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# Residual Residential Space as commons

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### Abstract

Research on common pool resources (CPR), which began with a focus on rural communities and their defining agricultural practices, shifted recently also to the urban context, looking at community gardens, city parks and other recreational facilities. This article extends the use of CPR theory to residential complexes. Courtyards, lawns, lobbies, cellars, stairwells and other parts that fall outside individual apartments are aggregated as a new sub-set of CPR, defined herewith as Residual Residential Space (RRS). Based on findings from three main types of RRS in Israel, the article evaluates some of the mechanisms designed to regulate such space. In line with earlier work on CPR, the article suggests that legal instruments, important as they are for general guidance, do not suffice. To be effective they need to echo popular framings of Residual Residential Space, to be congruent with local sensibilities regarding micro-history, and to concur with expectations stake-holders might have from their own community.

### Keywords

*Collective action; common pool resources; commons; Israel; residential space; social dilemmas*

### 1. Introduction

Research of Common Pool Resources (CPR) began with studies of rural communities and their defining systems of production such as hunting, grazing, foraging and a variety of agricultural practices. Researchers looked at, *inter alia*, collective management of fishing quotas ([Acheson 1989](#); [Berkes 1992](#); [Acheson and Brewer 2003](#)), regulation of hunting practices ([Beckerman and Valentine 1996](#)), cultivation of collective land ([Agrawal 2003](#)), the sharing of locally constructed and operated irrigation systems ([Singleton and Taylor 1992](#)), allocation of rights in grazing pastures ([Ensminger and Knight 1997](#); [Sneath 1998](#)), to name but a few. More recently research attention turned also to urban spaces, yielding studies that deal with governance and planning in open access urban commons ([Webster 2002, 2003, 2007](#); [Low 2003](#); [Lee and Webster 2006](#); [Colding 2011](#)); urban informality and its relationship with CPR ([Foster 2008](#)); collective management of urban gardens and other urban green spaces ([Andersson et al. 2007](#); [Barthel et al. 2010](#)) and more [1].

This new research trajectory, important as it is for urban studies and for commons research, has hitherto neglected an important and most prevalent dimension of urban life: shared space in residential complexes. An element experienced first-hand as CPR by the majority of city folk on a daily basis; such space deserves more analytical attention from students of the commons.

This exploratory article, which is based on data from three types of residential complexes in Israel – two in cities and one in Kibbutzim – is a first attempt to fill this gap. Analyzing the existing normative, legal and administrative tools designed to regulate RRS, it can hopefully propel a more nuanced scholarly debate on the principles and praxis of collective management of shared residential space.

Space in residential complexes where units are owned by individual proprietors (rather than by a single landlord who rents out units) can be conceptually divided in two: primary segments occupied by individual residential units; and secondary segments, occupied by semi-public [2] areas such as lawns and gardens, parking spaces, lobbies, courtyards, cellars, stairwells, elevators, outer walls and roofs. The latter category, often owned and managed collectively by the community of unit owners, is defined herewith as Residual Residential Space (RRS). Whatever the particular regime of ownership of individual units, and regardless of the implications this regime might have in terms of formal rights and duties in the space they share, RRS is clearly a case of Common Pool Resource (CPR) [3].

Preoccupation on the part of CPR researchers with rural communities and the production practices that shape their identities and socio-cultural characteristics shifted most analytical attention to norms and rules that restrain individuals from over-use of limited resources, and to the extent such norms safeguard ecological, economic and social sustainability. RRS, like urban recreational facilities, is somewhat different. Unlike fish stocks, water supply or grazing pastures, it is not prone to depletion through over-use. A common pool asset rather than an expandable resource, it represents communities of owners with different foci for potential harmony and discord.

The article sets off with a brief review of constructs designed by legal systems in the 20th century to regulate RRS. Focusing on the challenge that vertically stacked apartments pose to the universal principle of *superficies solo cedit* ('all that exists above the surface is one property'), it highlights the relationship between the legal mechanisms devised to regulate private ownership in multi-storey structures and the rather ambiguous status of the residual space created in the process.

Beginning with a brief history of the legal instruments devised to regulate RRS in urban apartment blocks in Israel, the article then goes on to compare these instruments across three types of RRS: standard urban apartment blocks where RRS is managed by an elected residents committees; hyper-modern luxury apartment towers where RRS is farmed out to be managed by commercial firms; and residential compounds in Kibbutzim, where a strong collectivist ideology has always had to come to terms with individuals' urge to enclose segments of the shared space and treat it as their own.

Three research questions arise from this comparison. One: do different types of RRS pose different sociological challenges? Two: assuming existing legal tools designed to regulate RRS are cogently designed and coherently enforced, can they successfully facilitate collective action? Three: if legal instruments prove wanting, what additional conceptual components and regulatory instruments might be of help?

A more nuanced understanding of RRS and of the regulatory tools required for its management can underline the relevance of CPR theory for the sociology of housing, for legal and policy aspects of planning and for the governance of urban residential complexes – three realms with daily relevance for many millions worldwide.

## 2. Conceptual and theoretical framework

Most real-estate proprietary arrangements are informed by the principle of *superficies solo cedit*. This maxim, first defined in Roman law, treats the vertical projection of a given plot as a single legal entity, with ownership in it applying to all that lies beneath the surface and above it, either natural or man-made [4].

This commonsensical rule, which covers most conceptual and practical issues associated with rights and privileges in rural agricultural plots, proved wanting with the emergence in the 19th century of two important and related developments. One was the introduction on a large scale of vertical co-residence in multi-storied buildings, with units stacked on top of one another. The other was the growing tendency for private ownership of urban residences, and the concomitant need for tools that would enable legal registration of individual units. The combination of vertical stacking and proper registration required modification of the erstwhile principle of *superficies solo cedit*, a task that proved anything but trivial.

Legal systems took some decades to respond, beginning to provide solutions in the 1920s [5]. Some of the legal tools devised had explicit indications of the challenge at hand in their names and titles. The Belgian law of 1924 was called *propriété des appartements* [6], the French and Spanish laws were poignantly termed *propriété per étage* and *propreidad horizontal*, respectively [7] (ibid), several U.S. states lumped these arrangements under the general title of "unit ownership," while in Australia the law deals with "strata title."

Typically, legal tools designed to facilitate coherent registration of apartments suspended above land and on top of one another produced a similar residue: spaces in and around the building which, while legally belonging to the plot, were neither parts of the private apartments nor belonged to the open access public domain beyond it. A new, unintended category of residential space – private space collectively owned by all individual unit owners, defined herewith as Residual Residential Space (RRS), emerged.

Legal systems tend to divide rights in RRS in a proportional manner: the total size of RRS is measured and divided by the number of units in the building. Some systems adjust the final share in RRS according to the relative size of units. Qualitatively, the rights tend to be allocated in a non-specific pattern: a unit owner who has, for instance, 10% of rights in RRS in a building, cannot claim a particular section of the garden, the stairwell, the basement or the roof as his or her own.

Like other countries in the early part of the 20th century, Palestine too experienced quick urbanization. The Ottoman reforms of the 19th century, designed to integrate the territory into the rapidly expanding market economy of Europe (Owen 1982), turned Palestinian coastal towns (Jaffa, Haifa and Acre) to busy outlets for international trade. Highland towns like Nablus, Jerusalem and Nazareth meanwhile evolved into hubs of market-oriented agricultural production and pilgrimage centers (Doumani 1995; Kimmerling and Migdal 2003). This, accompanied by innovations in construction technologies, ushered in new urban residential patterns.

This became doubly significant as Zionism started catapulting waves of Jewish settlers, from Europe and elsewhere, into the territory. New neighborhoods in mixed Towns such as Haifa and Jerusalem (Rabinowitz and Montereescu 2008) as well as newly established Jewish towns like Tel-Aviv, Petah-Tiqvah, Hadera, Rishon Letzion or Rehovot intensified demand for urban residence. And as the taste for individual ownership of urban apartments grew in the inter-bellum period, new urban residential projects catering for Jewish immigrants from Europe materialized [8].

This demand was initially met by small construction firms, typically providing flats in two or three storey buildings of eight or ten apartments. By the late 1920s, public bodies, particularly trade unions and

professional associations affiliated with the dominant Eretz Israel Worker's Party (*Mapai*), became active in the field of urban residence (Rabinowitz 2001). Adhering to the socialist maxim that communities are inherently responsible for supplying basic needs such as housing and employment to all members, these institutions began purchasing land, raising building credit, and supervising the constructions of new housing estates. The vision, which on the whole materialized in the decades that followed, was that the modest urban apartments would eventually become the property of those who got to live in them [9].

A new reality, in which the proto-state, and after independence in 1948 the state of Israel itself, play an active role in housing, became the order of the day (Efrat 2005). This pattern, complete with centralized bureaucratic control (through government owned housing enterprises) of real-estate market and the building credit that keeps it going, was dominant until the late 1970s, when large privately owned construction companies entered the market. The vibrant housing market, supplemented by a lavish building credit policy sanctioned by all governments, partly explains why more than three quarters of households in Israel currently hold property rights in their apartments [10], with the overwhelming majority of these apartments situated in urban residential buildings.

As elsewhere, this rapid expansion of urban residence required a solution for the *superficies solo cedit* conundrum. Up to the early 1950s, the legal repertoire available for registering rights in privately owned apartments consisted of two main options. One had potential unit owners form a shareholding company that would execute construction, become the legal owner of the building and lease individual apartments to each of the share holders. Owners thus had a dual status – stockholders in the company that owned the building, and leaseholders in their respective private apartments. A second option was to form a Rochdale like cooperative association that leased apartments to its members (Rabinowitz 2001). Every apartment owner was thus a voting member and a holder of leasing rights in a particular apartment.

But these solutions, which required unit owners to collectively register, maintain and manage a legal entity solely for the purpose of owning an apartment, soon proved too cumbersome and inefficient. By the early 1950s, the Israeli Parliament (the Knesset) looked for a more workable legal solution. The stage was set for the new Law of Cooperative Housing (Cooperative Houses Law, 7, Laws of the State of Israel, 4, 1952).

The main purpose of the Law of Cooperative Housing (1952), its combined version of 1961, the relevant sections of it incorporated into the more comprehensive Land Law (1969), and the various amendments that brought the latter to its current form, was to facilitate individual ownership of residential units in apartment houses. The 1952 law, like all its subsequent mergers and amendments, defined RRS rather confusingly as 'common property' (*rekhus meshutaf*). Concomitantly, the legal term attached to standard apartment buildings engendered by the law (the legal form of most urban residential structures in Israeli towns to date) is *Bayit Meshutaf* (literally 'shared house', hereafter 'Israeli condominium' or just 'condominium'). It is a label which reflects, somewhat idealistically perhaps, an expectation of harmonious relationships between owners/occupiers sharing the same building.

The basic definitions that guide the Law are clear and quite coherent. Article 52 of the Land Law (1969) defines 'apartment' as "a room or cell, or a complex of rooms or cells that are meant to serve as a complete and separate residential unit, for business or for any other purpose". This is immediately contrasted in the law with 'common property' (*rekhus meshutaf*), defined as "all parts of the communal house with the exception of the parts registered as apartments, including the ground, the roof, external walls, the foundations, stairwells, elevators, bomb shelters, and heating or water installations and the like, which are meant to serve all or most of the apartment owners, even if they are located within one particular apartment." These, essentially, are the elements subsumed in what I prefer to call RSS.

Article 55 defines property rights in such residual space. It states that "each apartment in a communal house has a non-specific part of the common property of the same communal house attached to it" [11]. A separate article (57a) then specifies that "the proportion of the common property attached to each apartment will correspond to the ratio of its floor's surface area in relation to the sum of the floor areas of all the apartments in the communal house, unless otherwise determined in the bylaws" [12]. Article 55c also stipulates that unit owners can modify the initial allocation of rights in RRS: "the apartment owners are permitted to state in the (building's) by-laws [...] that a specific part of the common property will be attached to a particular apartment, provided this does not apply to stairways, elevators, bomb-shelters, and other installations meant to serve all of the apartment owners [...]".

Clearly, the legislative tools devised in Israel to regulate shared urban residential complexes emerge as more coherent, practical and user friendly than the alternatives that had predated it (e.g. share-holders companies or cooperative associations). But have these instruments proven effective for the level of collective action required for these complexes and the communities that occupy them?

### 3. Methodology

This exploratory analysis of RRS in Israel uses a rather eclectic methodological approach. The data concerning old style residential buildings in Israeli towns were derived from essays written by 109 students who participated in a course on the commons which I taught at the department of sociology and anthropology at Tel-Aviv University between 2008 and 2012. One of the course requirements was a mid-term assignment where students had to describe an event or process they were familiar with which reflected how people thought and acted in response to situation related to a commons. The instructions did not specify the social field in which such an event or process might take place in, so students could

choose their cases freely.

Significantly, this essay-writing exercise was not designed as a research tool. It was only after reading a few dozen of these essays that I noticed how almost half of them dealt with what I now call RRS. To facilitate a closer look at what they represented, the essays that chose RRS as cases of commons were divided between (a) those depicting cooperation and consent, (b) those describing tension and disharmony and (c) those not easily assigned to either (a) or (b) above. The results provide an admittedly sketchy but nevertheless suggestive indication of the extent to which lay Israelis experience RRS as sites of discord or cooperation.

Data regarding RRS in luxury apartments, a fairly recent phenomenon in Israel, were gleaned primarily from websites of commercial companies that offer security, management and maintenance services to such complexes. Here again the sample is sporadic, providing a glimpse of the marketing logic some of these companies extend to their potential clients. A third set of data, the one concerned with RRS in kibbutzim, is based on interviews and observations summarized in a thesis that looked at incursions into public space in two adjacent Kibbutzim in Galilee ([Grossmark 2008](#)).

The three sets of data are of course descriptive and qualitative, thus requiring reflexive hermeneutical attention. The students, managers and kibbutzniks whose dispositions produced the data in the first place projected subjective, interpretative views on a field that is conceptually imprecise and analytically challenging. The result is data which, in line with much qualitative work in the social sciences, are suitable for an exploratory project designed to define conceptual idioms in a new field of research. Hopefully it could soon be augmented by research on RRS as CPR that will explore the field with additional quantitative and qualitative analysis.

#### 4. Results and analysis

One hundred and nine students who participated in a course on the commons I taught at the department of sociology and anthropology at Tel-Aviv University between 2008 and 2012 submitted mid-term assignments in which they were required to describe an event or process which reflected people's dispositions in relation to a commons issue. Instructions for the assignments were open ended, and students could choose their commons cases freely.

Out of 109 essays on submitted between 2008 and 2012, 46 (42.2%) focused on RRS – by far the single most significant field to be invoked [13]. Some essays dealt with daily routines in an apartment block (e.g. responsibility for maintenance and cleaning, rules of conduct in lifts and stairwells, one-off use of cellars and of roofs for parties, arrangements regarding parking, storage space, access to boilers and solar panels, antennae and satellite dishes. Others described attempts to gain consensus amongst apartment owners regarding renovations, the installation of an elevator. Some invoked negotiations whereby individual owners sought to purchase rights in particular segments of RRS, particularly on roofs, so that they can extend their apartments.

Instructions for preparing the assignments were open ended also regarding whether essays focused on cooperation or discord in relation to the commons. Content analysis of the 46 essays dedicated to RRS, however, discovered that thirty-five of them (76.1%) described situations characterized by tension and disagreement, often accompanied by sentiments of misunderstanding, misgiving, distrust and resentment. Only seven of the essays (15.2%) included instances of agreement and at least some level of cooperation and accord. An additional four essays (8.7%) could not be unambiguously assigned to either category.

A recurring theme in many of the essays describing RRS was that regardless of backgrounds or education level, most unit owners whose views were reflected were rather ignorant of the legal idioms defining RRS and oblivious to the implications of these idioms for normative conduct. Instead, their judgment of entitlement, privileges and obligations followed an intuitive, often idiosyncratic manner. Reading the essays as I did in light of the formal legal code often created an impression that events described in them took place in a parallel reality. The law emerged in many of the essays as one of many frames of references that could shape outcomes, not necessarily the predominant one. Rather than adhering to the relevant legal maxim, actors often drew on their own judgment of common-sensical legitimacy, treating it as the main repository for procedural guidance.

The dispositions gleaned from essays that dealt with RRS in conventional apartment blocks in Israel create an impression of RRS as a literal and metaphoric 'abandoned space'. The literal abandonment is embodied in neglected responsibility for maintenance and physical upkeep. This is most apparent in many blocks in inner city neighborhoods, where the majority of units are rented out to transient populations, or in poorer peripheral towns. Unlike the individual apartments, where ownership is clearly signified, explicitly encoded and seldom violated; and unlike universally accessible public spaces that fall under the care of the municipal authority, RRS in such surroundings tends to remain in limbo. Belonging to 'everyone' but in effect to no one, it easily slips out of conceptual sight and practical reach.

This reality is reflected also in Israeli popular culture, where traditional urban residential blocks, their management and governance are often described tragicomically. Looking after their shared spaces is depicted as a nuisance at best, a formidable impediment to peace, cooperation and decent residential life most other times. One famous cultural representation of this realm, recognized by many Israelis as a grotesque exaggeration of a set of characters recognizable to many is the 1986 cult comedy 'Battle for

the Chairmanship' [14]. The film's main character is the incumbent chairman of a residents' committee in an apartment block in a suburb of Tel-Aviv. An ultra-nationalist, militaristic, right-wing Mizrahi man, he watches over the building from his 3rd floor window, using a hand-held loudspeaker to yell at residents he thinks are misbehaving. His archrival is a leftist Ashkenazi dentist living elsewhere in the building, whose drilling at his patients' teeth infuriates the chairman. The two, oblivious to a tender love story developing between the chairman's nephew and the dentist's daughter, are engaged in a bitter campaign over the next term of the residents' committee headship. The campaign, an allegory for Israeli politics at large, gets out of hand and almost ends in violence, but the day is finally saved by a third party: an ultra-religious Jewish group that plots to build a cemetery across the street. The external enemy, whose plan could damage all apartment owners in the block, forces the warring parties to seek (and find) reconciliation. Love, civility and neighborly relations, however tentative and temporary, are restored.

Other Israeli cultural productions present more nuanced accounts of the inherent tensions associated with RRS in old style urban residential buildings. But many in fact invoke similar archetypes: fellow members of the community of owners/occupiers emerge as nose-y, unkind and obnoxiously obtrusive, as oblivious to other people's rights as they are to their own duties [15]. In a similar vein, volunteering time and energy for service on 'House Committees' (*Vaad Habayit* – the Israeli versions of residents or home-owners committee), is often ridiculed. A role associated with unpopular tasks such as hiring a cleaner for the stairwell or making sure the bomb shelter is intact, it is often trivialized. Fabled as a job requiring no real qualifications and having little or no consequences for anything that matters, it is often associated with elderly residents with little else in life to keep them occupied.

The other, more metaphorical sense in which RRS can be seen as abandoned space is in connection to particular micro-histories (cf. [Handelman 2005](#)). Tensions and misunderstandings in Israeli apartment blocks tend to be shaped by subjective views on rights and obligations. Consequently, they often get resolved by conjunctural factors such as age, social seniority, sequential order of residence or by the tendency to recognize taking care of a particular segment of RRS as toil that engenders entitlement. Not surprisingly, as apartments get sold and bought and as owners come and go, claims and counterclaims that cannot travel with departed or incoming neighbors become suspended, abandoned or altogether lost. One outcome, to borrow Zigmunt Bauman's term ([Bauman 2000](#)), is a type of "liquid space".

Abandonment, it is important to note, does not necessarily imply evacuation of all meaning. On the contrary, RRS is an arena whereby participants contend for agency, influence, honor, prestige and sometimes economic resources. This is why many Israelis, while dismissive of the option of membership in a House Committee, are seldom indifferent to the actual issues associated with its tasks. And this is why communication on the topic of the actual issues is often engaged, animated and emotive.

A different variant of RRS emerged in Israel in recent years in luxury apartment complexes. Explicitly seeking to emulate elite residential complexes in major global cities, particularly in the US, these complexes – typically high-rise towers in desirable metropolitan areas – are tailor-made for the rich. Built to the highest design fads and construction standards, such projects are advertised as prestige elite investment. Significantly, the symbolic and material value of individual apartments is described as linked to the quality of the non-private space. Luscious lawns and well appointed lobbies, elegant swimming pools and gyms, restaurants and shopping galleries, secured parking cellars and more are presented as integral components of the residential experience [16]. Unlike RRS in traditional condominiums, where courtyards, stairwells, roofs and cellars are merely tolerated prologues to individual apartment, RRS in luxury towers is an openly celebrated environment.

In many of these complexes, purchase contracts include clauses that bind apartment buyers to a long-term relationship with a management firm. Often owned by the company that developed the complex in the first place, such a firm is responsible for every aspect associated with RRS in and around the complex, with individual unit owners willingly accepting this type of delegation. Exempt from the operational responsibilities associated with managing and maintaining RRS, they are also liberated from the need to interact with peers for routine chores. The hefty monthly maintenance fee paid to the maintenance firm is presented as a fair price for this freedom.

This partial alienation of residual segments reflects a managerial attitude towards RRS. Unlike traditional apartment blocks in Israel, where RRS remains 'nobody's business' precisely because it is perceived as 'everybody's business', RRS in luxury apartment complexes has been transformed into somebody's business. The main result, luxuriously well-tended and sometimes lucrative RRS, is not the outcome of better care on the part of unit owners but a consequence of the material value it represents for them and for the professional managers assigned to it.

Finally, a look at RRS in Kibbutzim, cooperative communities where all assets, including land, means of production, residential areas and equipment, are held as common property by the community of members.

Members of Kibbutzim tend to live in detached one or two storey apartments, concentrated in a specific residential section. RRS in Kibbutzim thus mainly includes the lawns, gardens, paved walkways, bomb shelters and similar structures scattered amongst the houses. Significantly, these parts, which tend to be considerable in size and are often adequately tended, are destined to remain in the public domain even if property rights in individual residential units are eventually allocated to the members occupying them – something now being contemplated in many Kibbutzim.



Recent years have seen many instances of individual members taking over elements beyond their individual living space. Grossmark (2008) records instances that include planting new trees, hedgerows and flower beds, placing garden furniture, blocking paved walkways to bar access to a coveted corner of a lawn, thus making it de-facto private, and more. Some such moves are made in anticipation of the putative assignment of residential units and the plots adjoining them to individual members. Other incursions, such as the transformation of an abandoned bomb shelter into a private music room or video editing studio, or fencing off a remote section at the edge of the kibbutz to turn it into a private meditation spot, reflect a different logic.

Grossmark (ibid) found that individuals behind these projects, who embark on them without consulting with (or even notifying) others, when interviewed regarding their incursions, tend to use a standard vocabulary of justification. The spot is empty, untended and dilapidated, they would say. No one enjoys it in its current state. If it wasn't for the attention and the care which they extend, it would soon fall to total disrepair.

Another discovery of Grossmark's (2008) is that the micro history and economic standing of the particular Kibbutz plays an important part in the capacity of collectives to safeguard their RRS. Her comparison of an economically successful Kibbutz, where old institutional frameworks are intact, and a struggling Kibbutz forced by court into receivership as a measure to ensure repayment of its debts, yielded an interesting insight. In the Kibbutz under receivership, where operational decisions were taken and enforced by an executive appointed by the creditors, protection of RRS against transgressive individuals was more effective. The temporary manager, who is answerable to the kibbutz's creditors, saw his primary responsibility as guarding assets that might prove lucrative in future. Since RRS is part and parcel of residential quarters that could be saleable or rentable in future to new owners or renters, the manager was quick to reprimand and dissuade individuals from usurping segments and turn them into de-facto private property. This response was something the elected members in charge of running daily affairs in the more affluent and stable kibbutz were much more reluctant to produce. As a result, RRS in the more affluent Kibbutz was often less protected from incursions on the part of individual members.

## 5. Conclusion

Rural communities where collective action enhances more sustainable use of common pool resources are often associated with 'success on the commons' (following Ostrom 1990; McKean 1992). Research of such communities in fact provides important insights on the roles played by folk values, cultural norms (Ostrom 1994), administrative arrangements (Hackett 1992; Edwards and Steins 1998) and institutional devices (Berkes 1992; Ostrom et al. 1994) in safeguarding CPR. Suggestions of social, cultural and institutional characteristics that contribute have included, *inter alia*, a conservative disposition towards the commonly held resource (Beckerman and Valentine 1996); a coherent and self-aware community (Singleton and Taylor 1992); a sensible governance structure (Ostrom 1990, 2003; Kanbur 1991; Hilton 1992; Agrawal 2003) with easily comprehensible rules (Agrawal 2003; Acheson and Brewer 2003), acceptable avenues for action aimed to curb deviant activity (Ensminger and Knight 1997; Ostrom et al. 2002) and a sensible balance between the interests of affluent and poorer community members (McKean 1992; Ostrom 1999). Students that looked at CPR in urban situations (Webster 2002, 2003, 2007; Lee and Webster 2006; Andersson et al. 2007; Foster 2008; Barthel et al. 2010; Colding 2011) have indicated similar trajectories.

Residual Residential Space (RRS) is a variety of CPR that is endemic to most urban landscapes globally. A necessary component in every type of vertically stacked residential structure where units are assigned to individual owners (rather than to one landlord), it is a hybrid category, located somewhere on the continuum between the fully private and the wholly public. Regulating rights and duties in it requires the creation of a separate legal category, which legal systems in many countries have been doing since the 1920s.

Unlike consumable resources such as game, fish, pasture or water, and akin to non-residential urban CPR such as communal gardens and recreation facilities, RRS is not associated with major economic value or core identity elements. This notwithstanding, the analysis of different types of RRS in Israel clearly indicates that forging a coherent system for collective action in this context is anything but a mere technicality. Carrying significant micro-historical weight, such systems often invoke sensibilities on the part of actors that speak to cherished community values that are aspired and subscribed to by many individual members.

The data presented here concerning regulatory practices in RRS suggest that a coherent legal framework, while necessary, is by no means sufficient. Out of the various types of RRS in Israel that were examined, the only type that emerges as robust and stable, adequately defined and well maintained, is RRS in luxury towers. The willingness of stake holders to pay for the management of their RRS stems primarily from the economic and symbolic capital assigned to it. Advertised as part and parcel of a pathway to the prestigious life style of the well to do, RRS in luxury apartment complexes has been emancipated from the ambiguous nature that characterizes other types of RRS in Israel. Framed primarily as a capital investment, RRS in luxury apartment buildings, now consistently delegated to professional care, embodies a departure from the Israeli value system *ante*, whereby communities of neighbors sharing residual space had been implicitly assigned with social value [17].

Treatment of RRS in Kibbutzim speaks to a slightly different micro-history of values and of practical

arrangements. The Kibbutz that underwent financial crisis had an external manager imposed on it by creditors. Seen as a transitional measure, external regulators of indebted Kibbutzim are expected to move on once the debt was settled and to allow the original autonomous governance system to be reinstated. Until that time all assets belonging to the Kibbutz, RRS in residential segments no exception, were treated as potential contributors to economic recovery. The manager was thus seen as an impartial representative of the community's long-term interests. The fact his role – and his allegiance – were defined by banks and debtors' lawyers helped members, including those directly reprimanded by him for their transgression into RRS, to accept his authority.

The manager, for his part, was unencumbered by local micro-histories or other social constraints. His treatment of transgression into RRS was significantly more decisive and effective than the avoidance strategy displayed by elected members of the autonomous executive committee in the financially stable Kibbutz. As in the case of the Kenyan Orama, who at times preferred the government to perform the messy task of punishing transgressive kinsmen violating tribal grazing norms (Ensminger and Knight 1997), members of Kibbutzim too found it easier to have an external authority regulate their CPR on their behalf.

The system in place in standard Israeli apartment blocks, something the majority of Israelis experience on a daily basis, seems to be the least coherent in terms of the relationship between legal theory and daily praxis. This was apparent in the frequent discontents and frictions regarding norms and practices in RRS. The cultural significance of RRS in standard apartment blocks and its meaning for identity tend to be negligible and sometimes negative, and its economic value is often indeterminate. Not surprisingly, the vast majority of stake-holders have but a patchy notion of the procedures, rights and obligations the law stipulates for RRS. With relatively few cases of RRS actually litigated, many Israelis experience the legal and administrative tools available to them for rectifying transgression into RRS as inaccessible and user unfriendly [18].

This exploratory review of various types of RRS in Israel suggests that legal instruments, important as they may be as general guidelines, are not enough in and of themselves to put in a place a satisfactorily effective and responsive regulative system, one which might guide every community of owners towards smooth and cooperative management of every type of RRS. Laws and by-laws, rather, must be supplemented by norms and institutions that are in line with expectations members have of their communities and are in fit with local micro-histories and with conceptual and ideological framings that shape local attitudes to shared space.

RRS as a variety of CPR is a budding field, relevant to the daily experience of hundreds of millions worldwide. Much future research is needed if better conceptual, legal and practical solutions are to be provided for a wide spectrum of issues associated with this a type of shared resources that many stake-holders feel was imposed on rather than chosen by them. Future research should thus cover systematic descriptive and comparative work by lawyers on provisions legislative and judiciary bodies in various countries make to help regulate ownership, management and use of RRS; local micro-historical analysis of RRS; experience-near research of the efficacy, accessibility and responsiveness of administrative provisions and their reception by individuals and communities on the ground; the extent to which such legal frameworks comply with expectations stake-holders might have from their communities generally and from their residential space in particular; the various types of institutional realities that emerge in connection to RRS and more.

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## Notes

- 1 See also [Van Laerhoven and Ostrom \(2007\)](#).
- 2 Semi public in the sense that such spaces are legally defined as private, but are collectively owned by the community of unit owners. Unlike public areas, where access is open to all, these semi-private parts of residential complexes are in the hands of unit owners, who can theoretically restrict the general public from access to it.
- 3 The possibility of seeing RRS as asset rather than resource, and the option of defining Common Pool Asset (CPA) as a subset of CPR is beyond my scope here and will possibly be dealt with in another context.
- 4 An important rule derived from the principle of *superficies solo cedi* in many agricultural societies is that land owners also own the springs, wells, minerals and vegetation found under and above the ground.
- 5 European states acted in the 1920s and 1930s, legislative councils in the US made their move in the 1930s, while Australia began dealing with it in 1948 ([Weissman 1997](#)). In Great Britain, where the standard urban housing structure was the terraced house, the need for legislation that formalizes vertical division was not as pressing and came somewhat later.
- 6 'The law of ownership of apartments'.
- 7 The name suggests a conscious attempt on the part of the legislator to enable units on a (particular) floor or horizontal plane to be individually owned.
- 8 Despite the claim of being primarily concerned with agricultural settlement and "redeeming" rural peripheral land, Zionism was a predominantly urban colonizing movement ([Cohen 1970](#)). And since most Jewish immigrants from Europe were relatively young (thus small) nuclear families, demand for suitable urban units soon transform the urban housing market. Palestinians at the same time (and to a large extent to date), preferred privately owned residential complexes, ideally owned by a patriarchal couple who grant individual dwelling units to the nuclear families of their married sons, on renting or buying an apartment in a block shared by non-kin. This makes the legal and practical challenge associated with sharing a residential complex with non-kin somewhat peripheral to Palestinian society.
- 9 The obligation to provide every Israeli with a dwelling unit was achieved through a variety of legal, planning, economic and administrative devices, including systems put into place by the state during in the 1950s that made property of Palestinian refugees available for Jewish urban residents. The Palestinian citizens of Israel ("Israeli Arabs") were of course excluded from this process, and remained to a great extent its victims.
- 10 In Israel 76% of households own some sort of housing asset, one of the highest proportions in the world. In Ireland and in Spain the rate of ownership is as high as 80%. In Australia and Great Britain the rate is 70%. In Switzerland and Germany only 30% of households own an apartment, most of the urban population rents, usually on long-term leases.
- 11 "Attached" here carries a legal-administrative meaning, not a concrete one. "Non-specified" means that if the owner of a certain apartment owns a certain proportion of the common property in the building (say 10%) this part is not located in a specific sector of the building or the courtyard. Rather, it constitutes a non-specified tenth of the entire common property.
- 12 The law specifies that apartment buildings registered as communal houses must abide by a set of bylaws agreed by the general assembly of apartment owners. It also provides a standard formulation of such bylaws which become bylaws by default and remains legally effective unless the general assembly follows a specific procedure and changes it.
- 13 Other issues raised in essays included use of public spaces at community level, including community gardens, small local residential parks, sports and recreation grounds etc (approx. 10% of essays); local authorities charging entrance fee to public beaches and municipal parks (approx. 7% of essays); Intellectual property issues (5% of essays); community level struggles against development (5% of essays); use of urban roads and public parking spaces (4% of essays); behavior norms in public transport vehicles (4% of essays); and a variety of other, more isolated issues.
- 14 *Battle for the Chairmanship*. Israel, 1986. 85 min. Director: Avi Cohen. Script: Assi Dayan. The Hebrew name of the film, '*Hakrav al Havvad*' literally means 'Battle for the Committee', referring to the institution known in Hebrew as *vaad habayit* ('the house committee', the Israeli version of the residents' association). Immediately recognizable to most Israelis, the committee obviously needed no additional explanation in the film's title. For an account of the film see <http://www.imdb.com/title/tt0150811/> a more detailed description, in Hebrew, can be found in <http://tinyurl.com/6t3l6h6>.

- 15 In the novel 'Returning old Loves' (Kenaz 2001) Yehoshua Kenaz describes a house in a rundown inner city part of Tel-Aviv, where one of the apartment owners unlawfully takes over part of the stairwell to the basement and builds a room he wants to rent out. A subsequent collection of short stories, 'Apartment with An Entrance from the Yard' (Kenaz 2008), includes a story about compassionless relationships between aging owners/occupiers in an old crumbling apartment block in Tel-Aviv.
- 16 Websites of such apartment complexes and the companies that construct, operate, secure and maintain them contain numerous examples of such framing of RRS in luxury apartment complexes and the role it plays in the life style package sold to potential owners of units. For construction companies see <http://www.telavivinf.com/info/infoitem.asp?item=232&lang=eng>.  
<http://www.rozio-estate.co.il/nadlan/center-tel-aviv/sharona-towers/>; For maintenance companies see <http://www.bar1.co.il/why.html>; <http://www.mmm-a.co.il/platinum.html>; <http://www.gym4u.co.il/services1.html>; <http://www.gindi.com/telaviv.htm>; <http://www.conciergemm.com/>
- 17 Weisman (1997) indicates that the parliamentary protocols depicting the deliberations in the Israeli Knesset that preceded the passing of the Law of Communal Housing (1952) suggest that legislators saw the solution, complete with the new legal category of 'communal property', as congruent with a sense of benign collectivism and neighbourly relations which they saw as intrinsically positive. A similar attitude was reflected in a number of court rulings and legislative modifications over the years which strengthened the ability of the community to impose its majority sanctioned will regarding the fate of RRS on recalcitrant individuals (ibid).
- 18 Filing a court case against misuse of RRS, while feasible, is costly and quite time consuming. It can also cause irreparable damage to neighborly relations. A more accessible option is the Israeli Association for Residential Culture (*Haaguda Letarbut Hadiyur*) – a not for profit organization established by the ministry of housing, which operates under the supervision of the Government Companies Registrar. The association, whose existence is widely known in Israel, offers information, consultation and grants for improving RRS in residential buildings. It has no statutory role in disputes, but information it provides, either as general documents on its websites or in reference to specific cases brought before it, is viewed as reliably objective and often helps to clarify misapprehensions. Access to the Association's services hinges on the entire apartment building joining as a member (the cost in 2011 was 30 NIS – approximately 8 US dollars – per unit per year), something that already requires *a-priori* cooperation between unit owners.