetz (who published his “Toward a Theory of Property Rights”<sup>134</sup> a year before Hardin’s article) is largely credited with identifying the dynamic recrafting of property regimes in response to such exogenous changes, his sole focus on private property and enclosure as a panacea for society’s changing needs may have been somewhat overstated.

In fact, various forms of limited common property and/or shared use of resources may prove essential in response to increasingly rapid changes, even if they may be far from trying to reinstate old-style collectivist or communitarian ideologies. Accordingly, the divergence between different types of commons and manifestations of communality leads to what could be considered a happy conclusion. Just as there are many different geographical, economic, and social settings in which the concepts of commons or community may find renewed appeal, likewise the diversity of institutional and legal setups that may be utilized to implement market demand and other motives for sharing assets attests to the potential that the commons- and community-discourse may offer to contemporary society in Israel and beyond.

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134 Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347 (1967).

