

Alienations and Articulations

Tracing Israeli Land Policies Through History

MEKAREM ELJAMAL

Master of Middle Eastern & North African Studies and Urban and Regional Planning 2021

ABSTRACT

Contemporary conversations about Palestine and Israel often place land and claims to land at the center of the conflict; however, such discussions rarely concern the structures of land policy and ownership at play. Reflecting on Israel's recent dispossession of the Bedouin village of Umm al-Hiran in the Naqab, this paper takes a historical approach to understanding the land tenure systems of Israel and the previous governing regimes over Palestine. Through a comparative analysis of Ottoman, British, and Israeli land laws, this piece shows how Israel's ability to alienate and accumulate Palestinian land as state property was facilitated by the land systems that preceded it. The centrality of western forms of articulating ownership, especially land cultivation, thread together the land policies of these three regimes. While the implications of such articulations on the native Palestinians varied between Ottoman, British, and Israeli rule, the continuity between the three ultimately provided Israel the space to manipulate conceptions of 'abandoned' and 'waste' lands to their benefit as they dispossessed Palestinians of their property from the inception of the state to today.

“Many would say it’s a second Nakba for the Palestinians in the Naqab,” stated Suhad Bishara, the Director of Land and Planning Rights for Adalah, to describe the state of land appropriation in the Umm al-Hiran, an unrecognized Bedouin village in the Naqab, the southern region desert of Israel.¹ Since its inception, Israel has unabashedly maintained its right to alienate land and property from those it views as infringing upon its rights to the land. This continued entitlement is made all the more apparent in the case of Umm al-Hiran, as Bishara deliberately invokes the 1948 mass expulsion of Palestinians by Israel in relation to Israel’s current dispossession of the unrecognized village. The use of Umm al-Hiran as a case study challenges common discourse around Israeli land accumulation. Generally, conversations about Israeli land theft center on its illegal annexation of Palestinian land in the West Bank. Through Umm al-Hiran, I challenge the view that Israeli land practices in the West Bank are ‘exceptional’ and beyond the norm. Rather, this case proves that Israeli land theft is the norm and follows in the tradition of past regimes ruling over Palestine, as I trace a longer legal lineage of land dispossession policies, illuminating the connection between Israel’s current land alienation practices and British and Ottoman land tenure systems.

Threaded throughout Ottoman, British, and Israeli land laws is the importance of communication and its role in defining property. Carol Rose outlines this in her article, “Possession as the Origin of Property,” explaining how claiming ownership of property hinges upon how the claims are articulated and communicated and how such articulations are received by external parties.² Within the context of Palestine, Rose’s ideas around articulating ownership dovetail with the Lockean ideal of labor as the determining factor behind property and the colonial need to see land as both *terra nullius* and wasted. By tracing

the representation and discussion of empty and waste lands through the Ottoman and British land tenure policies, we arrive at the reiteration of such elements as key to the rhetorical and legal articulations of Israeli land ownership. The culmination of the piece brings us into the contemporary era and reinforces the pervasiveness of intelligibility in articulations of land ownership as I return to Umm al-Hiran and the residents’ protests against the village’s demolition to make way for a new Jewish settlement.

DEFINING LAND UNDER THE OTTOMAN EMPIRE

Ottoman land reform took place during the Nahda, or renaissance period, of the Middle East during which the region increased its engagement with the West. During the Nahda, the Ottoman Empire undertook the Tanzimat, which were reforms moving Ottoman law away from a religious basis toward a secular one - a reangling of Ottoman bureaucracy to conform to Western conceptions of governance. Fitting into this larger schema of the Tanzimat, details of the 1858 Ottoman Land Code exemplified this borrowing from the West during the Nahda. While the Tanzimat, and specifically the land laws, may not have intentionally aimed to be intelligible to its Western counterparts, the reality of pulling from Western formats, especially the British and French, provided a legal structure that conveniently fit with the goals and norms of these later colonizing powers and allowed the British to generally maintain the organizing and maintenance structures of land tenure.³

With the Ottoman Empire’s imperialism in mind, the divisions of land outlined in its Land Code exemplify intentions of state land accumulation. A majority of *mulk* land cannot be appropriated by the state; rather, it stays in the hands of individuals or non-state bodies.⁴ However, tithe-paying and tribute lands are two subcategories of *mulk* land that can revert back to state

hands because they were at one point under state purview.⁵ The state distributed tithe-paying lands after a victorious land conquest and allowed for tribute-paying lands to remain under the control of the non-Muslim inhabitants after conquest.⁶ For tithe- and tribute-paying lands, once the owner initially determined by the state dies, the land transfers to *mierié* land. This caveat to *mulk* lands of the tithe and tribute variety restricts the transferability of land across generations and continues to build the state pot of property.

“With the empire’s imperialism in mind, the divisions of land outlined in the Land Code exemplify intentions of state land accumulation.”

The Land Code explicitly describes *mierié* lands as including “arable fields, meadows, and winter pasturing grounds, woodlands and the like,” drawing explicit attention to the natural state of these lands.⁷ A clear parallel can be made between this description and John Locke’s perspective on land, as Locke places value on land that has the opportunity for exploitation.⁸ The Ottomans cannot exploit the lands already held in *mulk* beyond the taxes applied to lands held by non-Muslims since they agree with Locke’s labor-property relationship. This belief is affirmed later in the Land Code, wherein the results of any land cultivation by *mulk* owners belong to the owners themselves.⁹ Defining *mierié* lands within a natural context underscores the opportunity of these lands; they are ripe for exploitation – to be molded to fit the needs and desires of the state. Ottomans could use this land as a way to pay the *timar* for their military officials, but by maintaining this

Mulk is privately owned land upon which the government levies taxes.

Mierié defines the category of state-owned lands.

Timar is an area of land granted to a military official in lieu of a salary from which the officer is able to keep all the profits from the land’s cultivation.

Metrouké lands correlate to the contemporary conceptions of commons.

Mevat is dead or waste land.

Terra nullius is empty land, uninhabited land belonging to no one.

land’s classification as *mierié*, rather than tithe-paying land, the government maintains ultimate ownership and has leeway to make future adjustments as it sees fit. The nature- and state-land relationship will be revisited in unpacking Israel’s development initiatives.

With the last two categories of land – *metrouké* and *mevat* – Rose’s conversation about intent and Locke’s theories on labor return to the fore. *Metrouké* lands include areas such as highways and village grazing grounds.¹⁰ As commons, ownership and usufruct are expansive, prompting the Ottoman Empire to include a clause later in the Land Code stating, “no one shall erect any buildings or plant trees on a public road.... In general, no one shall do any act of possession on a public road.”¹¹ Article 93 of the Land Code explicitly defines what is considered an articulation of intent: an act that involves labor leading to a more permanent presence.¹² The placement of this clarification and assertion of intent, though, is important and highlights the categories in which the Ottoman Empire places value. *Mierié* lands are prominently featured in the first section of the Land Code, signaling their utmost importance

to the Ottoman Empire. However, Article 93 implies a certain esteem for collectively held land, protecting the commons from acts of possession that would generally denote property as being individually held. Returning to the earlier question of whether Ottoman incorporation of European legal structures was a strategy to evoke affinity from the Europeans, this value marker placed on collective property challenges this position because the Europeans valued private property more, as Locke's statement makes clear: "since [God] gave [the world] to [men] for their benefit and the greatest conveniences of life they were capable to draw from it, it cannot be supposed that he meant it should always remain in common and uncultivated."¹³

Finally, *mevat* refers to dead land that is uncultivated and distanced from any settled areas. This category becomes of the utmost importance once we reach the Israeli articulations of ownership.¹⁴ The Land Code does not prohibit cultivation of *mevat* land. Laboring the land is encouraged by the state; however, working *mevat* land

will not result in the laborer acquiring *mulk* land immediately.¹⁵ In the case of *mevat*, the Ottoman Empire splits from Locke's simple formula that labor and nature equate to personal property, adding the extra requirement of paying title-price to receive the deed for the land. Once the land is cultivated, it converts from *mevat* to *mierié*, maintaining the state's ownership until the full-title price of the land is met, at which point the land then switches to *mulk*. Key to *mevat* land is that it is not owned by the state; anyone who is in need of land to cultivate can choose to work *mevat* land without permission from others.

As Rose discusses, law and legal structures play a key role in communication of property. The Ottoman Land Code codifies the government's articulation of ownership and decrees title-deeds as the official communication of ownership. According to Article 8 of the Ottoman Land Code, title-deeds and holding an updated title-deed "showed [the owner's] right of possession."¹⁶ Ottoman Empire residents



Figure 1. Battir, Palestine - Property divisions delineated by utilizing the natural topography (ElJamal, 2014).

did not favor these material documents as the West did, or as the larger governing body was requesting they make their claims to property. In Bedouin communities of Palestine during this time, articulations of land ownership consisted of two parts: oral history and visibility. Power and authority over land debates were vested in tribal confederations. These tribal confederations governed land use over collectively agreed upon boundaries, and they relied on collective memory and oral history rather than government-decreed documentation to preserve land divisions.¹⁷ To supplement the histories and memorial documentation, and very much comporting with Rose's extolment of vision, Bedouins used stones and flora to delineate property lines.^{18, 19}

Just as Bedouins had a mixed approach to property delineation, utilizing both traditional modes of oral history and the documentative styles coming from the larger state bodies, the Ottoman Empire too recognized the role of various methods of communicating land ownership. While there is overwhelming support for and reliance on title-deeds and official documentation of land ownership, the Ottoman Land Code contains a clause that places trust in the past modes of property documentation, namely oral history. In cases where historical land markers erode or are made unintelligible, elders from adjacent communities gathered at the site in question to recall the past boundaries and, from their histories, boundaries are redocumented.²⁰

CONSTRUCTING LEGAL FOUNDATIONS DURING THE BRITISH MANDATE

Ottoman history and initiatives during the British Mandate intersected to establish a strong foundation upon which the successive Israeli government would stand. Three years before the British Mandate period in Palestine began, the British government made clear its intention in

dealing with land affairs there. In 1917, Lord Arthur Balfour penned the Balfour Declaration, in which he asserted the British duty to secure a Jewish homeland in Palestine. All of the British land initiatives and ordinances coming out of the Mandate period were in service to Balfour's previous commitment to Jewish sovereignty in Palestine. This intention was reiterated explicitly in Article 4 of the British Mandate of Palestine. In this foundational document detailing British rights of rule over Palestine, land is mentioned twice. The first mention reaffirms Balfour's Declaration and the second deals with the preservation of history, specifically around issues of archaeological digs and antiquities, a tactical justification Israel has since adopted in alienating Palestinian land.²¹ British history in Palestine began with voicing Britain's intentions to alienate and reallocate the land.

“**British history in Palestine began with voicing Britain's intentions to alienate and reallocate the land.**”

Since the Ottoman Land Code drew extensively from British law, once the Ottoman Empire fell and the League of Nations appointed Britain the ruler over Palestine, the British did not have to make significant alterations to the general structure of the existing land tenure system; the Ottoman Land Code was constructed within the Western-facing Tanzimat format. The British codified continuity between Ottoman law and British Mandate law through Article 46 of the Palestine Order in Council, stating, “the jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on November 1, 1914.” Based on the Palestine

Order, rules and regulations set forth by the Ottoman Land Code in 1858 stood during the British Mandate Period.

However, this is not to say that the laws were kept exactly the same during the regime transition. While Ottoman articulations of property ownership through title-deeds aligned with British expectations of property communication, there were great disparities in the implementation of these systems. Due to its vast size and decentralized structure, the Ottoman Empire struggled with enforcing the Land Code. In the law's early years, title-deeds accurately communicated a plot of land's owner; however, as original recipients of the deed died, people tended not to update and register the inheritors of the lands.²² With the discrepancy between landowners in reality and those documented, the British engaged in a rigorous project of land reregistration.²³

Britain's long international colonial history influenced the legal mechanisms used during the Mandate era in Palestine. The impact of their colonial practices become most apparent in their changes to *mevat* land. At its base, colonialism holds that native populations waste the land in their possession by either not using it at all or inefficiently cultivating it. From the colonialist perspective, the Ottoman process of granting title-deeds to those who labored *mevat* land and paid the title-price was not good use of land. In 1921, one year after the British gained control over Palestine, they passed the *Mevat* Land Ordinance. This new law not only ended the Ottoman tradition of granting title-deeds for cultivated *mevat* lands, but it also prohibited any future cultivation of this land category.²⁴ The law further stipulated that those who cultivated *mevat* land prior to the 1921 law must register their land within two months of the law's publication.²⁵ Under British land doctrine, *mevat* lands were not specifically claimed as state lands; they simply remained uncultivated, dead land owned by no one. Histories of colonial land practices

“ At its base, colonialism holds that native populations waste the land in their possession, either not using it at all or inefficiently cultivating it.”

converge to serve the intent established by Balfour. The High Commissioner, with his vast and vague powers to manage public lands, was explicitly given the directive to “encourage close settlement by Jews on the land, including State lands *and waste lands* [emphasis added].”²⁶ With such a directive, it was necessary for the British Mandate government to determine which lands in Palestine qualified as waste lands that could then be appropriated for Jewish settlement. In order to maximize lands available for Jewish settlement, the British needed to curtail Palestinian claiming of *mevat* lands, thereby justifying the 1921 *Mevat* Land Ordinance.

Moving away from the texts of land law, a major difference between the Ottoman and British Mandate land systems is in the delegation of power, rights, and responsibilities. The Ottoman Land Code mentions the landowners, land thieves, and the state, making no mention of an individual government position with duties of managing lands. In contrast, an appointed High Commissioner is assigned rights over and obligations to the land system during the British Mandate era. As noted earlier, these duties ranged from the broad responsibility to realize the Balfour Declaration's commitment to Jewish settlement to the more specific ability to “make grants or leases of any such public lands...or [the High Commissioner] may permit such lands to be temporarily occupied on such terms or conditions as he may think fit subject to the provisions of

any Ordinance.”²⁷ This position will figure centrally again once we turn to Israeli land authorities.

British articulation over Palestine’s land did not have to go through the same negotiation and reangling seen during the Ottoman Empire since Britain’s communication of control via land policy is seen as the norm and understood by the rest of the West. Instead, the British focus on intelligibility was directed towards the early Zionist community that Balfour reassured in his 1917 letter. Members of the British Mandate government needed their legal articulations over property to be understood in reference to their intent to support Jewish settlement and nationhood in Palestine. Their two acts of refining land laws set by the Ottomans and clarifying the intent behind their own land definition and acquisition complete, the British paved a path for Jewish land accumulation during the Mandate era and afterwards.

ISRAELI RHETORICAL ARTICULATIONS OF LAND PROPERTY

The two approaches to Zionism of relevance to a conversation about property and ownership are religious and political Zionism. Through religious Zionism, a clear connection ties claims to the Land of Israel with ideas around first possession. An early pioneer of religious Zionism claimed “the belief that Israel will return to its own land originates with the inherent relationship between Israel and the land and with the promise that the Holy One, Blessed be He, will give the land to His children,” a sentiment that remains prevalent to this day.²⁸ Other early religious Zionists used words such as “reclaim” or “return” in their writings, implying that those currently on the land are not the original owners of it.²⁹ As Israel became formally established, the rhetoric around religious Zionism and political Zionism began to converge. Zvi

Yehuda HaKohen Kook, a religious Zionist, said on the 19th anniversary of Israeli’s independence:

This is the state that the prophets envisioned. Of course, it has not yet attained perfection. But our prophets, our sages and those who followed them, said: “The seed of Abraham, Isaac, and Jacob will return and will reestablish settlement and independent political rule in the Land.”...Indeed, surely as a result of the return of Israel to their Land there will come about the increase of Torah and its glorification. But the first step is the settlement of Israel on their land!³⁰

Claim to the land stemmed from Biblical rights, but in the modern context, articulation of such land rights needed to be repackaged to also incorporate the Lockean value of labor as claims to ownership. While religious Zionists use the Torah as evidence of their first possession rights to the land, Palestinians pass down keys and land documents from the British Mandate period to articulate ownership of land.³¹ The documents they once placed little value in and chose not to update after the Ottomans first mandated the use

““ The documents they once placed little value in and chose not to update after the Ottomans first mandated the use of title-deeds in the 1858 Land Code, now became key evidence of ownership since the 1948 Nakba as Palestinians juxtapose legal documents denoting ownership against religious claims.”

of title-deeds in the 1858 Land Code now became key evidence of ownership since the 1948 Nakba as Palestinians juxtapose legal documents denoting ownership against religious claims.

“ Uninhabited, the land wastes away, purports the colonial mind.”

The phrase “a land without a people for a people without a land” has widely been attributed to political Zionist Israel Zangwill.³² This rhetoric of emptiness fits with the *terra nullius* rhetoric used in other settler-colonial states, including the British. The Israeli government continued this rhetoric after it took control of Palestine in 1948. With empty land, the focus is only on what the land does not have; this Zionist slogan, though, strategically couples the emptiness with a landless people. Uninhabited, the land wastes away, purports the colonial mind. The Zionist notes the land’s emptiness and proposes itself as the solution.

Inherent to this claim of Jewish settlement as the solution to wasted Palestinian land is the belief that the result of Jewish settlement will be a blossoming of such lands. Such efflorescence comes in two forms: monetary and agricultural. Ze’ev Jabotinsky, an early propagandist of Zionism, writes, “Jewish colonization was bringing a rain of gold to Palestine.... Between 1920 and 1938 Jews pour about 100 million pounds into Palestine.”³³ While this example emphasizes monetary growth over agricultural, the decision to use the word “rain” alludes to features necessary for agricultural blossoming. Israel’s first Prime Minister David Ben Gurion furthers the claim to the land through references to agricultural prosperity by stating variations of “we will make the desert bloom,”

including when he delivered the Declaration of the Establishment of the State of Israel.³⁴ Such statements from Ben Gurion and Jabotinsky keep the attention on the applied labor of Jews, unlike the earlier slogan of “a land without a people for a people without a land.” However, Ben Gurion alludes to the presence of others in the Naqab when saying, “if the state does not conquer the desert – the desert may liquidate the state.”³⁵ By employing the language of colonial conquest, Ben Gurion seems to suggest there is danger associated with the native Bedouin population. In any variation of these quotations from Ben Gurion and Jabotinsky, though, their intent is clear: the Land of Israel belongs to them through the labor of agriculture and capital conquest.

Kibbutzim were early manifestations of Israel’s bond between labor and land possession, actualizing Ben Gurion and Jabotinsky’s dreams of Jewish colonization through agriculture. In addition to the institutions of kibbutzim physically replicating the rhetoric of land rights via labor, the individuals on the kibbutz did as well. Called the ‘New Jews,’ they were physically strong and tough from working the land. The Hebrew term for this New Jew is a *tzabar*, which is also the word for the prickly-pear cactus. The association of the New Jew with the prickly-pear cactus was an attempt to show how natural the New Jew is as an inhabitant of the land.³⁶ The prickly-pear’s association with belonging and indigeneity, though, is not unique to Israelis; Palestinians also use the prickly-pear cactus to symbolize their own rootedness in the land. For example, Sahar Khalifeh’s book dealing with debates over modes of resistance to reclaim Palestine is entitled *al-subbar*, the Arabic word for prickly-pear. Even more relevant to property claims is the fact that prickly-pear cacti once demarcated property boundaries in Palestine.

Continuing the thread of plants, the nature- and state-land relationship discussed as

part of the Ottoman *mierié* classification is also present in Jewish National Fund tree-planting initiatives. Belonging and rootedness in Israel tied itself to the 'blooming Israel' rhetoric. In addition to embodying a plant in the idealized New Jew, building new forests across the country was a strategy for laying further claim to the lands by putting their labor into a rooted plant that eventually becomes immovable property. The Ottomans objected to planting new trees on public lands due to their permanence, and the Israelis took the same permanence logic and applied it to lands they wanted to pull into their purview. Beyond the new forests as acts of their own claims to land, they also erased Palestinian structural articulations to ownership. Many of the forests were built on top of depopulated Palestinian villages.³⁷ Along with fitting Lockean values of labor, this act of tree plantings was also intelligible to a broader audience due to its visible nature. The previous owners of the land, whether legitimate or illegitimate, were rendered invisible, covered by the fruits of the new owners' labor. All of these Israeli rhetorical claims based in nature, especially in the case of reforestation, are made on behalf of the entire Jewish collective while they are displacing and alienating large amounts of individually held Palestinian property.

Moving away from the nature-based rhetoric and towards a conversation about legal articulations of property, I end on Jabotinsky's rhetoric that brings in the legal history Israel inherited. Jabotinsky's famous 1923 essay, "The Iron Wall," articulates and acknowledges the stage the British set for Zionism. He writes:

This [Zionist coonization] is our Arab policy; not what we should be, but what it actually is, whether we admit it or not. What need, otherwise, of the Balfour Declaration? Or of the Mandate? Their value to us is that outside power has undertaken to create in the country such conditions of administration and security

that if the native population should desire to hinder our work, they will find it impossible.³⁸

On an international scale, Jabotinsky quite clearly voices the intention of future Zionist endeavors to continue on the path of British legal structures that already facilitated property alienation.

ISRAELI LEGAL ARTICULATIONS OF LAND PROPERTY

Foundational to Israeli alienation of Palestinian property was a series of emergency regulations established in 1948, specifically the Abandoned Areas Ordinance, Cultivation of Wastelands Law, and the Absentees' Property Law. Together, these laws facilitated the legal alienation of Palestinian property.

The Abandoned Areas Ordinance facilitated the widespread use of the Absentees' Property Law. Article 1 of the Ordinance defines abandoned land as "any area or place conquered by or surrendered to armed forces or deserted by all or part of its inhabitants, and which has been declared by order to be an abandoned area"; once declared abandoned, the land falls under state purview and all other Israeli laws. The Ordinance gave the Israeli government state-wide margins to deem an area abandoned. The unlimited range of power extended beyond the ability to classify lands as abandoned and goes on to empower the Prime Minister and other government officials to "make such regulations as he may deem expedient as to matters relating to...the expropriation and confiscation of moveable and immovable property, within any abandoned area."³⁹ This law delineates few restrictions of the state's authority to classify, alienate, and claim dominion over these lands and simultaneously disregards whether the state's own actions created the circumstances behind an area's abandonment.

Similarly, under the Absentees' Property Law, breadth of power comes into play as a way to maximize amalgamation and accumulation of property into state control. Absentee property is that whose ordinary owner was not present at the property from November 29, 1947 to May 19, 1948.⁴⁰ Once declared 'absentee property,' land and improvements fall into the state's hands, ignoring the reason for the owners' absence, fitting with language of the Abandoned Areas Ordinance.

The Cultivation of Wastelands Law has its roots in the 1921 British *Mevat* Land Ordinance, which protected uncultivated land from Palestinian claimants. In addition to cordoning off these swaths of land from Palestinian use, the rigorous land registration initiative under the British meant the Israeli government knew which lands were classified as waste land. While waste land did not immediately fall into the hands of the British, the Israeli legal system outlines several avenues through which the state can claim waste land. According

to the Abandoned Areas Ordinance, waste lands qualify as abandoned and thus can be amassed by the state. Additionally, under Article 4 of the Cultivation of Wastelands Law, if the "Minister of Agriculture is not satisfied that the owner of the land has begun or is about to begin or will continue to cultivate the land, the Minister of Agriculture may assume control of the land in order to ensure its cultivation."⁴¹

LAND LAW HISTORIES CONVERGE IN UMM AL-HIRAN

In the context of the Umm al-Hiran case, the history of British Mandate rule makes another appearance in the form of unrecognized villages and the Dead Negev Doctrine (DND), whose name itself connects to an understanding of ownership through Lockean values of labor. Israel deems many of the villages in the Naqab as 'unrecognized villages' and therefore has



Figure 2. Haifa, Palestine - Graffiti on abandoned property in Wadi Salib, a historically Palestinian neighborhood (ElJamal, 2015).

no responsibilities to them even though the inhabitants of the villages are Israeli citizens. The DND adds another layer to this complication because, for all intents and purposes, it rejects and denies Bedouin claims to the land, rendering their villages *mevat* lands. It follows that any actions taken to remove the Bedouins from the land are not acts of dispossession; rather, they are acts of protecting state lands.⁴² The DND also claims that Bedouins are not considered indigenous, thereby absolving Israel of the rights and responsibilities outlined by international bodies for the protection of such communities.⁴³

In Umm al-Hiran, the histories of land management from the Ottoman Empire to the British colony to Israel contribute to its precarious existence. Reallocation of Bedouin land across the Naqab began very early in Israel's existence through claiming lands for Jewish National Fund restoration

projects and Jewish resettlement.⁴⁴ Beginning in 2003, Israel issued a series of eviction and demolition orders for Umm al-Hiran, with the plans of building a new Jewish settlement and forest in its place.

Article 1 of the Cultivation of Waste Lands Law defines waste land as "land capable of yielding crops and which, in the opinion of the Minister of Agriculture, is uncultivated."⁴⁵ Taking into consideration the articulated goal of 'making the desert bloom,' the State of Israel clearly believes in the agricultural potential of the Naqab. The future implied in these statements, though, also means that the current use of the land by the Bedouins for their own pastoral purposes does not count as cultivating the land. The standards for cultivation remain unclear because if the new plan for Umm al-Hiran is a settlement, how then does the Bedouin use of the land for settlement not meet the use requirements?



Figure 3. Al-Khalil, Palestine - Located in Al-Khalil (Hebron), a town heavily militarized by Israeli soldiers occupied by Israeli settlers, this graffiti asserts the Palestinian roots of the land [Eljamal, 2014].

The DND itself was not a policy plan; however, it set a foundation for other policies to follow its directive. One such policy that emerged from the DND framework is the 2011 Praver-Begin Plan, or the Praver Bill, which aimed to “solve the Bedouin question.”⁴⁶ Following the colonial rhetoric of ‘modernizing the savage,’ the Praver Bill’s solution was to evict Palestinians in unrecognized villages and resettle them in more urban sites.⁴⁷ The Israeli State used aerial photographs to determine whether or not land was inhabited or cultivated to the extent necessary to deem it possessed.⁴⁸ The aerial photographs cannot account for Bedouin pasturing or agriculture practices, so if a land is caught in a time of rest and lacks the structures that are perceived as signaling habitation, then the land is reduced to that single snapshot and ostensibly can be alienated for the sake of the state under its authority given by the Cultivation of Waste Lands Law. This very much connects with Rose’s ideas about vision being part of property, and the way in which Israel is using these photos relates to a critique that has been levied against vision. The critique of vision eclipsing time becomes relevant in this case, despite Rose’s assertions against this consequence of vision.⁴⁹

CONCLUSION

The Israeli state manages to articulate its claims of ownership over Umm al-Hiran through several legal layers. Recent legal claims to the land are reinforced by laws from 1948, which are again supported by authorities constructed at the state’s founding. To a global community, it looks as though Israel is operating within its legal structure: the Praver Bill does not therefore stand out as exceptional, and continuity can be seen as credibility.

Israel’s claims to land ownership cannot be viewed as novel practices of a young

country. The state constructed its land tenure systems and practices precisely through the framework provided by the historical imperialism that dominated Palestine. Since the 1858 Ottoman Land Code, articulation of ownership hinges upon labor, which roots an individual to the tract of land and transforms *mevat* lands to spaces of productivity. Such Ottoman values of labor, and even more importantly the attempts to uncover the ‘highest and best uses’ of lands, resonate strongly with the British colonial mindset and are thus built upon as an opportunity for domination. What was once ‘dead’ land available for Palestinians to claim and cultivate becomes amalgamated property for the British Empire, consolidated under its land laws. Israel further builds upon this definition of waste to include emptiness, abandonment, and absenteeism, allowing the state to dispossess Palestinians of their land, growing its own coffers.

Land viewed as waste land is seen as an issue; in reality, though, the British and Israeli governments value and covet purportedly wasted land as an opportunity. A wider definition of waste land means a broader sphere for alienation. Thus, land laws that date back to the Ottoman era and uphold the Lockean perspective of labor as a communication of property ownership work hard to eliminate the opportunities for Palestinians to claim historic and current ownership through this method and other modes of articulation developed and established by past regimes, as is apparent through the case of Umm al-Hiran. Through this exploration into the tactics and strategies of land accumulation and alienation, we see how such methods of communication are not temporally confined; rather, imperial and colonial strategies maintain their prominence today, raging in contemporary Israel and successfully continuing to alienate Palestinian land.

ABOUT THE AUTHOR

Mekarem Eljamal is a dual Master of Arts candidate with the Center for Middle Eastern & North African Studies and Master of Urban and Regional Planning candidate at the University of Michigan. She received her Bachelor of Arts from the University of Michigan in Modern Middle Eastern and North African Studies in 2016. Her research interests focus on placemaking processes of Palestinian citizens of Israel. Mekarem is also the Associate Editor of the Middle East Studies Pedagogy Initiative with the Arab Studies Institute, where she works to support and instill a more nuanced manner of teaching the Middle East and North Africa.

ENDNOTES

1. Matt Surrusco, "'When I Look at the Praver Plan, I See Another Nakba,'" +972 Magazine, July 14, 2013, <https://www.972mag.com/when-i-look-at-the-praver-plan-i-see-another-nakba/>.
2. Carol M Rose, "Possession as the Origin of Property," in *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership*, eds. Robert W. Gordon and Jane Radin (Westview Press, 1985), 20.
3. Aida Asim Essaid, *Zionism and Land Tenure in Mandate Palestine* (Abingdon: Routledge, 2014), 58.
4. Ottoman Land Code, Article 2.
5. Ottoman Land Code, Article 2.
6. Ottoman Land Code, Article 2.
7. Ottoman Land Code, Article 3.
8. John Locke, "Of Property," in *Two Treatises of Government*, ed. Thomas Cook, n.d., 137.
9. Ottoman Land Code, Article 26.
10. Ottoman Land Code, Article 5.
11. Ottoman Land Code, Article 93.
12. Ottoman Land Code, Article 93.
13. Locke, "Of Property," 137.
14. Ottoman Land Code, Article 6.
15. Ottoman Land Code, Article 103.
16. Ottoman Land Code, Article 8.
17. Ahmad Amara, Alexandre Kedar, and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford: Stanford University Press, 2018), 53.
18. Rose, "Possession as the Origin of Property," 268.
19. Amara, Kedar, and Yiftachel, *Emptied Lands*, 53.
20. Ottoman Land Code, Article 126.
21. League of Nations, "Mandate for Palestine" (UNISPAL, 1922), Articles 4 and 21.
22. Amara, Kedar, and Yiftachel, *Emptied Lands*, 50.
23. Amara, Kedar, and Yiftachel, *Emptied Lands*, 78.
24. Martin Bunton, *Colonial Land Policies in Palestine 1917-1936* (Oxford: Oxford University Press, 2007), 44.
25. Amara, Kedar, and Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev*, 67.
26. "The Palestine Order in Council, 1922" (UNISPAL, 1922).
27. "The Palestine Order in Council, 1922," Article 13.
28. Gil Troy and Natan Sharansky, *The Zionist Ideas* (Philadelphia: Jewish Publication Society, 2018), 91–92.
29. Troy and Sharansky, *The Zionist Ideas*, 90-101.
30. Troy and Sharansky, *The Zionist Ideas*, 244.
31. Yara Bayoumy, "Father to Son, Keys to Palestinian Home Cherished," *Reuters*, November 23, 2007, <https://www.reuters.com/article/us-palestinians-israel-refugees/father-to-son-keys-to-palestinian-home-cherished-idUSL2223730920071123>.
32. Adam M. Garfinkle, "On the Origin, Meaning, Use and Abuse of a Phrase," *Middle Eastern Studies* 27 no. 4 (1991): 540.
33. Vladimir Jabotinsky, "Fata Morgana Land," *The Jewish Herald*, February 24, 1939, 1.
34. David Ben Gurion, "Proclamation of Independence," 1948.
35. Orri Avraham, "Farming a Desert—and Bulldozing a Habitat," *The Jerusalem Post*, November 6, 2007, <https://www.jpost.com/Health-and-Sci-Tech/Science-And-Environment/Farming-a-desert-and-bulldozing-a-habitat>.
36. Carol Bardenstein, "Threads of Memory and Discourses of Rootedness: Of Trees, Oranges, and the Prickly-Pear Cactus in Israel/Palestine," *Edebiyat* 8 (1998): 12.
37. Carol Bardenstein, "Trees, Forests, and the Shaping of Palestinian and Israeli Collective Memory," in *Acts of Memory: Cultural Recall in the Present*, eds. Mieke Bal, Jonathan V. Crewe, and Leo Spitzer (Hanover, NH: University Press of New England, 1999), 158-59.
38. Vladimir Jabotinsky, "The Iron Wall," *Raszviet*, November 4, 1923.
39. David Ben Gurion, "Abandoned Area Ordinance," 1948.
40. "Absentees' Property Law 1950," 1950, Article 1.
41. David Ben Gurion, "Emergency Regulations (Cultivation of Waste Lands) Ordinance," 1948.
42. Amara, Kedar, and Yiftachel, *Emptied Lands*, 14.
43. Amara, Kedar, and Yiftachel, *Emptied Lands*, 14.
44. The Attempted Expulsion of the Arab Bedouin in the Naqab: The Example of Atir–Umm Al-Hieran (Adalah - The Legal Center for Arab Minority Rights in Israel, September 2011), 14.
45. Ben Gurion, "Emergency Regulations (Cultivation of Waste Lands) Ordinance," 1948.
46. Amara, Kedar, and Yiftachel, *Emptied Lands*, 38.
47. Noura Erakat, "Rethinking Israel-Palestine: Beyond Bantustans, Beyond Reservations," *The Nation*, March 21, 2013, <https://www.thenation.com/article/archive/rethinking-israel-palestine-beyond-bantustans-beyond-reservations/>.
48. Amara, Kedar, and Yiftachel, *Emptied Lands*, 235.
49. Rose, "Possession as the Origin of Property," 268. *Jewish Herald*, February 24, 1939, 1.