RONIT LEVINE-SCHNUR

ON "MARKET OVERT" IN LAND IN JUDEA AND SAMARIA

This paper deals with a pressing legal and political issue. Since the second half of the 1970s, the Administrator (or Custodian) of Public Land in Judea and Samaria has granted numerous written authorizations to hold and develop public land in order to establish civilian settlements for Jews. In recent years, it has become clear that too many of these authorizations include private lands within their boundaries, without the Palestinian owners' prior consent. To date, there are approximately 3,000 buildings and other encroachments in Israeli settlements built on such private property. In order to avoid returning the land to its owners, the Attorney-General recently advanced a legal argument according to which leases between the Administrator and others that were contracted under the erroneous assumption that the land was public, but in good faith, would be subject to a "market overt" rule. This rule prioritizes the tenant over the original owner despite the absence of any legal right to the latter's property. This paper discusses the legality of that approach, arguing that it is based on a legal error. The Attorney-General's approach, the paper claims, misinterprets the relevant laws, including the substantive land law and the applicable military decrees, as well as the relevant impediments of international law. Furthermore, it serves to disguise the fact that the only outcome of the adopted policy is to transfer land rights from Palestinian owners to Jewish holders, an outcome that fails to meet either constitutional or normative requirements.

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CHAGAI VINIZKY

MARKET OVERT RULE IN TRANSACTIONS WITH THE COMMISSIONER OF STATE PROPERTY IN JUDEA AND SAMARIA

In the law that applies in Judea and Samaria, there is a market overt rule which protects those who concluded a transaction in good faith with the Commissioner of State Property purportedly relating to government property (state land), which turns out later not to be government property but rather property in which private individuals may have rights. This market overt rule is of the utmost importance. It could potentially apply to more than one thousand homes. The article looks at the objectives of this market overt rule, examines the critique of these objectives, and responds to that critique. The article discusses the components of the rule: the existence of a transaction, good faith, consideration, and government property. It explains the significance of the consequences of its application, including the granting of compensation for those who are harmed by its application. Next, the article examines three test cases in which the rule could be applied: exemption from inclusion in state lands (the Blue Line), exemption from seizure orders, and exemption from expropriation. Cases of all three types have been or are currently being litigated in the courts. Given the number of cases in which it might be applied, this market overt rule is expected to be a focus of legal discourse in the coming years. In light of this assumption, the article examines the possibility of creating an administrative path for testing the market overt rule as a substitute for the legal path. The article concludes with a comprehensive comparison with cases discussed by the European Court of Human Rights in relation to Northern Cyprus and Nagorno-Karabakh, where original rights holders clash with present settlers and/or the current government.

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EITHAN Y. KIDRON

UNDERSTANDING MORAL TURPITUDE AS ADMINISTRATIVE ENFORCEMENT – THE DOCTRINE OF LIMITED BAR

"Moral turpitude" is a vague term in Israeli law. The legislature used this term as an attribute that can be attached to a conviction by a court, as a result of which entry can be blocked to certain public positions and areas of practice, but did not define it. Over the years, the courts have tried to define the concept in a coherent manner but have also stated that the term is open-textured and changes with changing societal norms. Recently, criticism of the ambiguity of this concept has increased. Some of the most important questions regarding moral turpitude have no clear answer. Is it a punishment? Is it proper for the court to attach moral turpitude as part of its sentence? Since these questions have not been properly elucidated, moral turpitude is imposed arbitrarily, contrary to the principle of legality.

The article seeks to explain moral turpitude as a form of administrative enforcement. The proposal is based on the paradigm of administrative enforcement as corrective justice. Under this model, a person serving, or seeking to serve, in an institution of public importance may be barred because of the risk that his/her criminal behavior will recur. This justification is only partially consistent with the existing law. Accordingly, the article concludes that the law should be changed on several levels, including the grounds for exercising the bar, the types of evidence relevant to its exercise, the body that should be charged with seeking it and the court in which its imposition should be decided. The article also proposes that the term "moral turpitude" be abandoned and replaced by the term "doctrine of limited bar".

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OMRI BEN-ZVI

THE CONSTITUTIONAL COMMUNITY

Immigration issues tend to expose a conceptual tension underlying the theory of human rights. On one hand, it is commonly assumed that fundamental constitutional rights are universal and acknowledged for every person *qua* person. On the other hand, rights entail corresponding duties, and in the case of fundamental rights, the duty-bearer is usually assumed to be the state. Therefore, most constitutional rights theories assume that states are responsible for protecting these rights. However, the state (and particularly the nation-state) is an entity that does not aim to benefit all people as such, but rather, first and foremost, its own citizenry, i.e. the *demos*. This unresolved tension manifests itself in Israel in the way in which the courts deal with the question of whether foreigners enjoy the same scope of basic rights as citizens. The Supreme Court has provided two approaches to this question: first, that citizens and foreigners enjoy the same fundamental rights; and second, that the “core” of constitutional rights extends to both foreigners and citizens, but that “peripheral” rights are given only to citizens or legal residents.

The article argues that both these approaches are misguided and should be replaced with a more robust theory of the connection between citizenship and basic rights.

The main argument of the article is that the state should fully recognize the basic rights of persons who are likely to stay within its territorial borders for the foreseeable future (even if this is undesirable from the state's point of view). These people belong to the constitutional community. People who are not likely to stay for any length of time within the borders of the state should enjoy only those constitutional protections that are not morally based on the assumption of residing within the fixed boundaries of the host state. The article explores this idea, addressing both constitutional law and philosophical perspectives.

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ASAF ECKSTEIN

THE BOARD OF DIRECTORS: THEORY, EVIDENCE AND POLICY

The board of directors is charged with the mission of shaping and overseeing corporate policies and operations. Hence, the importance and relevance of research that explores the ways in which directors are elected is quite clear. Traditionally, policymakers and scholars have focused on directors' fiduciary duties and on the judicial standards of review applied to decisions made by directors in various circumstances with respect to multiple issues. Less attention has been given to the profile of the board of directors and the way this may affect the performance of the board and the corporation.
Recent years have seen a growing interest, in the U.S. and other countries, in the importance of the profile of the board and its influence on a corporation's governance and performance. More specifically, the focus has been on directors' independence, tenure, age and gender, and on the size of the board. In Israel, these characteristics have attracted little, if any, attention. This article aims to fill this void by exploring the profiles of 928 directors who served in Tel-Aviv 125 companies, as of December 31, 2017. The article analyzes the implications of the findings and puts forward a set of policy recommendations.

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