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From Taxation to Dispossession: Land Governance and the Colonization of Palestine**

من الكوشان إلى الكارافان: نحو إطار تاريخي لدراسة حوكمة الأرض واستعمار فلسطين

Abstract: This study examines the history of land governance in Palestine from the late Ottoman era to the Israeli occupation that began in 1948, focusing on the structural transformations that shaped land tenure and control. It explores rent, ownership, and spatial planning as interrelated spheres for understanding the conflict's dynamics. The study addresses how Ottoman law was utilized to regulate land ownership and how the British Mandate introduced significant reinterpretations of ownership that served broader colonial objectives. It also analyses the tools employed by the Israeli occupation to dispossess Palestinians, including legal mechanisms, expropriation, and spatial planning, while highlighting the historical, social, and political dimensions of the fight for land.

Keywords: Land Governance; Israeli Occupation; Ottoman Law; British Mandate; Spatial Planning.

الملخص: تتناول هذه الدراسة تاريخ حوكمة الأرض في فلسطين منذ أواخر العهد العثماني وحتى الاحتلال الإسرائيلي عام 1948، مع التركيز على التغيرات البنيوية في إدارة الحيازة والسيطرة على الأرض. وتقدم الريع والملكية والتخطيط الحيزي بوصفها مساحات مترابطة لفهم الصراع. وتوضح الدراسة كيفية استخدام القانون العثماني لتقنين حيازة الأرض، وما تلاه من تحوّلات خلال فترة الانتداب البريطاني، حيث أُعيد تشكيل مفاهيم الملكية وارتباطها بالسيطرة الاستعمارية. وتناقش أدوات الاحتلال الإسرائيلي لنزع ملكية الفلسطينيين عبر القوانين والمصادرة والتخطيط الحيزي، مسلطًا الضوء على الأبعاد التاريخية والاجتماعية والسياسية للصراع على الأرض.

كلمات مفتاحية: حوكمة الأرض؛ الاحتلال الإسرائيلي؛ القانون العثماني؛ الانتداب البريطاني؛ التخطيط الحيزي.

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Introduction

This study examines the conflict over land in Palestine over time, shedding light on the structural aspects of tenure governance and land control, and identifying points of historical continuity and discontinuity since the late Ottoman era. One cause of ambiguity regarding this matter is ahistorical references to the Ottoman Land Code and *tapu* (title deed),[1] allowing for manipulation by Israel's colonial occupation regime to dispossess Palestinians of lands passed down through generations, laying siege to their presence and future on the land through, for example, the use of the concept of "*mawat*" (dead/unused) land in Israeli military orders to seize territory historically connected to Palestinian villages and reclassify it as "state land".

However, the ability to produce an Ottoman *tapu* deed (or *kushan tapu*, as it is referred to in Palestine and Jordan) remains by far the strongest legal defence of Palestinian land ownership in Israeli courts, as it provides documentation of an irrefutable historical fact. Such a deed is considered the gold standard in proving ownership and may help settle particular cases in favour of Palestinians.[2] Oddly, then, Ottoman law and *tapu* deeds have been treated as both the malady and the cure.

The judicial perspective on the Ottoman *tapu* deed eschews the social, economic, and political contexts that govern land relations; that is, the policies, systems, customs, and socio-economic power relations that determine the nature of ownership and the modes of land control and use. I argue here that, to better grasp these matters, researchers must develop a theoretical framework for studying state power over land as a process that differentiates between various spheres of governance. This process involves institutionalizing the distinctions between three main problems:

1. The problem of land rent, where land is viewed as the central means of production within a political economy that, theoretically, draws no distinction between state finance and the economy of agricultural society.

2. The problem of land ownership, which concerns the transformation of land into a commodity that can be monopolized and repurposed within a "free economy" that is, theoretically and legally, independent of the problem of state rent.

3. The problem of urbanization, which revolves around the regulation of land use and the production of its economic, social, and political value by integrating it into a comprehensive system of spatial relations.

Methodologically, this study traces various historical phases, highlighting the central issues associated with each, and broadening the possibilities of historical research into the evolution of colonization in Palestine. In doing so, I have relied on a review and reframing of the literature, while offering specific examples drawn from my own research. The basic challenge posed by this method is bringing together issues that appear different – and are generally examined within distinct disciplines and epistemological approaches – into a single framework. These issues include: the Ottoman agricultural economy, which concerns historians; the legal history of ownership, addressed by legal scholars; and issues of urban planning, which engage geographers and planning experts. However challenging, connecting these fields theoretically and historically may enable a more comprehensive analytical perspective on the conflict, one that captures its continuity and shifts over time without reducing it to any single dimension.

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[1] *Tapu* was a permanent lease of state-owned arable land to a peasant family in the Ottoman Empire. The term was also used to refer to the title deed that certified *tapu* rights.

[2] See, for example, "'*al-Kūshān al-ʿUthmānī' ... Qārib Najāt al-Arḍ al-Filasṭīniyya min Amwāj al-Iḥtilāl*," *Reports*, Aljazeera Documentary, 2/12/2023, accessed on 5/11/2024, at: https://acr.ps/1L9zQTZ

Miri Land from the Perspective of the State Agricultural Economy in Late Ottoman Times

In the Ottoman context, *miri* land belonged to the State Treasury, or *Bayt al-Māl* (that is, it was ultimately the property of the Muslim nation, or Umma). Thus, the rights of disposal (*ḥuqūq al-taṣaruf*, known in the literature also as usufruct rights) granted to individuals were a mandate from the state. This included most of the agricultural and non-agricultural lands in the state with the exception of residential areas, gardens, agricultural lands under the category of *mulk* (property in the Shariʿa sense) and religious endowments (*awqāf*) of various kinds. According to many historians, the Ottoman understanding of *miri* land rights[3] was based on the principle of multiple rights (or a bundle of rights in the object), that is, the notion that more than one party could hold more than one right to the same land. Such interrelated rights related to rent and produce, and no single right nullified the others. However, during the latter half of the 19th century and after the fall of the Ottoman Empire, complex processes gave rise to the logic of exclusive land ownership by private individuals.[4]

There is an ongoing debate over the features and implications of this shift, centred on how the Land Code of 1858 should be interpreted. Did the Ottoman code recognize private land ownership, or did it not? In a recent article, Atilla Aytekin argues for the importance of reading the Ottoman Land Code as a response by the State to prevailing social conditions, as the customary practices associated with private ownership were undergoing transformation both under Ottoman rule and elsewhere.[5]

According to Aytekin's interpretative strategy, the phrases in the 1858 Code that refer to state ownership of *miri* land, and which are typically seen as undermining the concept of private ownership (such as the law's reference to state officials as those who implement the Code and grant individuals rights of disposal over land) are merely conventional legal formulations, and not the core substance of the law. According to this view, the important aspects of the Code include, for example, its recognition of women's ownership rights, which parallels developments in 19th-century capitalist societies, as well as its acknowledgement of large privately-owned farms as an existing reality, which indicates that private ownership of agricultural land (regardless of technical legal formulations) had become commonplace prior to the Code's promulgation.

It is certainly possible to argue in favour of and contra this theoretical approach, which takes material developments to precede law as the causal relationship between concrete reality and law is not linear – with one always preceding the other – but rather dialectical. The difficulty with Aytekin's method, however, is that his research focuses exclusively on unpacking the text, without extending the analysis to the historical circumstances that are vital to interpreting the text.

In fact, Aytekin's method encounters a genuine difficulty when tested against historical circumstances. When *miri* land is transferred from the state (its ultimate legal owner) to the person holding rights of disposal, the land would revert to the state upon the interruption of actual tenure or payment of the tithes. This indicates that possession of the land was, in essence, conditional upon fulfilling a commitment to the state rather than constituting pure ownership. Is this merely a formal matter with no substantive bearing on the nature of people's rights to land?

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[3] For general definitions of these groups, see Articles 1 to 4 of the Land Code of 1858 in: *Aṣl wa-Tarjamat Qānūn wa-Niẓāmnāmat al-Arādī*, Nicola Naqqash (trans.) (Beirut: Matbaʿat al-Abaa al-Yasuʿiyyin, 1873).

[4] I am referring here to perspectives proposed by Roger Owen and Huri Islamoğlu. See: Roger Owen (ed.), *New Perspectives on Property and Land in the Middle East* (Cambridge, MA: Center for Middle Eastern Studies of Harvard University, 2000), p. xi; Huri Islamoğlu, "The Land Code as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858," in: Owen (ed.), pp. 3-60.

[5] E. Attila Aytekin, "Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire," *Middle Eastern Studies*, vol. 45, no. 6 (2009), pp. 935-951.

In subsequent amendments to the 1858 Code, Ottoman law broadened the right of disposal to include transfer of inheritance, *al-farāgh bil-wafā* (that is, transfer of *tapu* rights for the purpose of repaying a debt),[6] insurance contracts, and the like. This suggests that rights of disposal fall somewhere on a continuum between tenure and ownership. Nevertheless, this does not render the term *mahlul* (referring to lands that had not been cultivated for over three years or whose owner had died without leaving heirs) a merely formal designation that gives the appearance of state ownership while tacitly implying private ownership.

The famous cases of the use of the *mahlul* category make this point abundantly clear. While the discussion here focuses on Palestine, its significance extends to the entire Ottoman Empire. After the Egyptian army's withdrawal from Palestine in the early 1840s, it took the Ottoman State more than two decades to restore direct control over its internal frontiers. In Marj Ibn Amer (also known as the Valley of Megiddo) and the inland Aghwar Plains, the state initially relied on the Bedouin strongman Aqil Agha (d. 1866/1867) as a local proxy until the mid-1860s. Thereafter, specialized *tapu* committees were dispatched to survey the lands and declare vast tracts "*mahlul*" on the grounds that they had not been cultivated for over ten years (measured most probably by the tax records). These lands had long served as a source of livelihood for numerous villagers, Bedouins, and Turkmen tribes, as well as for residents of various villages. Overnight, however, they were stripped of their legal possession of the land, which was then made available to a new class of absentee landlords who paid registration fees and taxes to the State and, in return, obtained *tapu* deeds that secured their control over land rent. These absentee owners were later joined by Sultan Abdul Hamid II (1842-1918) himself, who became the largest landowner of the era.

In these cases, possession did not entail the expulsion of those residing on the land but, rather, transformed them into farmer-tenants under a sharecropping system, an arrangement that dispossessed them, at best, of two-tenths of their crops; one-tenth was pocketed by the landowner as rent (rental tithe), and another went to the state as the *miri* tax (*miri* tithe). Despite their growing misery, these farmers remained the backbone of the traditional production system, preserving both their social units and their presence on the land. Given the nature of agricultural production, the state's reliance on tithes, and the prevailing agrarian production practices, *tapu* registration did not in practice yet confer on owners an exclusive right to the land, nor did it entail the forcible expulsion of the farmers. In effect, the *tapu* rendered the new landowners as partners in the local production process. Their rights to the land were limited to a fixed share of its rent, not full control over it. Such control began to develop with the expansion of Zionist settlement and the development of its ideology of complete replacement. This type of control over the land did not aim to exploit its pliant and submissive labourers familiar with the land and traditional agriculture, but rather to replace them with members of an ethnic group intended to supplant the country's population and transform its national character. The *tapu* deed began to emerge (and be contested) as a legal right to land emptied of its farmers and former inhabitants.

The process of legal emptying of the land as practiced by the Ottoman state, that is, the act of declaring lands to be *mahlul*, was not the only means by which absentee landowners were empowered. These landowners also benefitted from the development of a cash economy that was tightening its control over the countryside, deepening peasant farmers' indebtedness and their resultant need to take out cash loans to complete the seasonal agricultural cycles essential to their survival. Along with several likeminded merchants, the Beiruti Sursuq (Sursock) family, well known for profiting from Ottoman policies related to *mahlul* lands, extended loans to peasant farmers. This apparently led to further land being relinquished and registered under the *tapu* system in the names of merchants and financiers.

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[6] *al-Farāgh* is a term used in the Ottoman Land Code, which refers to the act of transferring *tapu* rights of disposal from one person to another. This process is not called a sale, because the latter assumes ownership, a condition that is not met in the strict legal sense in the right to dispose of *miri* land. It is also distinguishable from *al-intiqāl,* which refers to the inheritance of *tapu* rights by relatives as defined in the Code (which does not follow the Shari'a inheritance law). *al-Farāgh bil-Wafā* refers to the act of transferring *tapu* rights in lieu of debt repayment.

Once again, this did not mean that the peasants would be expelled. It, however, did subject them to an additional land rent, a rental tithe on top of the *miri* tithe. As a result, they continued farming the land according to the *khums* (one-fifth) system. We have little information about these dynamics from a local, micro perspective. Be that as it may, Ottoman law guaranteed, in some cases, the right of the farmer who had relinquished his land to pay a debt owed to a merchant or financier to reclaim his land upon repayment of the debt.[7]

Indeed, there are documented cases in which peasant-farmers resisted the notion that land sales were final, and expected their rights to the land, including their right to reclaim it, to continue in force. This understanding persisted into the 1920s, even after the end of Ottoman rule and the introduction of numerous legal changes by the British Mandate authorities to the existing system of land ownership in Palestine.[8] From the perspective of the farmers, *tapu* registration secured a lender's right to full repayment, but did not entail an exclusive right to the land itself.

It is clear from the foregoing that the Ottoman *tapu* deed was increasingly being interpreted as evidence of an individual's exclusive right of disposal, even if the movement in this direction was not entirely consistent. On the one hand, the law did not identify the rights enjoyed by permanent farmers on the land but simply registered the name of "the owner of the land", indicating that a set of rights had been dropped in favour of a single right. On the other hand, this was probably due to the law's conflation of the obligation to pay rent with the right of disposal (where the latter was derived from the former, implying that the state remained the ultimate owner of the land). Additionally, Ottoman law provided an imprecise record of actual holdings, as it was not implemented through systematic and detailed surveys that captured rights as they were known and exercised by people.

This inconsistency in the understanding of the *tapu* is illustrated by developments surrounding Sultan Abdul-Hamid's own lands. Not long after his accession to the throne in 1876, he outlined a distinctive policy aimed at expanding his imperial estates (*humayun* or *saniyya* lands) through instructions issued by his royal court to the Imperial Tapu Authority. These instructions included registering his name as the owner of the land and noting that it would be transferred to his offspring after him, i.e., treating it as his private property.[9] However, he deliberately conflated property with sovereignty. In 1880, he established a special body called the Imperial Lands Authority under his privy purse to exempt his financial affairs from oversight by the Ministry of Finance and the Council of Ministers – oversight that had begun under his father in 1838 in the beginning of the Tanzimat Era.[10] In other words, Abdul Hamid created a special, sovereign space for himself, using the language of private ownership to reinforce his exceptional status as a monarch who stood apart from his subjects.

Sultan Abdul Hamid's vast land holdings encompassed millions of dunams across the breadth of the Empire, from the vilayets of Basra, Baghdad, and Mosul with their oil fields, to Ankara, Edirne, Bursa, and

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[7] See Articles 114 to 117 of the Land Code of 1858 in: *Aṣl wa-Tarjamat Qānūn wa-Niẓāmnāmat al-Arādī*.

[8] Munir Fakher Eldin, "Confronting a Colonial Rule of Property: The al-Sakhina Case in Mandate Palestine," *Arab Studies Journal*, vol. xvii, no. 1 (2019), pp. 12-33.

[9] An Armenian Ottoman official, politician, and legal expert, Dr Halagian, was summoned by the British government to testify in a case concerning the Sultan's heirs. Dr Halagian's testimony is preserved in a 17-page document in which he states that the orders Abdul Hamid issued to the Imperial Tapu Authority (*al-Daftar al-Khāqānī*) to transfer his property to his offspring nullified a longstanding Ottoman custom whereby the Sultan's property would be transferred to his successor. not to his offspring (p. 4 of the document). This document, titled, "Heirs of the Sultan Abdul Hamid Pleadings", is housed in a file preserved in the Israeli State Archives under reference number 5100/8-ב. The file can be retrieved at https://search.archives.gov.il using the code "000uore". However, since the beginning of the genocidal war on Gaza in October 2023, the Israeli State Archive website has been blocked to users in Arab countries.

[10] References to this body began to appear in the Ottomans' official annal (*Salname*) in all of these vilayets in the late 1880s, confirming its governmental nature. In other words, the notion of sultanate property and *tapu* registration in the name of Abdul Hamid II did not denote purely private ownership. Rather, it was based on a conceptual conflation between the person of the Sultan and his position as a ruler endowed with broad powers of governance. See, for example, the Salname of the Syria Vilayet 1891/92.

Konya in present-day Turkey; to Thessalonica in Greece; the Ioannina Elayet (in present-day southern Albania and central and northern Greece); Aleppo, Hama, and the entire vilayet of Syria; Jerusalem, Beirut, Cyprus, and Tripoli (Lebanon), as well as the capital city Astana (present-day Istanbul) and its surrounding sanjaks (administrative districts). His holdings also included concessions in numerous mines, ports, and maritime transportation lines throughout various vilayets.[11] When Abdul Hamid was deposed in 1909, the process of dispossessing him of the lands and concessions he had arrogated to himself (through reverting its revenues to the states, hence it became known as *medevera*[12] in Ottoman Turkish, or *mudawwara, in Arabic*) was one of the most complex challenges of the constitutional era, remaining the subject of judicial and political disputes for many years thereafter.[13]

In some respects, Sultan Abdul Hamid acted like any other absentee landlord, imposing on the farmers who worked the land a tax of one-fifth of their produce. However, he would transfer the tithe (*miri*) tax, levied in addition to the rent tithe (*ʿushr al-ijāra*) to his private exchequer. He then used these revenues to integrate the Bedouin, sectarian minorities, and refugees that had fled regions upturned by war with Russia under the banner of the sultanate. As part of this enterprise, he built primary schools and mosques, renovated tombs and shrines, and constructed roads and towns that became symbols of Ottoman sovereignty and modernity in locations such as Beisan, Bir al-Sabaʿ, and ʿAuja al-Hafir along the Egyptian borders.

The funds Sultan Abdul Hamid was collecting from lands registered in his own name were essentially deducted from state revenues. However, they were not necessarily going into his pocket or used for private economic activity by himself or his offspring. Rather, they were deployed to reinforce the classical conception of the sultan as both ruler and symbol of sovereignty. At the same time, he was successfully bypassing the central bureaucracy and its growing restrictions on his personal authority.

In a subsequent phase, after Abdul Hamid's deposing the Unionist governments considered the *medevera* estates as *mahlul* and, in a return to the policy of the 1870s, offered them for sale en masse. However, this move encountered vehement political and popular opposition, particularly in the case of Palestine, where the Zionist threat was becoming increasingly apparent. In fact, the opposition succeeded in blocking the implementation of this policy, thereby maintaining the status quo that had emerged under Abdul Hamid in most of the *medevera* lands, except for the Huleh concession granted by Beirut's Salam clan, which was made in an attempt to undermine the reformists' opposition to the Unionists' coup against the government of Kamil Pasha immediately prior to World War I.[14]

Persevering in their struggle after the onset of the British occupation, particularly in the Ghor Bisan region, the people of Palestine succeeded in thwarting a scheme aimed at enabling the Zionist movement to seize control over a large part of the *medevera* lands. Their efforts compelled the first High Commissioner of Palestine, Herbert Samuel, known for his support for Zionism, to return the land to its rightful indigenous

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[11] Naz Yücel, "On Ottoman, British, and Belgian Monarchs' Ownership of Private Property in the Late Nineteenth Century: A Comparison," *Comparative Studies of South Asia, Africa and the Middle East*, vol. 43, no. 2 (1 August 2023), p. 212.

[12] The word *medevera* was a technical bureaucratic term used by the Ottomans to shift properties and revenues from the Sultan's privy purse to the Ministry of Finance. It originated in two imperial edicts issued by Sultan Abdulhamid II and Murad V, 1908 and 1909.

[13] See: Naz Yücel, "Sustaining the Empire: Transformation of Property Regime in the Late Ottoman Empire, 1876–1913," PhD Dissertation, George Washington University, 2023, Part III. In one of the peculiar turns in the history of these territories, Sultan Abdul Hamid's heirs claimed the right to them as a legal inheritance and sued for this right in courts in Palestine and subsequent mandate states, with support from US and British financial corporations established for this purpose. In 1937, they won their case concerning the lands of the village of al-Muharraqa near Gaza City in the Jaffa Court, and hoped that this would set a precedent for future wins in other territories both in Palestine and beyond. However, a series of appeals led to the reversal of the decision, thus affirming the legitimacy of *medevere* measures as a legal and "sovereign act". Palestinian newspapers covered this case with considerable concern and trepidation. See, for example, *al-Difaʿ*, 5/3/1927; *Falastin*, 15/4/1930; *Miraat al-Sharq*, 14/3/1934; *Falastin*, 22/3/1937, 19/5/1937, and 4/1/1946. For a useful study of the subject, see: Ruth Kark & Seth J. Frantzman, "'One of the Most Spectacular Lawsuits Ever Launched': Abdülhamid's Heirs, His Lands and the Land Case in Palestine, 1908-1950," *New Perspectives on Turkey*, no. 42 (2010), pp. 127-157.

[14] Many newspaper articles appeared in Palestine on this topic in the context of the Salam family's decision to relinquish this concession and sell it to a Zionist settlement corporation in 1934. See, for example, Fata al-ʿArab (pseudonym), "Shaykh al-Ḥūla Yatanabba' bi-l-Bayʿ Qabl ʿIshrīn Sana: Ḥawl Imtiyāz al-Ḥūla Ayḍan," *Jaridat al-Difaa*, 27/12/1934.

owners. In doing so, the territories' status as ordinary *miri* lands was reaffirmed by disregarding the dates on which they had been registered as personal property under *tapu* title deeds.

In this context, local residents contested the notion that the *tapu* deeds held by the government (in the name of Sultan Abdul Hamid II) constituted conclusive evidence of ownership. Their legal representative was a gentleman named Wadiʿ al-Bustani (1888-1954), a lawyer, poet, and scion of the Lebanese Bustani family, known for its role in the modern Arab Renaissance. Al-Bustani had settled in Palestine during the British Mandate and was involved in several prominent land cases. In contrast to prevailing understandings of the development of capitalist relations and the transformation of the *tapu* system into a mechanism for transferring ownership in the late Ottoman period, al-Bustani submitted an official memorandum to Samuel, saying:

> The fact is that, since before the creation of the *tapu* system [in 1859], proof of legal ownership has consisted of recognized documents such as a certificate of disposal without contest, a writ of sale, a division of inheritance, a waqf decree, a deed of gift, and the like. The *tapu* deed is merely a sign that has been forcibly made into evidence for the existence of such proofs. However, [apart from such proofs], it cannot be considered legal or just. We base this assertion on the fact that the question of ownership to this day, is governed by the articles of the Mecelle,[15] *which determine ownership not solely on the basis of a tapu* deed, but rather according to the aforementioned documents. In other words, the *tapu* deed possesses no greater legality, validity, legitimacy, or fairness than that which underlies it.

When the report was published by the well-known *al-Karmal* newspaper, its owner, Najib Nassar (1865-1948) commented on it, saying:

> The addition [to the tithe taxes] that Abdul Hamid used to collect from farmers in al-Ghor was in return for protection from creditors and government employees. This same approach was adopted by many merchants and influential individuals, who provided small loans to residents of villages owned [by others], sparring them from paying the *werko* tax [a tax added to the tithes]. In return, however, they charged them 23%, a practice that persisted until war was declared.[16]

Eventually, the people of these lands secured a settlement in their favour. Yet with it, they entered a new world in which *tapu* deeds played a critical role in creating a land market that turned against them.

Mandate "Land Settlement": The State Exits the Market, Only to Re-Enter

British Mandate policies on the land were based on the close relationship between state finance and ownership of agricultural land in the Ottoman system, and the nature and function of the *tapu* register. These policies followed two complementary tracks: the first involved replacing the Ottoman *tapu* system with a new registration system and entirely different procedural mechanisms; and the second entailed reforming the tithe system.

1. Replacement of the Ottoman Tapu System with a New Registration System and Entirely Different Procedural Mechanisms

This approach began in 1921 with the *medevera* lands in Beisan, Samakh, and Ghor al-Fariʿah. It was followed in 1928 by passage of the Land (Settlement of Title) Ordinance to register and identify land ownership through cadastral surveys. The ordinance aimed to address land disputes and ensure clearer

[15] The Journal of Judicial Verdicts (*Majallat al-Aḥkām al-ʿAdliyya*) was a civil law code that had been formulated by a committee of scholars in 1869 CE based on the Hanafi school of Islamic jurisprudence.

[16] Wadiʿ al-Bustani, "Taqrīr al-Difāʿ ʿAn ʾḤuqūq Ahālī al-Ghūr fī Arāḍīhim (3)," *al-Karmal*, 14/9/1921.

land titles throughout Mandatory Palestine. Under this new law, state employees were authorized to enter villages, parcel the land, and assign village residents rights to fixed plots. Given the complexity of the mechanisms involved and their impact on local communities, this process proceeded slowly. It took two decades to settle titles to approximately 20% of Palestine, during which the focus remained on the plains, particularly in areas purchased by Zionist settlements.[17]

In the remaining regions, by contrast, the Mandate relied solely on new tax records as the basis for recognizing tenure. Subsequently, the Jordanian authorities continued to operate on nearly the same bases as the British Mandate. However, the process made no significant changes in the West Bank or in Jerusalem prior to the occupation. Following the 1967 occupation, the occupation authorities reversed the criteria for land claim settlements inside the Green Line, and halted the process entirely in the occupied territories.

With regard to the foundations of the British Mandate land title settlement, at least two developments marked turning points. The first was the decision to introduce new interpretations of the land classifications established in the Ottoman Land Code and the way in which they were recorded. The second was a change in the understanding of the concept of private ownership.

In the first development, the terms "private land" and "state land" were introduced for the first time, with state land registered in the name of the High Commissioner "on behalf of the Government". These terms are absent from the Ottoman system and its Land Code. On the surface, this effort appeared to be a mere translation of Ottoman terminology. In fact, however, it involved a reinterpretation of the underlying concepts. According to this new interpretation, *mawat* lands (uncultivated and unappropriated "dead" land), *matruka* lands (lands left without cultivation or ostensible owner), *mahlul* lands (lands that reverted to the state if left uncultivated for three years or vacated and available for re-grant), and *medevera* lands were all henceforth classified as "state lands" or "government lands", while all *miri* lands with provable tenure were redefined as "private land".

This new categorization eliminated the flexible boundaries that had previously characterized these terms in the Ottoman system. Under the Ottoman Land Code, for example, if someone reclaimed *mawat* land without prior authorization and was not caught or prevented from doing so within three years, he would acquire the right to register the land in their name through a *tapu* deed. In other words, their tenure would become official.[18] This meant that reclaiming *mawat* land was permissible unless the government had a specific reason to prevent this, and provided it acted within three years of the reclamation's initiation.

Under the British Mandate, by contrast, the law required farmers and village mayors to report such cases within three months of their occurrence, and failure to do so was deemed a violation of the law.[19] The same stricture applied to *mahlul* lands. The principle set forth in the Ottoman Land Code of 1858 held that access to land would be granted to new individuals to guarantee the collection of *miri* revenues. There was no concept of registering the land as the property of the state through a *tapu* deed, as land was already considered, by law, to belong to the state. However, broad categories of heirs, partners, associates, and the village poor were granted priority access to the land of a deceased person who had no children or living parents. Only in the absence of individuals from any of these categories would the state authorize others to obtain the land, and this would occur through public auction. Similarly, Ottoman law granted anyone who laid claim to *mahlul* lands a grace period of ten years within which to register the land via a *tapu* title deed, without the state raising any objection.[20]

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[17] Dove Gavish, The Survey of Palestine under the British Mandate, 1920–1948 (London: Routledge Curzon and Palestine Exploration Fund, 2005), p. 180.

[18] See Article 125 of the Ottoman Land Code of 1858 in *Aṣl wa-Tarjamat Qānūn wa-Niẓāmnāmat al-Arādī*.

[19] See the 1921 Law on Mawat Lands in: Duaybis al-Murr, *Aḥkām al-Arāḍī al-Muttabaʿa fī al-Bilād al-ʿArabiyya al-Munfaṣila ʿan al-Sulṭa al-ʿUthmāniyya* (Jerusalem: Matbaʿat Bayt al-Quds, 1923), p. 150.

[20] See the articles in Chapter Four, particularly Articles 59, 60, and 77 of the Ottoman Land Code of 1858 in *Aṣl wa-Tarjamat Qānūn wa-Niẓāmnāmat al-Arādī*.

These aspects of the Ottoman concept of *mahlul* were dropped with the advent of the British Mandate. Instead, strict emphasis was placed on the state's exclusive right to *mahlul* land, which would remain in its possession and be registered in its name.[21] In a clear break with Ottoman law and practice, rights of disposal to such land were granted only through temporary lease contracts and long-term concessions.

Regarding the second development, the British found that although Ottoman law did not recognize the system of communal tenancy (*mashāʿ, or mushāʿ*), it had nevertheless been widely tolerated.[22] Hence, it was deemed necessary to promote the notion of the "ideal" landowner: a self-reliant, competitive farmer who is independent vis-à-vis community. This so-called "ideal" was promoted under the pretext that dependence on communal structures impeded "development", and led to the neglect of land. According to the dominant rhetoric of the British Mandate authorities, the application of periodical redistribution of the land discouraged individual investment in land improvement, as any monetary or labour contribution would ultimately benefit others.[23] It was this arrangement, they claimed, that contributed to the deterioration of agricultural productivity and the depletion of the land's resources.[24]

Accordingly, the new land registration system, the mandatory subdivision of land, and the establishment of individual land ownership were presented as necessary measures for "development". These changes were promoted not only as aligning with a supposed natural human inclination toward private ownership, but also as meeting the need to associate exclusive ownership with a clear, robust *tapu* title deed, purportedly to create agricultural loan mechanisms that would liberate farmers from the greed of lenders who exploited their misery and financial woes by charging exorbitant interest rates. Of course, local mechanisms of land subdivision existed and adapted to various economic conditions. But when such subdivision was imposed through relentless state intervention, local practices were forcibly directed onto a different path.

This aspect of Mandate policy has been discussed by several scholars. However, it warrants further research from the perspective of the law and the land settlement process, as well as its impact on the ground.[25]

2. Changing the Tithe System

This change was closely related to the developments discussed above. The British Mandate began by fixing the tithe rates recorded over the previous four years, through new legislation known as the Tithe Amendment Act of 1927. The purpose of this legislation was to stabilize the state's income by shielding it from fluctuations in tithe revenue, and to eliminate taxation practices that were no longer regarded as civilized, such as annual appraisals conduced in haphazard and arbitrary manner, or requiring farmers to leave their harvested grains on the threshing floors until the arrival of a government tax official, causing crops to spoil or lose their market value.

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[21] See the 1921 Law on Mahlul Lands in: al-Murr, pp. 148-149.

[22] Justice Tute, "The Law of State Lands in Palestine," *Journal of Comparative Legislation and International Law*, vol. 9, no. 4 (1927), pp. 173, 177-178.

[23] The *mushāʿ* system was applied on a broad scale in Ottoman Palestine and in the Mashreq generally. The system was based on a periodic redistribution of land based on an annual or bi-annual lottery among the families of a village, or among the members of a single family or clan. It helped to preserve social cohesion within the village and/or clan, particularly given the pressures being exerted by the emerging cash economy and the new registration systems being introduced by successive governments.

[24] The Mandate Government archive available to researchers contains numerous files relating to "land reclamation", which scholars have treated as authoritative sources of information. However, we have yet to see critical analytical studies that discuss the structure of the discourse on this topic and reveal its numerous presuppositions and arguments. For more examples of the discussions of joint tenure lands, tithes, and the logic behind the change sought by the Mandate, see the Israeli State Archive file titled, "Land Settlement (General Points) and Sir Ernest Dowson's Reports", (No. 5285/3-מ), at https://search.archives.gov.il, using the code 000btvm, and the file titled, "E. Dowson Visits – Memoranda and Proposals for Settlement, Registration, and Taxation of Land", at https://search.archives.gov.il, using the code 000bhkd.

[25] Scott Atran, "Hamula Organisation and Masha'a Tenure in Palestine," *Man*, vol. 21, no. 2 (June 1986), pp. 271-295; Nadan Amos, *The Palestinian Peasant Economy Under the Mandate: A Story of Colonial Bungling* (Cambridge Mass: Distributed for the Center for Middle Eastern Studies of Harvard University by Harvard University Press, 2006).

However, finding that these measures did not go far enough, the Mandate authorities sought to change the theoretical foundation of their taxation policy. Thus, in the early 1930s, the entire tithe system was abolished and replaced with a "land tax" system, which was based on surveying existing agricultural plots and recording taxpayers' names (though without addressing questions of ownership, which remained the responsibility of the other track: the land settlement process and precise survey). The surveyed plots were then classified into different tax categories that reflected the soil quality, the irrigation methods, and such objective characteristics of the land.

British colonial officials, such as district governors and directors of relevant government departments in the High Commissioner's office, engaged in lengthy debates over the feasibility of this change. Some, particularly district governors who dealt directly with the people, held that the benefit to be gained from the new system would be too negligible to justify the tremendous effort required for its implementation. If the authorities' aim was simply to collect a fixed tax for the state, then the amended tithe system already served the purpose. Moreover, they argued that the tithes were more practical and convenient for the government, as they were familiar to and acceptable by the people.

The prevailing view, however, assailed the very philosophy behind the tithes. For proponents of this view, the importance of the land tax lay not merely in securing funds for the government, but in changing the culture of governance and reshaping people's expectations of the state. Under the tithe system, the state and the farmer functioned as partners in production. Consequently, the state shared with the farmer in both profits and losses. But within the emerging logic of free economic competition, this meant that the state would be rewarding lazy farmers and punishing the industrious ones. Every farmer understood that more effort would result in having to share the fruits with a "sleeping partner", namely, the state, which reduced the motivation to develop and advance.

The discussion went further, in fact, by linking land's productive value to the objective characteristics of the land, rather than to the given social patterns of production. This meant that a farmer unable to extract this value from the land should be compelled economically to relinquish it to someone who could.[26] Structurally, these philosophical interpretations – centred on the virtues of ownership and the competitive economy – pointed to the need to separate state finance from the agricultural economy and to liberate the latter from the restrictions of the former. From this perspective, guaranteeing a fixed income for the state was only one side of the coin; the other was the promotion of economic competition and the facilitation of land monopolization.

Through its handling of these issues, the British Mandate advanced a new discourse around the right to land, one that privileged the Zionist settlers as an ethnic group. If the value of land was inherent to the land itself rather than a result of the conventional pattern of production sustained by the state itself, then the land's "true" owner was not necessarily the person currently possessing it, but rather the one capable of developing it. It is not a far leap from this assertion to the notion that a particular ethnic group, embodied by Western Zionist settlers with advanced material, scientific, and organizational resources (what Patrick Wolfe terms "settlement capital"), could be viewed as the "true" owners of the land. In practical terms, this economic rationale – rather than solely a theological claim – was reflected in the privileges extended to Zionist settlers in areas such as al-Huleh, Bassat Qisariya, as well as in projects like the Dead Sea Concession and the Rutenberg Electricity Concession.[27]

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[26] "Land Settlement (General Points) and Sir Ernest Dowson's Reports;" "E Dowson Visits – Memoranda and Proposals for Settlement, Registration, and Taxation of Land."

[27] For a classic study of British economic policy, see: Barbara Smith, *The Roots of Separatism in Palestine: British Economic Policy, 1920-1929* (Syracuse: Syracuse University Press, 1993); and for a critical reading of the British "development rhetoric" in Palestine, see: Zeina Ghandour, *A Discourse on Domination in Mandate Palestine: Imperialism, Property, and Insurgency* (London: Routledge, 2010).

The impact of these transformations was not unidirectional. The process of settling land rights under the British Mandate was based on a broad principle: the registration of rights based on local conventions. Plots of land were distributed among village residents without reference to an Ottoman *tapu* title deed unless one already existed. In other words, the process affirmed Palestinian ownership practices to a significant extent. Jointly owned property and *matruka* lands in Arab villages – often reclassified as state lands – were plundered. Excess lands were gradually encroached upon and Palestinian villagers were compressed into smaller areas. Public lands were instead allocated for Zionist settlement (which Palestinians resisted in numerous ways). Yet it is important not overlook the significance of this broad principle. Nor should there be an overgeneralization by claiming that the ownership system favoured the settlers.[28] Similarly, with respect to the enforcement of the land tax and its assessment according to the new tax brackets, the willingness of the people to accept new procedures remained a key criterion in determining whether to adopt them.[29]

Two additional observations are in order regarding the dialectic involved in these changes and their impact on Palestinian land tenure. First, it should be noted that the large sales that occurred in the 1920s in Marj Ibn Amer and other plains regions were undertaken by Lebanese and Syrian absentee landowners who had gained control over the land through the legal and economic conditions that prevailed during the late Ottoman era, including Ottoman *mahlul* policies. Thus, the indirect condition for these sales was rooted in Ottoman policies, while the British Mandate's land settlement process did not necessarily play a role in facilitating them. It is true, of course, that Mandate policies pertaining to land settlement opened the door for settlers' capital in new regions where the land was owned by Palestinian peasants whose holdings had not previously formed part of the Ottoman real estate market. At the same time, however, the nature of land settlement in these regions slowed the pace of Zionist settlement expansion and led to geographic patterns that were not amenable to the logic of contiguous territorial control and the complete replacement of the indigenous population.

In particular, regions such as Bisan, where the effects of land-rights settlements and market dynamics can be clearly traced, some farmers sold shares that overlapped with those of family members or fellow villagers, or shares that had not yet been divided into individual plots. This practice prevented Zionist settlers from achieving complete control over the land.[30] In our view, the limited nature of the Palestinian land market and the British Mandate's approach to managing it remained understudied, and must be revisited for a better understanding of the evolution and dynamics of the confrontation between Zionist settlement and Palestinian society within the framework of the British Mandate.

The second observation concerns the use of land ownership within the Mandate's political and colonial demography. Alongside the rhetoric of private property, the British were obliged in the early 1930s to develop a parallel rhetoric affirming farmers' rights and to enact laws designed to protect these rights. This development followed the Buraq Uprising of 1929, after which the Mandate authorities drew a connection between the uprising and the mass expulsions of Arab farmers from areas of Zionist settlement in Marj Ibn Amer.[31] In response, legislation was introduced prohibiting the eviction of any farmer who had farmed a given piece of land for two seasons (ten months) and had paid the requisite rent to the landowner. These

[28] For an important micro-level study of land rights settlements and the ways in which Palestinians lost parts of their lands in some Arab villages as compared with the Zionist settlements, see: Aida Asim Essaid, *Zionism and Land Tenure in Mandate Palestine* (Abingdon Oxon: Routledge, 2014).

[29] This situation is reflected in a report submitted by Sir Ernest Dowson, a prominent planner of the Mandate authorities' lands-rights settlement and tax policies in Palestine, on the progress that was being made in "land reforms" during the 1920s; see the Israeli State Archive, File 5285/3-ב: Ernest Dowson to High Commissioner, "Progress in Land Reforms, 1923-1930," November 1930, in: "Land Settlement (General Points) and Sir Ernest Dowson's Reports."

[30] In this context, see the case of the village of al-Sakhina, which I discussed in a previous article: Fakher Eldin, "Confronting a Colonial Rule of Property," pp. 12-33.

[31] See the report submitted by the Shaw Commission in 1930: Sir Walter Shaw (Chairman) et al., *Report of the Commission on the Palestine Disturbances of August 1929. Presented by the Secretary of the Colonies to Parliament by Command of His Majesty, March 1930* (London: His Majesty's Stationary Office, 1930).

laws, however, had contradictory effects: in some cases, they were used to evict farmers, while in others, they helped farmers to remain on the land and hinder Zionist settlement.[32]

This legal sphere that had not existed under Ottoman rule became an important structural feature in the transition from a tenure system centred on rent to one centred on ownership as the basis for land resource management in a colonial context. This transition was linked to the political and colonial management of Palestine under British rule, particularly to the framing of Palestine as a dual-ethnic entity structured around a hierarchy of collective rights that privileged the colonizers over the indigenous population. It was also linked to the regulation of demographic balances, which required ongoing government intervention.

In the 1920s, the British spoke of linking Jewish immigration to Palestine's "absorptive capacity", by which they meant the capacity of the Palestinian economy to absorb immigrants as workers. The intention was to frame the sphere of absorption not as land, but the labour market. However, this framing proved unsustainable given the Palestinian resistance to Zionist policy to displace Palestinian farmers from the colonized lands. By the 1930's, "absorptive capacity" had become associated with mounting pressure on land resources and the expulsion of Arab farmers at the level of the country at large. This was followed by government deliberations on the need to develop Arab agriculture and the state's responsibility to "resettle" farmers who had been expelled from their land due to Zionist settlement. The amendments made to British policy based on this reframing of the problem, however, failed to resolve the conflict.

After the 1936-1939 Arab Revolt, a new discussion emerged around the need to protect "Arab land". In 1939 the British issued a White Paper with a new vision for shared Arab-Jewish governance in Palestine. The vision had a concrete demographic and geographic aspects. It sought to produce a calculated and controlled demographic balance between the two populations of 60% Arabs and 40% Jews. Land was seen as vital to control this political demography. Thus, new Land Transfer Regulations were issued in 1940 designating up to 75% of Palestine as "Arab land", whereas transfer of land from Arabs to Jews was forbidden. In the remaining areas that were deemed vital for Zionist settlement expansion and economic control, free or conditional transfers subject to the approval of the High Commissioner were permitted.[33]

In view of their overall historical impact, these policies can be understood as part of a scheme to perpetuate the logic of Zionist settler sovereignty, one in which the land market and rights of ownership functioned as tools for shaping the country's geographical, demographic, and political landscape. Land purchases by Zionist settlers were legitimized as conferring the right to expel residents on an ethno-national basis.

From Rent Management and Market Mechanisms to Uprooting and Comprehensive Planning

With the Zionist movement's organizational and political maturation following the first Zionist Congress in Basel, Switzerland, in 1897, and the beginning of what is known in Zionist history as the "Second Aliyah" (1904-1914), two ideas crystallized that would play a critical role in shaping the Zionist project. The first was the concept of "Hebrew labour", and the second was the idea of the geographical continuity of Zionist settlement, along with the need to reinforce regional domination to imbue Zionist settlement with a national character in Palestine. During this period, a plan emerged to concentrate settlement in the shape of the letter "N" on the map of Palestine, stretching along the coastal plain from Gaza to Haifa in

[32] Fakher Eldin, "Confronting a Colonial Rule of Property."

[33] For a previous treatment of this topic, see: Munir Fakher Eldin, "al-Arḍ wa-Huqūq al-Milkiyya wa-l-Irjāʾ al-Istiʿmārī: Bayn Waʿd Balfūr wa-l-Nakba," *Ostour*, vol. 4, no 8 (July 2018), pp. 193-209.

the north, then moving southeast toward the Jordan Valley, and from there northward to the Huleh Plain and the headwaters of the Jordan River in the Upper Galilee.

In this regional thinking, we can discern the harbingers of Zionist settlers' spatial planning. However, their primary tool was not pure spatial planning, but rather the monopolization of land through the market. This reveals a deeper structural issue: the power of property and the roles played by both the Ottoman and Mandate authorities. Alongside the right of possession (or tenure), Zionist settlers obtained a tacit right to engage in urban development, that is, the right to construct settlements and establish a civil life of their own. These developments did not emerge from the framework of spatial governance or urban planning, but were instead rooted in land laws and the dynamics of tenure and ownership.

Following its establishment in 1909 near the ancient port city of Jaffa, the colony of Tel Aviv gradually expanded until it was merged with Jaffa in 1950, effectively absorbing the city. This expansion began with the legal possession of Karm al-Jabali, a vineyard owned by the Jabali family in northern Jaffa. The vineyard was *miri* land that had been sold in 1905 by members of the Jabali family to Jewish brokers living in Jerusalem. These brokers then sold it to a group of German Jewish settlers in Jaffa who dreamed of establishing a modern neighbourhood of their own. To circumvent the legal barrier posed by Ottoman law, which forbade the registration of *miri* land in the name of non-Ottoman Jews, the settlers arranged for two Jaffan Jews, both Ottoman subjects, to register the plots in their names, in return for a residential plot each in the new neighbourhood. To thwart this plan, the Ottoman authorities invoked a 1907 directive that prohibited the registration of *miri* land in the names of Jews, even if they were Ottoman subjects. However, this official opposition collapsed under pressure from foreign consuls, and by 1909, construction of the neighbourhood had commenced. When a number of Bedouin residents filed a legal case against the settlers' construction, claiming prior use of the land through growing vegetables and grains, their claims were rejected by the Ottoman authorities.[34]

This story carries many implications. What concerns us here, however, is that the debate centred on the right to build – an issue understood to hinge on whether or not the party in question held a legal right of tenure. In practical terms, the issue of legal tenure served as a tool employed by the Ottoman authorities to carry out organizational and demographic-political interventions. This supports the broader argument that, during that era, there was no clear distinction between the realms of rent, ownership, and urban development.

This may also apply, to some extent, to the Mandate era. Despite advancements in the field of urban planning, the field remained part of "land law". Moses Doukhan and Frederic Goadby, both officials in the Mandate government, wrote a reference work titled *The Land Law of Palestine*, in which they devoted a chapter to "city planning". There, they proposed that, in light of the urban expansion of villages and towns, *miri* lands should not be turned into *mulk* (privately owned) lands, out of concern that this might lead to the expansion of waqf holdings.[35] Once again, we find that, despite the development of laws particularly addressing urban planning, building permits, and structural maps, the concept of tenure (*al-ḥiyāza*) continued to serve as an indirect instrument of urban organization and spatial governance.

Urban governance as a separate realm regulating spatial relations and land distribution emerged only after the Nakba, with the approval of the Israel's first structural map in 1951. Marking a clear break from the Ottoman and Mandate eras, the issue of rent ceased to be a serious or central concern for the state, and was entirely dissociated from the broader land problem. The domain of ownership was radically restructured to produce "empty land" – that is, land devoid of any Palestinian presence, whether physical or legal – while

[34] Mark LeVine, *Overthrowing Geography: Jaffa, Tel Aviv, and the Struggle for Palestine, 1880-1948* (Berkeley: University of California Press, 2005), pp. 64-67.

[35] Moses Doukhan & Frederic Goadby, *The Land Law of Palestine* (Tel Aviv: Shoshany's Printing, 1936), p. 36.

the state's claim to ownership was expanded and reinforced as the collective property of Zionist settlers. This process required the development of space governance as a distinct field.

1. Property Governance, or "Occupier's Law"

While the British Mandate settled land claims by affirming Palestinian farmers' possession of land based on proof of actual or legal tenure, "Occupier's Law", to borrow and expand Raja Shehadeh's term, developed a range of laws, military and administrative orders, and direct punitive practices aimed at dispossessing Palestinians, whether through legal procedures or by the use of naked force.[36]

The mechanisms employed by "Occupier's Law" – understood broadly as a legal, administrative, and military structure designed to facilitate Palestinian dispossession – can be categorized into four groups:

a. Legal Guardianship over the Properties of Palestinian Refugees

Israeli law classified the property of Palestinian refugees as "absentee property", facilitating the application of this designation even to lands still inhabited by their owners. These properties were transferred to a new authority known as the Guardian of Absentees Property, an official body legally authorized by the state to manage and dispose of such properties without consulting anyone. This so-called guardianship constituted the largest direct seizure of Palestinian property since the beginning of Zionist settlement in the 1880s. Through this mechanism, the State of Israel has transferred vast amounts of land and real estate to various settlement bodies (in particular, the Jewish National Fund and the Development Authority), and continues to do so in occupied Jerusalem, across the West Bank (particularly in Area C), and the occupied Golan Heights.[37]

b. Confiscation on the Pretext of "The Public Interest"

Israeli law grants the government near-absolute authority to confiscate Palestinian land under the pretext of serving "the public interest", without requiring justification or a clear definition of what constitute this interest. This tool of dispossession has had a profound impact on specific regions, most notably the Galilee. In 1976, the confiscation of thousands of dunams of agricultural land from the residents of Arraba, Sakhnin, and Kafr Kanna – part of a scheme to Judaize the Galilee – sparked violent confrontations, resulting in the martyrdom of six Palestinians. These events are commemorated annually on Land Day, observed on 30 March.

c. Kafkaesque Bureaucratic, Judicial, and Legislative Manoeuvres

Examples of such manoeuvres include the bureaucratic practices employed by successive Israeli governments with the explicit aim of obstructing or preventing Palestinians from registering property they rightfully own. This approach has been used extensively in the Negev, where – at the suggestion of Joseph Weitz, a member of the Jewish National Fund's board of directors in the 1950s and a theorist of population transfer – the Land Registration Department was closed. As a result, hundreds of court cases filed by Palestinians remained unresolved for decades, fostering a sense of hopelessness that led many people to abandon their cases and relinquish their rights. Drawing on the views of Zionist researchers shaped by Orientalist thought, the Israeli judiciary advanced the notion that the Negev had been classified as *mawat* land under Ottoman law. This position became the dominant legal interpretation on which courts relied on to dismiss Palestinians land claims, denying their rights and creating a Sisyphean challenge par excellence.[38]

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[36] Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington, DC: Institute for Palestine Studies, 1985).

[37] See: Malaka Abd al-Latif, "al-Istiyṭān al-Ṣahyūnī al-Dīnī fī al-Quds: Jamʿiyyat Ilʿād ka-Ḥālat Dirāsa," Master Thesis, Birzeit University, 2024.

[38] For an in-depth study of the policy of dispossession and Judaization in its legal dimensions, see: Ahmad Amara, Alexandre Kedar & Oren Yiftachel, *al-Arāḍī al-Mufragha: Jughrāfiyya Qānūniyya li-Ḥuqūq al-Badū fī al-Naqab* (Ramallah: Madar – al-Markaz al-Filastini li-l-Dirasat al-Israiliyya, 2021).

To this can be added settlement outposts, scores of which have proliferated across the West Bank since the 1993 Oslo Accords. These outposts began springing up on hills belonging to Palestinian villages and individuals, planted by Zionist settlers without military orders or explicit coordination with the occupation army. Settlers would install mobile homes, build fences, and connect the outposts to electricity grids and water infrastructure under military protection, thus creating a *fait accompli*.

In Israeli discourse, these outposts are referred to as "illegal settlements", a term that merits clarification, as it conveys two meanings. First, the label "illegal" indicates that these colonies were not formally legitimized by military orders. Second, it reflects the fact that that the land in question had not yet been officially designated as "state lands" by the occupation authorities. As a result, they violated the Israeli High Court's 1979 Elon Moreh decision, which explicitly prohibited the confiscation of private Palestinian land for the purpose of establishing Zionist settlements, while simultaneously allowing settlement on designated "state lands". Following that ruling, a wave of military orders rapidly expanded the classification of lands as "state lands", effectively tripling the area eligible for settlement.[39]

Beginning with the Oslo Accords, these outposts represented a kind of settlement creep beyond the regions declared "state lands". By the logic of settler colonialism, their illegality (under Israeli law, that is, bearing in mind that *all* Jewish settlement in the occupied Palestinian territories is illegal under international law) was not viewed as illegitimate violence. Nevertheless, it gave rise to practical challenges related to real estate value and urban development. Being located outside the legal boundaries of "state lands" limited their marketability and disqualified them from eligibility for housing loans or inclusion in government-subsidized housing projects.

In response to these obstacles, colonial lawmakers devised a clever artifice to facilitate further dispossession of Palestinian land. In 2017, the Knesset passed the Judea and Samaria Settlement Regulation Law, whose explicit purpose was to retroactively legalize settlements built on land privately owned – whether in full or in part – by Palestinians. Under this law, usage rights to such land could be expropriated, while leaving legal ownership status intact. The usage rights would then be transferred to the Custodian of Absentee and Abandoned Property, an agency that forms part of the occupation army's civil administration in the West Bank.

d. Unmasked Force Followed by the Legalization of Its Outcomes

The developments discussed thus far underscore the naked force underpinning the laws and actions of the occupier. A further example is the construction of the apartheid wall, which has imposed severe restrictions on many Palestinian villagers, requiring them to obtain daily security permits merely to reach their lands and perform seasonal agricultural work. In such situations, the path from restrictions to complete dispossession is exceedingly short, as the existing balance of power swiftly tilts against the Palestinians. Simply approaching the barbed wire surrounding a settlement colony can place a Palestinian's life at risk, and their land may be lost without settlers having to undertake any official action. The logic of "security" has thus created legal grey areas in which Palestinian rights – no matter how well documented or firmly established – are effectively erased.[40]

One of the more recent manifestations of unmasked violence in the West Bank is the phenomenon now referred to as "pastoral settlement", wherein Zionist settlers, accompanied and supported by the occupation army, bring their livestock to graze on lands attached to Palestinian villages as a means of taking possession

[39] For a report by the Israeli human rights organization, B'Tselem, see: Nir Shalev, "Under the Guise of Legality: Israel's Declarations of State Land in the West Bank, B'Tselem," February 2012, accessed on 20/2/2025, at: https://acr.ps/1L9zQFo. The Committee to Resist the Wall and Settlement, which keeps abreast of confiscation policies and land theft, periodically issues relevant reports and maps; see: https://acr.ps/1L9zQGQ

[40] See: Qusay al-Barghuthi, "Qānūn fī Khidmat al-Istiʿmār: Āliyāt al-Sayṭara al-Istiʿmāriyya al-Istīṭāniyya al-Isrāʾīliyya ʿalā al-Arāḍī al-Filasṭīniyya al-Muḥtalla - al-Diffa al-Gharbiyya (1967 ilā al-Ān) ka-Ḥāla Dirāsiyya," Master Thesis, Birzeit University, 2021.

of the land. The most extreme and brutal expression of Israel's use of such force, however, is currently unfurling in the daily massacres carried out by the occupation army in its genocidal war on the Gaza Strip, accompanied by frantic endeavours to revive Zionist settlement in the devastated northern part of the Strip. In this context, the idea of settlers' occupation precedes theft and actual settlement, all advancing in tandem with the process of colonial urbanism (or what Mr Trump had phrased as the "Riviera of the Middle East").

Through the wide lens of history, settler land control can be seen as having destroyed the land market in which it was born to liberate itself from the political limitations. This process of dispossession, however, did not alone suffice the colonial project. It rather needed to differentiate urbanization as a distinct governmental sphere and to mobilize to its service.

2. The Sphere of Urban Governance

Israel's first structural map, approved in 1951, launched the ideology and methodology of centralized Israeli planning that would dominate over the next four decades, until the late 1980s. The planning philosophy of the period following the ethnic cleansing and seizure of Palestinian refugees' property in 1948 promoted the dispersal of Jewish settlement over the widest possible area through the establishment of the greatest possible number of small colonies. This approach was fuelled by the Zionists imperative to settle Jews both in the areas from which Palestinians had been expelled and along the borders with neighbouring Arab countries. It also sought to delineate the internal boundaries of the Zionist project, that is, the contours of the ethnic hierarchy between Ashkenazi and Mizrahi Jews. The expansion of settlement played a role in banishing Jewish Arab immigrants to the borderlands and creating the so-called development towns, which are residential areas lacking agricultural land and designed to supply cheap labour to Ashkenazi-dominated agricultural settlements.[41]

Spatial planning within the 1948 borders underwent a major shift in the early 1990s, opening the way for a new philosophy oriented toward maximizing the economic exploitation of space and envisioning an urban future composed of major metropolises in the Galilee, the Tel Aviv area, Jerusalem, and Beʾer Sheva. The purpose of this shift was to preserve the intervening green spaces and resources for future (Jewish) generations. This shift was shaped by the development of academic fields related to planning and organization, the emerging power and autonomy of civil societies amid the liberalizing shifts that characterized Israel in the 1980s and 1990s, and the large wave of Jewish immigration from the former Soviet Union during that period. Together, these shifts spurred widespread debate over state policy and questions of justice in spatial planning, particularly given the role and impact of NGOs in policy formation.[42]

Two fundamental problems must be highlighted. The first concerns the way in which Israeli spatial planning has functioned to besiege and isolate the Palestinian presence within the Green Line. Numerous reports and studies have revealed a broad range of challenges facing Arab villages and towns, including unrecognized communities and villages repeatedly demolished (particularly in the Negev), the lack of structural maps due to Israeli institutional obstruction, and the incompatibility of Israeli planning criteria with the realities of Arab towns. These conditions have led a growing number of cases in which people build without permits, thus exposing themselves to the risk of demolitions and exorbitant fines.

Demolition of tents, buildings, and facilities, forced displacement, and the absence of appropriate structural plans in both East Jerusalem and the Negev form part of a broader, carefully engineered structural schemes to Judaize the landscape. One notable example is the 2011 Prawer-Begin Plan, which proposed

[41] For an important reference on this topic, see: Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Pennsylvania: University of Pennsylvania Press, 2006).

[42] For an overall narrative of the history of Israeli spatial planning and its problems, see: Rasim Khamayisi, "al-Arḍ wa-l-Takhṭīṭ wa-l-ʿUmrān," in: Munir Fakher Eldin et al (eds.), *Dalīl Isrāʾīl 2020* (Beirut: Ramallah: Muʾassasat al-Dirasat al-Filastiniya, 2021).

the forcible relocation of Bedouins to clear the way for Zionist settlements. This initiative reflected the principles of Israel's new planning doctrine which – like its predecessor – prioritized the expansion of Jewish settlement, for instance by recognizing individually initiated settlements in the Negev and providing them with infrastructure.[43]

The second problem pertains to the geopolitical boundaries of the sphere of urban governance. Officially, the Israeli Planning Administration (IPA) operates within the 1967 borders, with the exception of occupied East Jerusalem and its environs, as well as the occupied Syrian Golan Heights, where Israeli law has been applied and which are thus subject to Israeli structural planning. Yet the urban sphere extends beyond this. Behind the official façade of the IPA's work lies what Rasim Khamayisi has termed "hidden planning", which manifests itself through the constant expansion of Israeli settlements and their urban formations. This includes a vast network of roads and other installations that fragment Palestinian territories, disregarding the Palestinians' presence entirely, and robbing them of any possibility of their own national spatial planning.[44] The "empty land" policy (or Palestinian dispossession) is closely intertwined with a highly effective military-civilian control over the urban space which poses a genuine strategic danger to the Palestinian presence.

A substantial body of research has addressed urbanization in Palestinian cities, particularly the challenges posed by neoliberal policies that have shaped housing initiatives since the establishment of the Palestinian Authority (PA) in the early 1990s. However, relatively less interest has been devoted to the PA's policy regarding land settlement procedures and issuance of *tapu* deeds to citizens. Despite the importance of researching such issues (particularly the PA's role in managing ownership and space), the major problem lies in the PA's limited sovereignty, which remains truncated and confined to only one-third of the area of the territories occupied by Israel in 1967. According to the interim Oslo Accords, the PA only exercises control over Areas A and B, which are effectively a series of disconnected and fragmented enclaves surrounded by Area C, comprising roughly two-thirds of the West Bank, and remains under full Israeli control.[45] Furthermore, the PA's partial jurisdiction does not extend to occupied East Jerusalem. Under these conditions, the PA is structurally incapacitated: it cannot build a road between two villages, let alone develop structural plans that accommodate the evolving needs of Palestinian communities, without encountering the constraints imposed by the Israeli occupation.

Conclusion

A proper historical examination of the conflict over land in Palestine requires a thorough inquiry into the underlying infrastructure of power and control. This study has traced the historical process of differentiation among three spheres of land governance: rent, ownership, and urbanization. By foregrounding this tripartite distinction, the study has revealed the frameworks of control, the central fault lines of the land struggle, and the larger problems experienced by the Palestinians.

The system of private ownership under Ottoman rule emerged as rent lost its central importance. Nevertheless, the new system retained significant vestiges of the earlier rentier system. Recognizing this layered continuity is essential for understanding the language associated with land conflicts during that period, particularly the struggle for Palestine.

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[43] For an overview of these reports, see: Munir Fakher Eldin, "al-Filasṭīniyūn fī Maṣāʾid al-Takhṭīṭ al-ʿUmrānī al-Isrāʾīlī," in: Jamil Hilal, Munir Fakher Eldin & Khalid Farraj (eds.), *Murājaʿat al-Siyāsāt al-Isrāʾiliyya Tijāh al-Qaḍiyya al-Filasṭīniyya* (Beirut/Ramallah: Muʾassasat al-Dirasat al-Filastiniyya, 2017).

[44] Khamayisi, pp. 792-793.

[45] It must be noted that the Oslo Accords envisioned an interim period of five years during which final status negotiations would be concluded, which never happened, thus turning the interim period and its arrangements into a protracted fact on the ground.

The British Mandate authorities pursued a deliberate effort to restructure the relationship between rent and ownership, transforming the settlement of land claims, that is, the precise legal division of properties, into a basis for rent management rather than its outcome. Although this process was not completed systematically across all of Mandate Palestine, it left significant footprints by introducing contradictions and a frequency of conflicts that had been uncommon under Ottoman rule. Rather than advancing a universal discourse of ownership, the British Mandate reinforced the logic of settler colonialism. This outcome is inseparable from Britain's political commitment to the Zionist project, most notably articulated in the 1917 Balfour Declaration. The study argued that critically examining contradictions of the British Mandate is necessary for understanding Palestinians' daily experiences and the most profound rupture in Palestinian history: the 1948 Nakba.

In contrast to British Mandate policy on property governance, Israel has not simply subjected Palestinian property to the logic of the market and the rhetoric of "development". Rather, it has grounded its approach on the principle of dispossession by all possible means, both legal and administrative. In the sphere of urban governance, the Israeli state sought to spread Jewish settlement and impose ever stricter control over Palestinian space. In many cases, the Palestinian tragedy today can best be understood by examining the logic embedded in Israeli structural planning, which necessitates a critical inquiry into the intersection between legal mechanisms of property theft and the spatial strategies deployed to besiege and fragment Palestinian collective presence on the land.

Failing to distinguish between the various spheres of the conflict or to recognize its historical shifts, from rent to ownership and from ownership to space, leads to projecting current understandings onto the past and impedes clear examinations of historical trajectories that have shaped present realities.

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