

Just compensation? Israeli expropriation laws' quest for remedial justice

Shai Stern

The Israeli expropriation laws establish quite a simple formula, according to which the state, or other competent authorities, may expropriate property rights for the realization of public needs in return for compensation given to the property owners. The compensation within the Israeli expropriation laws is predicated on a universal standard intended to express the market value of the expropriated property rights. Although there are exceptions to this compensation standard, these are limited in scope, some of them being granted only at the discretion of the authorities.

Although the Israeli expropriation laws' compensation policy aims to provide fair and just compensation, it fails to do so because the establishment of a universal compensation standard leads, in some cases, to under-compensation. Furthermore, the current compensation policy fails to realize the corrective conception of justice, which is declaredly the underlying conception of justice of the Israeli expropriation laws. This failure is due to the current compensation policy's disregard for the variance that prevails in the circumstances of expropriations, in the characteristics of the property owners, and in the features of the properties. In this sense, the current compensation policy favors simplicity and certainty over the attainment of justice.

This Article calls for a reform of the Israeli expropriation laws' compensation policy, with the aim of ensuring a high level of simplicity and certainty while enhancing the laws' adherence to justice. Under the proposed reform, the range of remedies available to owners subject to expropriation will be expanded to include financial premiums, in-kind remedies, and indirect remedies. Giving the authorities a wider range of remedies will make it possible to address differences in expropriations' consequences, in property owners, and in the features of properties. To avoid ad hoc adjudication and practical assessment difficulties, this Article proposes the categorization of the different prototypical failures that characterize current expropriation law. The proposed remedial scheme will therefore allow Israeli expropriation laws to strive for more just compensation, without compromising on certainty and simplicity.