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# Zionism and Land Tenure in Mandate Palestine

Aida Asim Essaid



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A fundamental aspect of the conflict between Palestinians and Israelis is the territorial dispute which began long before the State of Israel was established. Analysing the land tenure system in Palestine under the administration of the British Mandate, this book questions whether, and to what extent, the land tenure system in Palestine facilitated Zionist land acquisition. The research uses benchmarks elaborated in the guidelines of the United Nations Human Settlements Programme as its analytical starting point, and looks at the formation and implementation of the land tenure system in Palestine. It goes on to place the penetration of Zionism into the land tenure system within the theoretical context of a colonial-settler framework, employing information from land registry records located at the Jordanian Department of Lands.

Providing a political–historical analysis of the land tenure system from the end of Ottoman Rule until the end of the British Mandate, this book will be of interest to scholars and students of Middle Eastern History, Imperial and Colonial History, and Middle Eastern Politics.

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# **Zionism and Land Tenure in Mandate Palestine**

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# Glossary and Acronyms

Cadastral survey	An official, accurate, and systematic survey of land for its division into permanent area units, and their registration by identification numbers given to each parcel and block.
Cadastre	Refers to a system of registering real property in registry books according to a certain order, which may be related to as a repository of data on parcels of land whose size, form, and location are determined by official survey.
Dunum	Refers to the metric dunum introduced to Palestine by the British (as opposed to the Ottoman dunum). Therefore 1 metric dunum = 1,000 square meters; $\frac{1}{4}$ of an acre; 1 km = 0.62 miles.
<i>Fellah</i>	Peasant, agriculturalist, or farmer.
<i>Fellahin</i>	(Also spelled <i>fellaheen</i> .) Plural of <i>fellah</i> .
<i>Ghubn fahish</i>	Obscene injustice.
ICA	See PICA, Palestine Jewish Colonization Association.
<i>Ifraz</i>	Partition of <i>musha'</i> land.
JA	The Jewish Agency for Palestine. Established according to Article 4 of the Palestine Mandate which states that "An appropriate Jewish Agency shall be recognized as a public body for the purpose of advising and cooperating with the Administration of Palestine in economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and subject always to the control of the administration, to assist and take part in the development of the country." Created in 1930.
JNF	Jewish National Fund. Founded by the Zionist congress in 1901 AD and incorporated as an English company in 1907 with a Palestine Office in Jaffa.

<i>al-Khawaja</i>	Term used in some Arab countries in reference to foreigners. Originates from the Persian word for Master.
<i>Kushan</i>	Title deed.
Landownership	Those legal, contractual, or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land.
Land Settlement	The examination, settling, and recording of the rights of the owner in land registry (not to be confused with <i>settlement of people on the land</i> ).
Land Tenure	The perceived institutional arrangement of rules, principles, procedures, and practices, whereby a society or community defines control over, access to, management of, exploitation of, and use of means of existence and production.
Land Tenure System	The recognition of land tenure by a system of established rules and customary relationships in a social organization.
Land Tenure Security	The perceived feeling of being secure in one's access to land without the risk of losing it to someone else without consent or proper compensation.
£LE.	Egyptian Pound. Until 31 March 1928, it was a legal tender in Palestine (and was valued at about 2.5 percent more than the British Pound).
<i>Kushan</i>	Refers to a land title deed or land certificate.
Mapping	(Particularly mapping of property for land settlement.) An instrument of demographic, fiscal, land, economic, or security policies of a given government.
<i>Mawat</i>	Unoccupied hill, scrub, woodland, and grazing grounds not held by title deed.
<i>Mafruz</i>	Parceled land.
<i>Mahlul Miri</i>	Lands left uncultivated.
<i>Matruka</i>	( = Withdrawn) Land left for public use either for general use (e.g highways) or special use (e.g. common pastures, threshing floors).
<i>Musha'</i>	Land-use or holding by which a group of people (usually a village) held shares or parcels that were periodically redistributed.
<i>Miri</i>	Land where the owner held the usufruct but not the title. Regarded as State Land.
<i>Mukhtar</i>	Village headman.
<i>Mulk</i>	Freehold land.
Palestine	Refers to historical Palestine, or pre-1948 Palestine. The British Mandate in Palestine consisted of the geographic areas of what are now Israel (not

	including the Golan Heights), the West Bank, East Jerusalem, and the Gaza Strip.
Palestinian Arabs	Refers to those Arabs who are Palestinian as opposed to other Arabs, and by 'Palestinian' the author means Palestinian Jews, Christians, and Muslims alike.
PFU	The Palestine Foundation Fund (Keren Hayesod). Established in 1920 as the financial organ of the JA. It provided the JNF with finance for immigration, settlement in Palestine, security, industry, education, and political work.
PICA	Palestine Jewish Colonization Association (PICA or ICA). Established in 1924 by Baron Edmund de Rothschild.
PLDC	Palestine Land Development Corporation. Established in 1909 in England, as an arm of the WZO.
£P	Palestinian Pound = US \$4.03 in 1948.
Parcellation	The division of land into two or more parts.
<i>Pashalik</i>	A term for the territory under the jurisdiction or administration of a pasha.
<i>Tabu</i>	(In Turkish spelled <i>tapu</i> .) Title to land. Also means land registry book.
UN-HABITAT	The United Nations Human Settlements Programme.
UNCCP	United Nations Conciliation Commission for Palestine.
<i>Waqf</i>	(= Dedicated) Usually <i>mulk</i> (or originally <i>miri</i> ) modified by dedication. Recognized by Islamic Law as the power of a landowner to dedicate the land for a religious purpose. The property then becomes categorized as an unalienable endowment.
Zionist-Jews	Refers to those Jews who believe in the Zionist movement and its goal of the creation of a Jewish state in the land of Palestine. The conflict today is between Palestinians and Israelis; however, prior to 1948 the state of Israel did not exist and therefore the Jewish population during the British Mandate in Palestine cannot be referred to as Israelis. Since not all Jews support the Zionist movement, the author has therefore chosen to use the term 'Zionist-Jews.'
ZO	Zionist Organization. Also known as World Zionist Organization (WZO). Founded in Basle in 1897 as an international body divided into Federations, each of which, as a rule, is co-extensive with the boundaries of a state.

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# 1 Introduction

Landownership in Palestine represents the crux of the current conflict between the present-day states of Israel and Palestine.<sup>1</sup> During the period of the British Mandate, the system of land tenure was transformed by the many changes in land policies. This book is a study of the land tenure system in British Mandate Palestine,<sup>2</sup> and is a qualitative historical analysis of the processes that contributed to, if they did not directly cause, the disparities of landownership in Palestine prior to 1948.

Even today the conflict between Israelis and Palestinians is based on two peoples and the legitimacy of their beliefs regarding their rights to the land. To this day, landownership<sup>3</sup> and boundaries are disputed matters related to each side's claim to the land; and to this topic all other unresolved issues are directly tied.

A transparent study of landownership in Palestine is directly linked to the property claims of Palestinian refugees, boundary issues, and Israeli settlements, and, most importantly, will be essential for a truth commission upon resolution of the Palestinian–Israeli conflict. The current map of the states of Palestine and Israel is not in line with what the people of either area believe to be rightfully theirs. To many Israelis, the West Bank and Gaza are disputed territories that are part of the Jewish return to the Holy Land and the “promised restitution of Israel”;<sup>4</sup> and many believe that “The people of Israel have ancient ties to the territories ... [and] Israel has rights in the West Bank and Gaza Strip, rights that the Palestinians deliberately disregard.”<sup>5</sup>

To Palestinians these are Israeli-occupied territories, along with the Golan Heights. In fact, the PLO Negotiations Affairs Department writes,

In the spirit of compromise the Palestinians have expressed a willingness to forgo Palestinian national claims to land within the 1948 Armistice Lines in exchange for the establishment of a state in the Occupied Palestinian territories. Nevertheless, because such claims continue to exist and until they are relinquished, lands inside Israel should be termed “disputed” for purposes of consistency.<sup>6</sup>

Palestinian refugees, whether in the West Bank and Gaza, in refugee camps in Jordan or Lebanon, or in the global Palestinian Diasporas, identify

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themselves with their pre-1948 homes, and therefore still consider the land in the state of Israel to be their rightful home.

In short, then, the conflict is intractable only to the extent that it was always a contest over the same land by two peoples who believed they had valid title to it and who hoped that the other side would in time give up or go away. One side won the war, the other lost, but the contest is as alive as ever.<sup>7</sup>

The conflict between Palestinians and Israelis is based on the fight between two peoples over their right to the land. The purpose of this book is to examine their legal rights to the land by dissecting the land tenure system into its different parts, and examining how each contributed to the transfer of landownership between Palestinian Arabs and Zionist-Jews during the British Mandate in Palestine within the context of settler colonialism. According to the existing literature on the subject, the main reason was economic circumstances and the fact that the Palestinians sold their land.

The primary questions asked are: Did the land tenure system of the British Mandate of Palestine facilitate the transfer of land from Palestinian Arabs to Zionist-Jews? If it did, then to what extent did this occur? And what role did the Jewish Agency and the Zionist Movement have within this land tenure system? The book argues that each part of the land tenure system – consisting of legislation, cadastral survey, registration of title, land sales, and disputes – together caused the landownership conflict during the British Mandate of Palestine. And contrary to the major part of the existing literature on the subject, it is also argued that the Jewish Agency and Zionist bodies had a direct and collaborative role in each part of this land tenure system.

### **Struggle Over Land**

#### *History, Identity, and Nationalism*

Long before it became the core of the Palestinian–Israeli conflict, the land of Palestine had held great significance for millions of people, including Jews, Christians, and Muslims. It is almost impossible for any individual to approach this topic impartially because of the religious connotations of the geographical area for the religions of Judaism, Christianity, and Islam.

The historical ties of Jews and Arabs to the land of Palestine go back at least 6,000 years. According to the Torah, the Bible, and the Qur'an, the first connection to the land was established by Abraham, the patriarch (in Judaism) or prophet (in Islam). It is believed that Abraham was guided by God to the land of Palestine, where he had two sons: Isaac the son of Sarah and Ishmael son of Hagar. Isaac and his descendants became the Jews, and Ishmael and his descendants became the Arabs. Therefore Arabs and Jews, hence Palestinians and Jews, are Semites related to the same father, Abraham.<sup>8</sup>

The Jewish people were in Jerusalem and Palestine for 600 years before they were exiled in 721 BC by the King of Assyria, and again in 586 BC by Nebuchadnezzar, the King of Babylon. From then on, Palestine fell under the control of the Persians, Greeks, Romans, Arabs, Christian Crusaders, Mamluks, Ottomans, and finally the British Mandate. From 586 BC until 1948, the Jewish people held no political sovereignty over Palestine. The Arabs had political power over Palestine for a brief period during the seventh century AD and were numerically dominant between the seventh century and 1948.<sup>9</sup>

The history of governments in Palestine is not a continuous one and is very extensive. But the beginning of the conflict between Palestinians and Israelis goes back no further than the rule of the Ottoman Empire. Palestine was under Ottoman rule as a part of southern Syria in the fifteenth century until the empire dissolved. The Ottoman forces surrendered to General Sir Edmund Allenby, Commander-in-Chief of the Egyptian Expeditionary Force and the Allied forces in Jerusalem, on 9 December 1917; from that point onwards, the British governed Palestine: first militarily until 1920, then under ‘civilian’ rule until 1923, and then under the British Mandate in Palestine, which lasted until the creation of the state of Israel on 14 May 1948.

Searching for an understanding landownership in Palestine is in no way meant to undermine the importance of the Holy Places and the history of the land to any of the religions. The Palestinian–Israeli conflict, however, began with the fight for landownership between two peoples – Palestinian Arabs and Zionist-Jews – during the period of the British Mandate in Palestine.<sup>10</sup>

There is a direct relationship between Palestinian identity and the land. This is not a new phenomenon; it has always existed. Palestinian memory was not constructed as a result of the creation of the state of Israel in 1948; on the contrary, Palestinian identity, nationalism, history, and culture have always been directly related to the land. In his *Palestinian Identity: the Construction of Modern National Consciousness*, Rashid Khalidi discusses how one of the earliest bonds between Palestinians and the land was the religious attachment to the Holy Land of Palestinian Jews, Christians, and Muslims.<sup>11</sup> He refers to this direct relationship between Palestinian identity and the land as “urban patriotism.” For example, the powerful local attachment to land and cities that people have is expressed in the tradition Khalilis, Nabulsi, and Jerusalemites have of using the names of their cities as a family names or as a symbol of pride in addition to an existing name (for example al-Nabulsi, al-Maqdisi, al-Khalili, etc.). Villagers also took pride in their history and in being able to trace their family lineage on the land. Even if they had never lived there themselves, Palestinians were identified with their place of origin by their family name. Currently exiled Palestinian refugees, whether in refugee camps or elsewhere, and whether two or three generations later, still identify themselves with their cities, towns, and villages of origin as if they had never left.<sup>12</sup>

While they tried to protect and preserve their national identity and their past, a nationalist symbol emerged for the Palestinian people: that of the



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peasant or farmer, the *fellah* (pl. *fellahin*). Throughout history most rural Palestinians have been *fellahin*, for whom the family was the basic unit, and who carried out most, if not all, labor on the farm land; the farm then provided the family with its needs.<sup>13</sup> The *fellah* is a representational figure for the Palestinian people because it symbolizes the traditional lifestyle of the majority of the Palestinian people. For example, during the 1936–39 revolts in British Mandate Palestine, the *fellah* symbolized the struggle against colonialism. At all times, the *fellah* has characterized the deep love and historical attachment to the land, maintaining a permanent bond to it and remaining loyal and *sumud* (steadfast) against all conflicts, population transfers, and land expropriations. The relationship between the Palestinian people and the land is indivisible, and is even embodied in Palestinian literature, poetry, and folklore.<sup>14</sup>

The association between the land and the people had always been a natural one for Palestinians, so the concept of re-establishing roots to the land was a new experience. As a respected member of the community, the *fellah* was viewed in congruence to his ownership of land because land meant honor. Therefore, to the Palestinian people the loss of land through Zionist colonization meant a loss of ‘national’ honour.<sup>15</sup>

The identity of the Palestinian people is implanted in the land. All Palestinians have something in common; they are members of a family, and the family is part of the village, town, or city that is tied to the land. When the British introduced the identity card in Palestine in the 1920s, the reply was “*Ardi hiya hawiyati!*” meaning “My land is my identity!” This relationship is not a recent or modern phenomenon; it is rooted within Palestinian idioms, poetry, and traditions.<sup>16</sup> For this reason, for Palestinian refugees the loss of the land is also a loss of their identity.

There is no question about the connection between the Jewish faith and Palestine, just as there is no debate about the existence of links with Christianity or Islam. However, the idea of a state for Jews is not shared by all Jews. As with any type of nationalism, Zionism can be defined in many ways, depending on the source, perspective, and historical framework. The goals of Zionism have changed and developed over the years, so in this context, Zionism can be defined as the Jewish nationalist movement for self-determination, leading to the establishment of a Jewish homeland, and eventually a Jewish state in Eretz Israel: “To date, even after the creation of the state of Israel, Zionism has neither failed nor succeeded.”<sup>17</sup>

From the late nineteenth century, Zionist authors such as Eliezer Ben-Yehudah, Moshe Leib Lilienblum, and Leo Pinsker were promoting the idea that Jewish people needed to be brought together in a common land, saying that the lack of a Jewish nation meant the lack of a solution to the international Jewish question of being alienated everywhere. Pinsker remarked that “The Land which we are about to purchase must be productive and well located and of an area sufficient to allow the settlement of several millions. The land, as national property, must be inalienable.”<sup>18</sup>

As noted above, the religious significance of Jerusalem and Palestine to the Jewish people is not a subject for debate. However the link between Zionism and the land in Palestine is not a direct one. Rather, as the quote above suggests, what Zionism initially called for was a Jewish nation and land for that nation. Where that land was located was a matter that would remain unclear for years to come. For example, Leo Pinsker himself suggested “a small territory in North America, or a sovereign *pashalik* in Asiatic Turkey recognized by the Porte and the other Powers as neutral.”<sup>19</sup> In 1896 Theodor Herzl (also known as the father of Zionism) published the pamphlet “The Jewish State,” in which he considered both Argentina and Palestine as possible lands for Jewish sovereignty, but stressed that “Palestine is our unforgettable historic homeland.”<sup>20</sup>

Rabbi Abraham Isaac Kook, the first chief rabbi in British Mandate Palestine, wrote that Eretz Israel could not be regarded as a tool for establishing “national unity” because it was part of the Jewish people’s soul, and that “human reason ... cannot stir the depths of love for the land that are dormant within” the Jewish people. To the Zionist-Jew of the late nineteenth and early twentieth centuries, there was no question that the Jewish nation meant returning to the Holy Land.<sup>21</sup> It was a spiritual connection with the land that was understood exclusively by Jews. Some Zionist-Jews went as far as to claim that “Jews are the only people in the world who, from earliest times to modern days, are identified religiously, historically and legally with Palestine.”<sup>22</sup>

Palestinians and Zionist-Jews today identify themselves with the land. For Palestinians it is their home, their pride, and their way of life. For Zionist-Jews, it is a long-lost land from which they have been exiled for thousands of years; today, it is the same land from which Palestinians are in exile. Without any doubt the land of Palestine is essential to the identities of both peoples. However, symbolic and spiritual meaning is not a substitute for the controversy over land tenure.

### ***Topography***

Palestine lies on the eastern edge of the Mediterranean Sea, bordered by Lebanon and Syria in the north, Jordan in the east, the Mediterranean Sea in the west, and the Gulf of Aqaba and the Egyptian Sinai Peninsula in the South. The area of land covered is 26,323 square kilometers (10,162 square miles).<sup>23</sup> The topography of the landscape is an important factor in understanding landownership in Palestine because of the high demand for the most fertile land during the British Mandate. The land of Palestine is a “geographical mosaic” consisting of the coastal plain, mountains and hills, the Jordan Valley, and the Naqab desert.<sup>24</sup> Even though the country is small in size, the landscape of Palestine is a great mixture of soils and climates.<sup>25</sup> The temperatures and rainfall differ amongst the four regions, and the climate consists of hot, dry summers, and short, cool, and wet winters.<sup>26</sup>

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In the West Asia<sup>27</sup> region, land was the main economic resource because the majority of the population depended on agriculture for their means of subsistence.<sup>28</sup> When the British came to Palestine they recognized the role of agricultural life in Palestinian society and economy. The Ottoman government had made the agricultural sector their main source of income by imposing taxes on the crops. At the beginning of the British Mandate, the livelihoods of two-thirds of the population were based on Palestine's agricultural industry.<sup>29</sup>

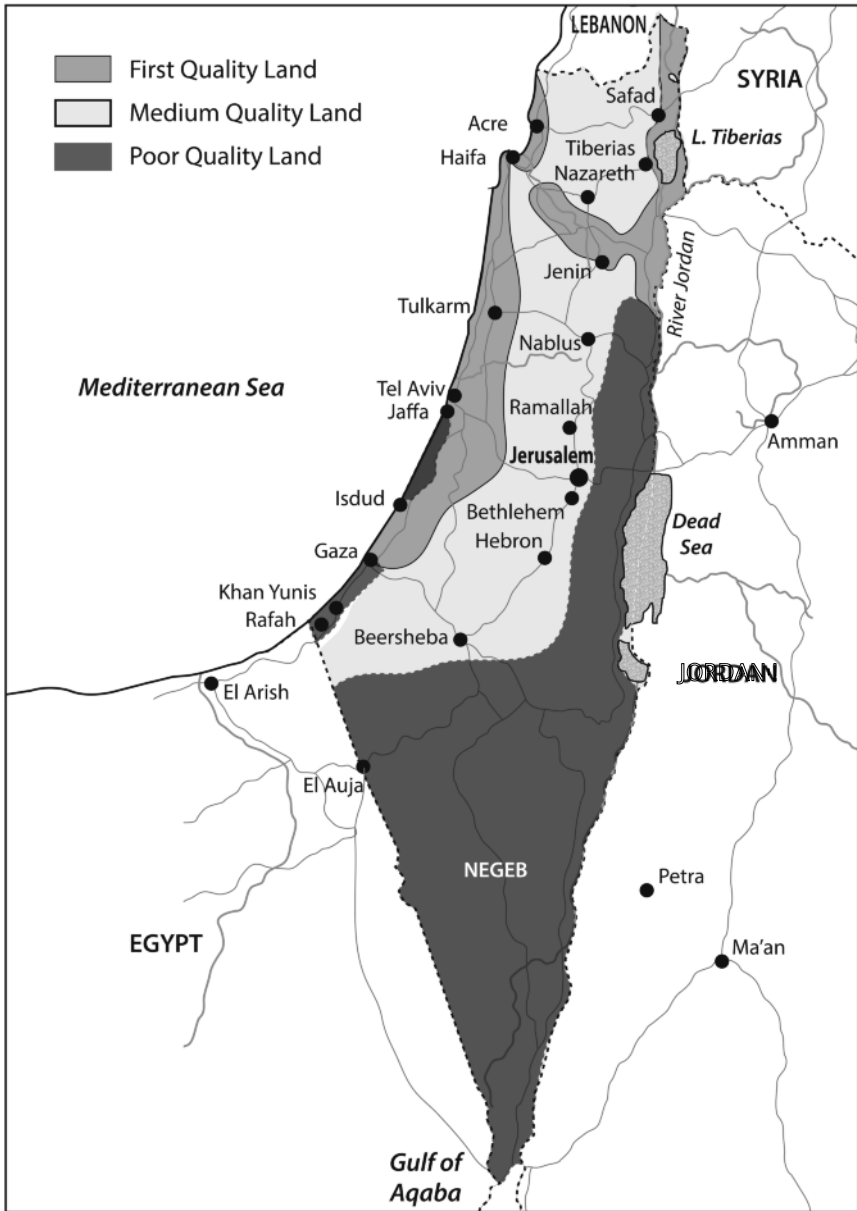
In the coastal plains, the soil was very fertile and there was an abundance of water from wells. The main crops were citrus fruit, bananas, tobacco, wheat, barley, and other vegetables. The coastal plains were the most cultivable land in Palestine. Water sources in the other areas were much scarcer, and the lack of soil allowed only certain crops to be grown, such as wheat and barley, and olive and fig trees.<sup>30</sup> In the non-irrigated land areas, wheat was the main crop and could be found on approximately one-fourth of the land.<sup>31</sup> The soil in these areas – the Jordan Valley, the mountains and hills, and the Beersheba and Negev (spelled 'Negeb' in Map 1.1) districts – were less cultivable or not cultivable at all.<sup>32</sup>

The amount of land owned by Palestinians and Zionist-Jews at the beginning and end of the Mandate is important, but what is more essential is the location of that land. By the end of the Mandate, approximately 5.5 to 7 percent of the land of Palestine was under Zionist-Jewish ownership.<sup>33</sup> While the amount of land was perhaps minute, it was concentrated in the coastal plain and the north-east areas, known for their "first quality land" and hence the most fertile land in Palestine.<sup>34</sup> Therefore the significance lies not only in the percentage of land owned by Zionist-Jews, but as illustrated by Maps 1.1 and 1.2, in the fact that it was the most fertile cultivable land in Palestine.

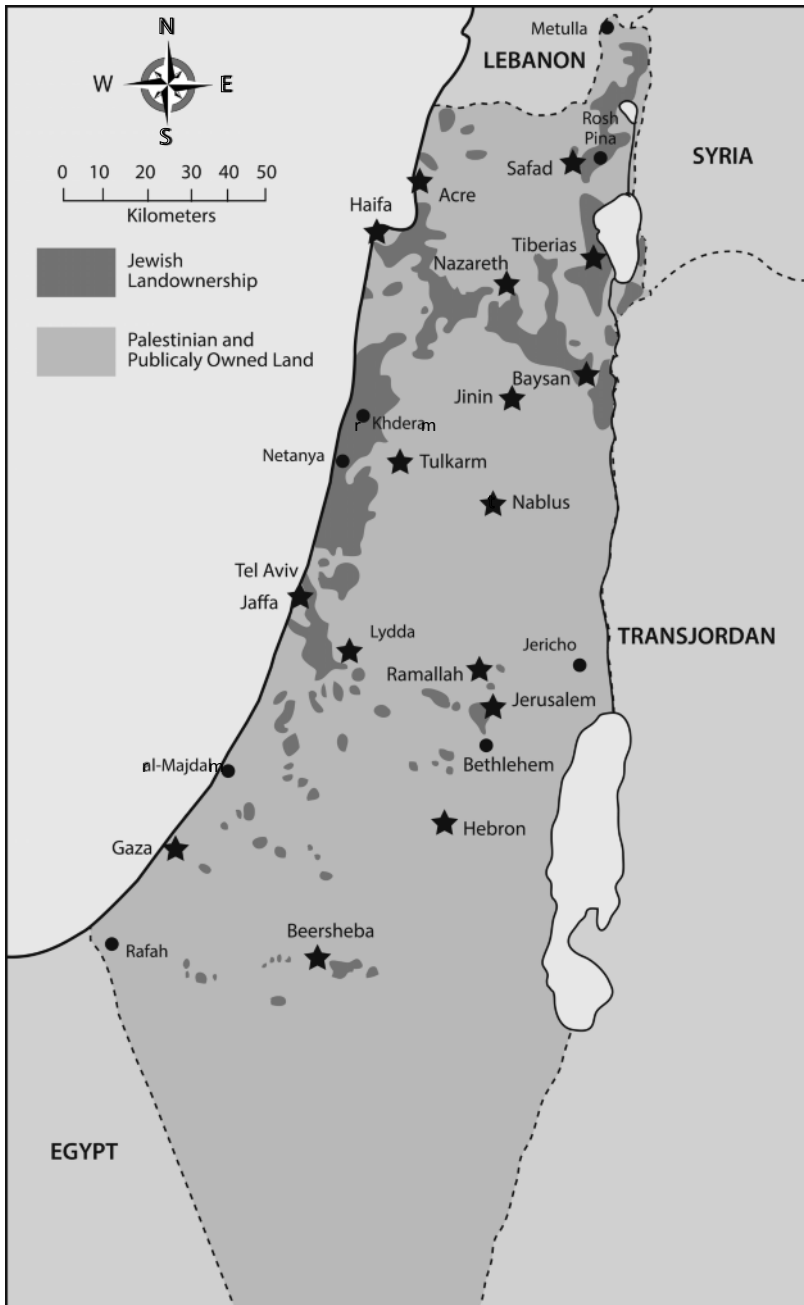
### ***Landownership and the British Mandate in Palestine***

Reform of land tenure in Palestine began under the rule of the Ottoman Empire with the issuing of the 1858 Land Code. This was intended to be an instrument for achieving control of state-owned lands, as well as for regulating private land ownership by the Ottoman administration. It was definitely a starting point for the centralization of power and land reform in the region, but the process of implementing the Land Code would not be carried out fully until after the British had entered Palestine. Trained officials able to implement the law in the Ottoman administration were lacking, and a strong central government had not yet been achieved. The British Administration had begun in Palestine in 1917, and the Mandate lasted from 1923 to 1948. The transfer of landownership from Palestinians to Zionist-Jews took place in this last period, and so is the main time-frame of interest in this research.

The state of Israel could not exist without the acquisition of land in Palestine. As stated in the Balfour Declaration in 1914, one of the obligations



Map 1.1 Classification of soil. Sami Hadawi (1988) "MAP H: Palestine: Classification of Soil," *Palestinian Rights and Losses in 1948: A Comprehensive Study*, London: Saqi Books, p. 200



*Map 1.2* Jewish-owned land in Palestine. Note, this map shows Jewish landownership in Palestine to be 7 percent. “Jewish Owned Land in Palestine as of 1947,” map copied from [www.palestineremembered.com](http://www.palestineremembered.com) (accessed 24 September 2009)

of the British Mandate administration in Palestine was to establish “a Jewish national home,” and this characterized its landownership policies accordingly. The British issued many land laws during the Mandate period, including land transfer ordinances and regulations. It is important not only to study the sources of origin and development of these policies, but also their implementation in all parts of Palestine, all of which will be analyzed closely in the chapters that follow.

A population census carried out by the British Government in Palestine in 1922 showed the total population to be 752,000, with around 650,000 Arabs and some 84,000 Jews. From that point onwards, Zionist-Jewish immigration, along with land acquisition, increased greatly, thus instigating enmity amongst the Arabs in Palestine. By 1939, the number of Zionist-Jews in British Mandate Palestine had reached almost 450,000, and the Arabs numbered almost one million.<sup>35</sup> Without question the British Mandate in Palestine was the pivotal time period in the creation of the state of Israel.

Although the British administration “acted only as an umpire in Palestine” amongst Palestinians and Zionist-Jews, the Zionists were nevertheless able to use their position in the Mandate to take possession of the most fertile and geographically strategic land; the British did little to aid the Palestinians and furthermore did not give them an equal voice in the policy-making process. Zionists were able to influence the British administration at many levels, starting with the Balfour Declaration, and even actually wrote the land tenure laws for the Mandate government. Zionists used their influence and power aggressively within the British Mandate government to ensure their needs were met in the acquisition of land for the creation of a Jewish state in Palestine.<sup>36</sup>

Even though land tenure reforms in Palestine had begun under the administration of the Ottoman Empire after 1858, Palestinian landownership was not under threat until the British Mandate in Palestine, which facilitated the means for Zionist-Jews to acquire enough land in Palestine not only for a national home, but also for a Jewish state in Palestine. As mentioned previously, Zionist-Jewish landownership was a very small percentage in Mandate Palestine but it included a considerable amount of the most cultivable land. Furthermore, as seen in Maps 1.1 and 1.2, Zionist-Jewish landownership was dispersed strategically over a large area, but not to the extent of becoming engulfed by the Palestinian-owned land. After the state of Israel was formed in 1948, land acquisition took on new forms. It was no longer a matter of competitive or assertive land-purchasing schemes, the majority of which had taken place between 1928 and 1939. From November 1947 to January 1949, 754,000 Palestinians became refugees, and by July 1949 that number had reached 804,000.<sup>37</sup> The new state then had to seize the lands vacated by Palestinians in order to prevent their return, and furthermore to transform them into Israeli property by legalizing their confiscation; this would also prevent future claims being made by them or their future descendants. This was done by issuing a group of initial emergency laws,

“Absentees’ property” laws, and other land ordinances legalizing acquisition of Palestinian lands.<sup>38</sup>

Land reforms for the privatization and registration of tenure were introduced to Palestine by the Ottoman Empire in 1858. Ninety years later the Israeli government took all the land vacated by Palestinians who had fled or were exiled, and legalized the annexation. To this day Palestinian refugees have been unable to return to the land they owned. For this reason a transparent study of landownership in the Palestinian and Israeli conflict for the period between Ottoman and Israeli rule over Palestine has to take place. It was during the British Mandate in Palestine that the methods for transferring landownership from Palestinians to Zionist-Jews were made possible.

## **Literature Review**

There is a great deal of literature covering the British Mandate in Palestine with regard to history, politics, and economic policies, and a vast amount of literature describing the historical importance of the land to both peoples. Concerning landownership, however, only a few authors have provided the basis for all other literature on this topic.

Each chapter of this book provides a thematic review of the literature relevant to each part of the land tenure system; however a review of what the author has selected as the key works is given here. While there are many sources on the topic of land in Palestine – ranging from studies on ancient and Biblical times, Ottoman Palestine, and, most extensively, on British Mandate Palestine, to Israel and the West Bank and Gaza – there are few sources that cover the topic of landownership as such. Most works focus on other aspects, such as the historical ties of the peoples to the land, the religious significance of the Holy Land, the different rulers of the land, land use, and current problems such as occupation of the land and boundaries. There is also a great deal of literature on the British Mandate in Palestine dealing with history, politics, and economic policies.

### ***Landownership and Land Policy During the Mandate***

Kenneth Stein’s *The Land Question in Palestine, 1917–1939* focuses largely on actual landownership and land tenure in Palestine under the British Mandate.<sup>39</sup> Stein uses a vast array of primary and secondary sources to explain how Zionists had obtained “the core of a national territory by 1939,”<sup>40</sup> concluding that Jews succeeded in purchasing the land for five reasons:

First, the inherited Ottoman land regime was vulnerable to manipulation; second, Palestinian Arab society was divided socially and politically, thus allowing the Zionists to move into the land sphere without real opposition; third, Palestine’s rural economy remained weak prior to, during, and

after World War I and was therefore susceptible to Zionist land-purchase overtures; fourth, the British acted only as an umpire in Palestine and did little to strengthen the condition of the Palestinian fellah; and fifth, the Zionists were able to use their special status under the Mandate to organize themselves in the effort to reach their goal.<sup>41</sup>

However the evidence presented by Stein does not support this argument and conclusion. While Stein repeatedly discusses the “influence” of the Jewish Agency and Zionist bodies and individuals in the British Mandate’s land policy, he nevertheless does not call it anything more than that. He overstates this argument even though a review of the evidence used to support it suggests otherwise. For example, Stein discusses the close involvement of Zionist actors with the Mandate Government in the land tenure system – including the drafting of laws, opposition of loans for the *fellahin*, the “Jewish Agency’s scrutiny of landless Arab claims in the 1930s,” and the appointment of British Zionists such as Herbert Samuel as the first High Commissioner and Norman Bentwich as Attorney General – all as being part of the “diverse and pluralistic origins” of the “Jewish leadership.”<sup>42</sup> However, a different perspective would suggest a different degree of influence, and that it was this manifold approach of Zionist penetration into the land tenure system that not only allowed the purchase of land, but also weakened the land tenure system and land tenure security of the Palestinian population.

On the other hand Stein concentrates on the divided Arab society who sold their land due to financial need, while dismissing the infiltration of Zionist actors in the land tenure system by calling it simply “influence” and “good organization.” Furthermore, he claims that the economic factors that hindered the “economic viability” of the *fellahin*, “such as insufficient plow animals, plagues, locusts, drought, usurious interest rates,” were “all totally unrelated to Zionist policies”; and that “Palestinian Arabs sold land enthusiastically, voluntarily, and collusively”<sup>43</sup> because of the situation, as opposed to doing so because of the economic conditions formed by Zionist land policy. And while Stein also claims that the Jewish Agency and Zionist actors took advantage of factors such as the weak Ottoman land system, the declining economy after World War I, the lack of financial aid and protection (especially by the British Mandate Government) towards the *fellahin*, and finally the lack of Arab experience in dealing with the bureaucratic and legislative Mandate system, he still finds that all this was only to the advantage of the Zionist cause and not that the aim was to impede Palestinian landowners.

Like many authors who have written on the history of Palestine, Stein does not fail to emphasize the significance of the agricultural industry. However he is clear in his opinion that whereas the agricultural methods of the Jewish immigrants to Palestine were modern and efficient, “the Arabs” were not only inefficient, but also backward in their farming methods. Such claims were originally made by Abraham Granovsky (Granott), an economist and



co-founder and chairman of the Progressive Party in Israel. Granovsky was one of the first authors to publish books on the topic of land in Mandate Palestine. Most of his work was written for Zionist-Jewish settlers immigrating to Palestine, advising them on agricultural techniques and how to maximize land use in order to achieve their greater objective of establishing a new homeland. His major works in relation to the present study include *Land Problems in Palestine* (1926), *Land Policy in Palestine* (1940), and *The Land System in Palestine: History and Structure* (1952).<sup>44</sup>

Stein used not only Granovsky's works, but also many primary sources, such as the British, Israeli, and Zionist Archives; however his book ends at 1939 and does not cover the remaining nine years of the British Mandate. Stein's conclusions as to why the confused Palestinian people failed to keep their land, whereas the modern Zionist movement succeeded in obtaining this land without much of a struggle, are what many scholars might identify as 'Orientalist.' One can read the works of Granovsky and Stein and identify the dichotomy that both authors have illustrated as a 'modern versus backward' people, one succeeding and the other failing. Both Granovsky and Stein emphasized not only that the Palestinians had failed to keep their land, but that they had also shown the inability of Arabs to maximize the agricultural production from that land. Stein concludes that Palestinians lost control over their homeland because they sold their land; but analysis of the different parts of the land system will show that it was the conditions and barriers constructed by the Zionist companies and the Jewish Agency that prevented Palestinian Arabs from being able to keep their land.

An extensive summary of the land laws is documented in Salman Abu Sitta's *Atlas of Palestine 1948*, which contains information on landmarks, population composition, landownership, and towns and villages, and maps and photographs of Palestine under the British Mandate.<sup>45</sup> Abu Sitta also reviews and amends the landownership statistics as claimed by Granovsky and other Zionist sources on Jewish landownership in Palestine prior to 1948. The atlas gives a historical account of the events leading to and of the 1948 war from a Palestinian perspective, emphasizing the Zionist supremacy over the land which led to the dispossession and expulsion of the Palestinian population. On land settlement in Palestine, *A Survey of Palestine under the British Mandate, 1920–1948* by Dov Gavish is a thorough study of how the land survey system of Palestine was led by the Zionist land scheme, especially in the politics and history of the establishment of the Survey Department, and Land Registry and Land Settlement Offices.<sup>46</sup>

A differing view to this is found in Martin Bunton's *Colonial Land Policies in Palestine, 1917–1936* where, rather than examining landownership as a problem between Zionists and Palestinian Arabs (a problem Bunton considers to be marginal), Bunton instead focuses on the British Government's problems of land policy reform.<sup>47</sup> For example whereas Gavish found land settlement in Palestine to be driven by Zionist demands, Bunton argues that the unfinished land settlement was due to insufficient funding. Unlike the

approach of this research, Bunton shows the similarities between British land policies in Palestine (rather than the differences accredited to the role of Zionism) and in other British colonial policies in Sudan, India, and Cyprus. Another publication, by Roza I. M. El-Eini, analyzes British policy formation and implementation in the landscape of British Mandate Palestine. In her book *Mandated Landscape: British Imperial Rule in Palestine, 1929–1948*, El-Eini uses a considerable number of primary and secondary sources, including the Public Records Office in London and the Israeli State Archives and the Central Zionist Archives, to discuss British policy formation and its implementation in agriculture, forestry, town planning, and partition plans, while a very informative chapter on land and land laws demonstrates the British Mandate government as “an agent of change in land-use and the landscape.”<sup>48</sup>

### *The History and Economy of Mandate Palestine*

There are other key works that were immensely significant for the study of the different parts of the land tenure system. For example, on the subject of laws and legislation, Sahar Huneidi’s *A Broken Trust: Herbert Samuel, Zionism and the Palestinians* used British Archives as well as a unique array of Palestinian and Arab sources to describe the role of the Palestinian Arab nationalist movement during the time of Sir Herbert Samuel, the British High Commissioner in Palestine.<sup>49</sup> Huneidi shows both the lack of objectivity in Samuel’s position in Palestine, and the struggle of the Palestinians for their demands to be addressed by the British Mandate government. On law in Palestine, the textbook by Frederic M. Goadby and Moses J. Doukhan on *The Land Law of Palestine* was essential for the understanding of the purpose and intention of the British Mandate legislation, and its relation to the Ottoman land laws.<sup>50</sup>

The inclusion of the Palestinian narrative is evident in Ilan Pappé’s *A History of Modern Palestine: One Land, Two Peoples*. Pappé explains the existence of modernity in Palestine prior to the British Mandate and the creation of Israel, contradicting the more widespread perception of Zionism as a force for modernization in Palestine.<sup>51</sup> This argument is also made by Mark LeVine in his *Overthrowing Geography: Jaffa, Tel Aviv, and the Struggle for Palestine 1880–1948*, which he describes as “a mutually constitutive four-fold matrix of discourses – modernity, colonialism, capitalism, and nationalism.”<sup>52</sup> He uses this matrix to investigate and broaden the understanding of the historiography of Jaffa and Tel Aviv, and of Palestine and Israel as a whole, contradicting the prevalent view of Zionism as a modernizing movement. Most importantly in terms of this study, LeVine describes “the two triangular relationships – between Zionist-Jews, Palestinians, and the Ottoman and then British (colonial) states – that defined the history of this period.”<sup>53</sup>

Therefore in order to include the Palestinian narrative in the history of the land question in British Mandate Palestine as well as in the overall

Palestinian–Israeli conflict, it is first necessary to understand the role of Zionism within colonial theory. Many authors have identified Zionism to be a colonial-settler movement, distinguishing it from other colonial movements. In *Israel: A Colonial-Settler State?*, Maxime Rodinson clearly distinguishes the differences between imperialism and colonialism, and the ideology of a colonial-settler movement.<sup>54</sup> Fayez A. Sayegh makes a similar argument in *Zionist Colonialism in Palestine*, where he highlights that “unlike European colonization elsewhere ... Zionist colonization of Palestine was essentially incompatible with the continued existence of the ‘native population’ in the coveted country.”<sup>55</sup> By emphasizing this point, both Rodinson and Sayegh bring light to the fact that because the Zionist movement was not a purely colonial one, it could not have succeeded in its objectives without the backing of a European imperial alliance such as that of the British. This key point, along with other characteristics of Zionism, is discussed thoroughly by many authors in *Zionism, Imperialism and Racism*, edited by Abdul Wahab Al Kayyali.<sup>56</sup> For the systematic infiltration of Zionism into the land policy of Mandate Palestine, Baruch Kimmerling’s book, *Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics*, gives a detailed account of how the Zionist movement developed with time a multi-level structure in order to have access to all methods of land acquisition in Mandate Palestine.<sup>57</sup>

A study of the land tenure system is also connected to the agricultural industry and the economy of Palestine; Barbara J. Smith’s *The Roots of Separatism: British Economic Policy, 1920–1929* gives a significant analysis of the divided economy in Mandate Palestine.<sup>58</sup> Smith discusses the relationship between Zionist-Jewish immigration and land policies and their effects on the Palestinian economy and population. Amos Nadan’s *The Palestinian Peasant Economy Under the Mandate: A Story of Colonial Bungling* turned out to be a particularly useful resource on the overall outcome of the British Government’s policies in Palestine and their resulting effect on Palestine’s agricultural industry and the economic welfare and development of the *fellahin*.<sup>59</sup> Nadan concluded that while the British Mandate aimed to assist the *fellah* financially, as well as carry out land reforms to eliminate communal land ownership to enhance development, the outcome was actually the opposite.

### ***Land Records and Statistics***

Palestinian scholar Sami Hadawi (1904–2004) published many works on the subject of land and Palestine, including *Land Ownership in Palestine* (1957), *Palestine: Loss of a Heritage* (1963), *Palestinian Rights and Losses in 1948: A Comprehensive Study* (1988), and perhaps what has provided the most useful data for many scholars on the subject (as well as for the latter half of this study), *Village Statistics 1945: A Classification of Land and Area Ownership in Palestine* (1970).<sup>60</sup> In *Village Statistics 1945* Hadawi gives the figures for population, classification of land, and ownership holdings during the last few

years of the Mandate, all of which was collected by the Government of Palestine. Hadawi was an Official Land Valuer and Inspector of Tax Assessments in Palestine during the Mandate, and later worked as a Land Specialist for the United Nations Conciliation Commission for Palestine (UNCCP).

The UNCCP records are extremely difficult to access; however, one scholar who was able to use them is Michael R. Fischbach, whose book, *Records of Dispossession: Palestinian Refugee Property and the Arab–Israeli Conflict*, is a study of the property losses of Palestinian refugees.<sup>61</sup> His exploration of the UNCCP archival records constitutes the most detailed historical analysis of the question of refugee property values and losses at the end of the Mandate, and was invaluable in the understanding of the value of the land registry records of Mandate Palestine.

### Significance of the Research

This book argues that the land tenure system in Palestine, as set up by the British Government, allowed Zionism to take an active and collaborative role in every stage of the land tenure system, which have been identified as the following: land law, cadastral survey, registration of title, land transfers (sales), and land disputes.

Salman Abu Sitta writes that “the land under Jewish possession has always been shrouded in mystery”; and that today over 92 percent of Israeli land has been seized from Palestinians.<sup>62</sup> There are several reasons for this confusion, one reason being the political repercussions of publishing Zionist-Jewish landholding figures, and another being that, during politically troubled times amongst the populations in British Mandate Palestine, land was purchased through many dealers so as to dilute the traces of its having been purchased by Zionist-Jews. Abu Sitta identifies other reasons, including the bypassing of land regulations, unclear land status definitions, planned mortgage closings, unregistered claims and a lack of sale transactions, and lost records. The result of this is that the figures for the area of registered land in British Mandate Palestine have varied from 938,365 dunums<sup>63</sup> to 1,850,000 dunums.<sup>64</sup>

Some have argued that Israel continues the process of nation-building and establishing itself as a state by eliminating Palestinian historical ties to the land and creating a special relationship between Zionist-Jewish history and the land. After 1948, Israel began the process of eliminating Palestinian association with the land in cities and the destruction of 418 villages to transform them into Jewish identities by giving them Hebrew names or planting trees all over them with support from the Jewish National Fund.<sup>65</sup> When reconstructing and reinterpreting modern historical narratives, local histories play an imperative role. In the majority of cases, the victorious eliminate the ‘others’ by using their dominant position to record their own version of events. Because of the Palestinians’ historical relationship with the land, the destruction of the land of Palestine has been the most devastating

method of silencing the Palestinian people. Land is the predominant subject at the heart of the conflict, and with two peoples struggling for that same territory, it can be presumed that the argument is over land.<sup>66</sup>

As historian Ilan Pappé explained in the introduction to his book *A History of Modern Palestine*, two historical perspectives exist, Palestinian and Jewish, and “a concise history of Israel and Palestine must take into account these narratives.”<sup>67</sup> On the subject of landownership in British Mandate Palestine, Stein’s *The Land Question in Palestine, 1917–1939* is the principal source, but even though he covers the land question extensively, he does not give a Palestinian narrative. Stein uses many primary sources, including the British National Archives at the PRO, as well as the ISA and CZA. But in order to have a comprehensive history of the “land question in Palestine” it is imperative for the Palestinian narrative to be incorporated, so that it becomes an integral part of the enquiry. Therefore, one of the objectives of this present research was to add the Palestinian narrative to the already existing Zionist historiography of Palestine’s land issue.

This required not only revisiting the same primary sources that had already been used, but also acquiring new information in order to augment the missing narrative. In addition, whereas Stein wrote the Zionist account of the history of the land issue from 1917 to 1939, and Roza I. M. El-Eini concentrated on analyzing British policy formation and implementation on the landscape of British Mandate Palestine between 1929 and 1948,<sup>68</sup> this study attempts to complete the history of both narratives of the land question in modern Palestine<sup>69</sup> until the establishment of the state of Israel.

## **Research Design and Methodology**

This research is a political-historical analysis of the land tenure system and its transformation from the end of Ottoman rule until the end of the British Mandate. As noted earlier, the questions asked in the study are: Did the land tenure system of the British Mandate facilitate Zionist land acquisition in Palestine, and if so, to what extent did this happen? And second, what were the roles of the Jewish Agency and the Zionists within the system?

The research design<sup>70</sup> was formulated to answer these questions as thoroughly as possible. One of the ways of doing this was by providing an analysis not only of the establishment of the land tenure system, but also an overview of its implementation. For this reason the book can be split into three parts: Chapter Two provides a brief theoretical synopsis of politics, land, and tenure systems; Chapters Three and Four discuss the formation and development of the British Mandate land tenure system in Palestine; and finally the execution of that system is seen in Chapters Five, Six, and Seven.

As mentioned, Stein’s *The Land Question in Palestine, 1919–1939* provided the most comprehensive historical analysis on this subject; other scholars have argued that the conflict was caused by other aspects of the land tenure system in Mandate Palestine and have offered varying opinions as to the roles and

objectives of the actors involved. This research has identified the processes that make up the system, and has investigated how Zionism was involved in each, during both the creation and implementation of the system.

Therefore, rather than approaching the land tenure system chronologically, these questions have been answered by formulating the parts and processes that constituted the land tenure system, and analyzing each accordingly. After three years of investigating the topics of land and power, land tenure, land conflicts, and land tenure systems in West Asia and North Africa, and specifically in Palestine, the following were determined to be the essential parts of the land tenure system: land legislation and the government objectives they support, the cadastral survey of the land, registration of title, land transfers, and disputes over land tenure. To identify the role of the Zionist movement in Mandate Palestine, Chapter Two places Zionism within the context of colonial theory and, more specifically, recognizes those characteristics that make it a colonial-settler movement. This theoretical framework will be discussed in Chapter Two, along with discussions on both the significance of a study of land tenure conflicts and the methods through which such a study should be carried out, according to the work done on land and tenure by the United Nations Human Settlements Programme (UN-HABITAT).

With the help of UN-HABITAT's guidelines on land tenure security and land tenure records in areas of land conflict, along with those concerning the development of Zionism as a colonial-settler movement, it was concluded that before studying the land registry records of the three villages in Chapters Five, Six, and Seven, it would be crucial to deconstruct the policy and establishment of the land system from the perspective of those who had lost their property in the conflict (the subordinate population), who in this case were the Palestinians. This links to one of the objectives of this research: to reveal the Palestinian narrative of the land question in Mandate Palestine and include it with the already existing Zionist-Jewish narrative.

Therefore Chapters Three and Four examine the land tenure system thematically from a non-Zionist perspective, and furthermore illustrate the argument that in every part of that system the British Mandate land tenure system cleared the way for the transfer of land to the Jewish Agency and to Zionist institutions. The second question is addressed in these two chapters by studying the role of Zionists at each level in the land tenure system. As discussed in the literature review, the intention of this study was to provide the Palestinian narrative on the subject; however it was found that there were no primary Palestinian or Arab sources to support this. Unlike the Jewish Agency, which had documented everything to do with immigration and land in Palestine since the Ottoman Empire, there was no Arab equivalent.

For this reason it was concluded that rather than have a weak Palestinian narrative due to lack of information, it would be more beneficial to re-examine the archives already used by other authors (at the Central Zionist Archives and Israeli State Archives in Jerusalem, and the Public Records Office in

London). By returning to these sources, it was found that the existing literature had favoured a Zionist interpretation of the archives in order to support a political agenda – that Zionist-Jews had purchased the land legally and were influential in a land tenure system administered by the British Government. So by returning to the original archives this perspective was deconstructed and categorized into the stages of the land tenure system in Chapters Three and Four.

This design best addresses the questions asked, however one of the consequences is that even though it has been narrowed down to a specific topic and time period, because the land tenure system consists of five parts the subject ends up looking very broad. However, it has to be carried out this way to illustrate the argument. For example, however much the issue of Zionism within the land survey of Palestine is discussed in the first section of Chapter Four, the section cannot cover all that Dov Gavish did in his book on the topic, *A Survey of Palestine under the British Mandate, 1920–1948*. Nevertheless, the advantage of this research design is that, by utilizing the main points of Gavish’s book, it will contribute to the overall argument of Zionist collaboration in every part of the land tenure system of the British Mandate in Palestine.

Chapter Three reviews only one part of the land system – the land policy and laws of Mandate Palestine. However, as determined by Chapter Two, land policies and reforms are used to achieve government objectives, and for this reason the objectives of the British Mandate government are also reviewed. Furthermore, the land laws of the British Mandate in Palestine were intended to be modifications of the land laws of their predecessors, the Ottoman government. Therefore, the Ottoman objectives, land policy, and laws are also reviewed, and within this the efforts for Jewish land settlement of the position of the evolving Zionist movement. Land tenure legislation and the government objectives that define them represent the only subject of this chapter, since they were found to be the framework and foundation of the entire land tenure system and had thus to be studied in depth on their own. Chapter Four examines the remaining parts of the land tenure system, beginning with cadastral surveys, registration of title, land sales, and, finally, legal disputes. These topics have been organized in the order they occur within the system; nevertheless they greatly overlap, and this is extremely evident in the implementation of the system in the following three chapters.

Finally, in Chapters Five, Six, and Seven, implementation of the system is seen for the first time in three case studies using land registry records of the British Mandate in Palestine, a unique archive with restricted access. Case studies are used in comparative research as “non-quantitative time-series research designs” that generally study a country over a period of time to illustrate a change that transpired during that time period.<sup>71</sup> In this research, however, the case studies have been selected to determine whether or not the implementation of the British Mandate land tenure system facilitated Zionist land acquisition. It is understood that bias is inherent in comparative

analysis; case studies are usually selected for being “most similar” or “most different,” making the bias seem unavoidable.<sup>72</sup> For this reason, rather than compare an Arab and a Jewish village only, three case studies were chosen in order to also include a mixed village.<sup>73</sup> This would reveal whether the implementation of the land system and Zionist collaboration with the British Administration varied from one area to another. The three chapters are based entirely on the land registry records of the British Mandate Government found in Amman at the Jordanian Department of Lands and Survey. The significance and history of these records, and the methodology of the selection process, are all discussed at the beginning of Chapter Five, which deals with the first village, Sarafand al-Kharab in Ramleh. Chapters Six and Seven deal respectively with the Jewish village, al-Haram in Jaffa, and Yaquq, a mixed village in Tiberias.

In summary, this book intends to answer the questions: Did the British Mandate land tenure system in Palestine facilitate Zionist land acquisition? And, if so, to what extent? And what was the role of the Jewish Agency and other Zionists within that system? These questions are answered by the design of this study, along with careful analysis of an array of primary sources. By establishing what constitutes a land tenure system and how a land tenure conflict must be deconstructed, and by then examining the creation, policy, and implementation of that system in Palestine, it will be found that the argument made is a valid one. The land tenure system of the British Mandate in Palestine allowed the Jewish Agency and other Zionists to have a collaborative role in every process within the system, and with this direct role they were able to fulfill their ambitions for land acquisition.

## Notes

- 1 In this book, the term ‘Palestine’ is used to refer to historical Palestine, or pre-1948 Palestine.
- 2 The British Mandate in Palestine consisted of the geographic areas of what are now Israel (not including the Golan Heights), the West Bank, East Jerusalem, and the Gaza Strip.
- 3 The word “landownership” is used to represent “those legal, contractual or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land” – as defined by John Ratcliffe in *Land Policy: an Exploration of the Nature of Land in Society* (London: Hutchinson and Co Ltd., 1976), p. 21.
- 4 Dan Cohn-Sherbok, *The Politics of Apocalypse: The History and Influence of Christian Zionism* (Oxford: One World Publications, 2006), p. 15.
- 5 “Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip,” 1 February 2003, from the website of the Israel Ministry of Foreign Affairs, [www.mfa.gov.il/MFA/MFArchive/2000\\_2009/2003/2/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We](http://www.mfa.gov.il/MFA/MFArchive/2000_2009/2003/2/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We) (accessed 22 September 2009).
- 6 “Spurious Equivalence: The Absence of Israel’s Occupation in the Press,” a fact sheet from the website of the PLO Negotiations Affairs Department: [www.nad-plo.org/inner.php?view=facts\\_others\\_f23p](http://www.nad-plo.org/inner.php?view=facts_others_f23p) (accessed 22 September 2009).



- 7 Edward W. Said, *The End of the Peace Process: Oslo and After* (New York: Vintage Books / Random House, 2000/2001), p. 314.
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- 69 The term “modern Palestine” refers to the period starting from the decline of Ottoman rule over Palestine (during the Tanzimat and more specifically from the 1858 Land Code).
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## 2 The Politics of Landownership

### Introduction

The conflict over land in Palestine might be considered unique, but land tenure as the cause of a conflict is not. Before specifically focusing on the land tenure system in British Mandate Palestine, it is necessary to examine the politics of the topic across a broader spectrum. Also, to be objective in investigating the creation and implementation of land policies in Mandate Palestine, one must first understand the basics and the importance of land tenure systems, as well as the most accurate way of studying a land tenure system and the land registry records of a land conflict.

“Land, without the dimension of tenure, is a meaningless concept.”<sup>1</sup> The purpose of this chapter is to understand the relationship between land tenure and power; to examine land tenure systems and the role of government, and land tenure security and various methods of land acquisition; and to examine the importance of using land records in areas of conflict. After studying these concepts on a general level, they will then be used to determine whether or not the British Mandate land tenure system facilitated Zionist land acquisition in Palestine through a discussion of the characteristics of Zionism which make it a colonial-settler movement rather than just a colonial one.

### Land and Ownership

The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society.<sup>2</sup>

In his *Discourse on Inequality*, philosopher Jean-Jacques Rousseau explores the progression of people from a ‘primitive state of nature’ to a ‘modern society,’ maintaining that when the first individual found it fitting to designate an area of land from the rest of the community by setting boundaries, the result was ‘original sin.’<sup>3</sup> Others would argue that landownership does not have to exist. In fact, throughout history and even today there are many societies that do not acknowledge the concept. Even though absolute rights to

a certain plot of land are not labeled, it does not eliminate the idea of “invisible lines on land,” drawn by religious or traditional rules.<sup>4</sup>

On its own, it is evident that the term ‘land’ is too broad a concept to define. From an economic perspective, land is considered one of the factors of production, along with land, labor, capital, and entrepreneurship. However, as a scarce resource in the natural order of things, some of the characteristics of land include the fact that supply is somewhat fixed, and that all land is unique, with no two pieces of land being exactly the same.<sup>5</sup> The agricultural view is that land is the essential means for yielding crops, whereas, legally speaking, land is a physical element to which a range of rights are attached.<sup>6</sup> From the architect to the engineer or surveyor, or to the politician concerned with controversies such as ‘partisan philosophy’ and gerrymandering,<sup>7</sup> there are many definitions and perspectives.

One concise but more generally applicable definition of land is: “Any part of the earth’s surface which can be owned as property, and everything annexed to it, whether by nature or by the hand of man.”<sup>8</sup> This might be regarded as a legal definition, but one concept that is always tied to definitions, descriptions, and issues of land is the notion of ‘rights.’ For this reason the intricate set of rights to use a piece of land is referred to by the term ‘land tenure.’ There are different systems of land tenure, so these rights include “legal, contractual, or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land,” and these rules and procedures are established by the authority that controls the whole territory and are part of a greater land tenure system.<sup>9</sup> The formation and administration of that land tenure system is therefore controlled by the authority or government in power.

### **Landownership, Power, and the State**

The ‘state’ refers to “a context of power relations” representing “a hegemonic environment in which a group or groups, through persuasion and through use of force, establishes domination over others.”<sup>10</sup> According to sociologist and political economist Max Weber, all states exist because social institutions use violence and force; therefore all states are established by force – otherwise, there would be a form of anarchy. Weber noted that, especially in the past, a state would be established by the use of force; however this changed to a state becoming “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory” (original emphasis).<sup>11</sup>

State formation is not possible without territory. In stating that politically dominant powers managed to maintain their authority by “organized domination,” which included not only control of material goods but also of land,<sup>12</sup> Weber emphasized that ‘territory’ was a significant characteristic of the state.<sup>13</sup> Without that territory, it could be a nation, but not a state. Legitimacy is an essential factor in state domination, and is something states

must achieve if they are to maintain their power. A state consists of a set of institutions with the common objective of legitimizing their power. Territorial conquests allow the dominant power to access additional sources of income, as well as to acquire new resources that have been under the control of opposing political groups.<sup>14</sup>

The relationship between power and land, or state and territory, coincides with the system of centre and periphery. There are two defining characteristics to this structure: the centre is “the locus of decision making, i.e. of power”; and the centre and the periphery “both belong to an encompassing system, of which they are differentiated but interdependent parts.”<sup>15</sup> Territory is a periphery, but with a government in power at its centre the two can form a state. Power that has no designated area within which to legitimize its authority will be diluted and weak. Creating a land tenure system is essential to a centralizing administration because it eliminates all existing revenue claims of previously dominant factions. However, “rights of tenure are no stronger than the power of the sovereignty that grants them.”<sup>16</sup> Introducing the concept of individual landownership removes all claims to access and use of the land. This results in the new administration becoming the only taxing body for land revenues and the sovereign authority of the land in a given territory.<sup>17</sup>

Research and analysis of land tenure systems cannot be carried out without understanding their relationship to the other systems which produce and influence them. These include economic, social, and political systems, along with the structural management that administers land tenure registration<sup>18</sup> through land laws. And all laws have the common objective of increasing yields in agricultural production so to enable the export of the harvest: “A modern society recognizes ownership of rights to land, including all the possibilities which ownership contains.”<sup>19</sup> Therefore, the nineteenth-century transformations of land tenure systems that occurred almost simultaneously on a global scale were not coincidental. Economic demand for crops such as sugar, coffee, and cotton increased in the United States and Europe, and this stimulated the global market to supply that demand.<sup>20</sup> In the Ottoman Empire this was done through the 1858 Land Code; in Mexico the *Ley de desamotrización*, or *Ley Lerdo*, was established in 1856, and in 1874 Bolivia passed the *Ley de Exvinculación de Tierras* to abolish communal land holdings; similar laws were also seen in Guatemala in 1870 and Venezuela in 1882. Land legislation (except in sub-Saharan Africa) spread on a global scale.<sup>21</sup>

French historian and political thinker Alexis de Tocqueville associated the process of centralization with the development of fundamental processes, including democratization and social egalitarianism. Centralization of power and political authority over a territory was “the result of the working of the basic mechanisms of societal cybernetics” because it linked directly to other structural developments in society, such as communication, transportation, and systems of production.<sup>22</sup> In the past, the success of a centralized state’s ‘market society’ (comprising legal and administrative entities such as

households, trade unions, corporations, and other associations), was dependent on its ability to moderate a range of interests within that market society, such as the interests of landowners, farmers, and employers. The legitimacy of a centralized state depended on the mediation of these interests, as well as on the state's skill in leading the society and economy into the competitiveness of the global market.<sup>23</sup>

In political systems, states monopolize the use of force over a certain territory. In West Asia, it is generally considered that the controlling colonial powers were the first to have created the necessary characteristics of a modern state by providing a centralized administration, as well as a flag, a legal system, and international boundaries.<sup>24</sup> However modernity cannot take place without reforms of the land system. It was not the British administration that introduced land reforms to Palestine, but their predecessors, the Ottoman Empire. As LeVine remarks, "Ottoman modernity involved a process of mediation and translation to adapt new ideas from the West to radically different settings across the Empire."<sup>25</sup> The 1858 Ottoman Land Code created a land tenure system as part of the Empire's greater modernizing process that involved the adapting of European ideas and then implementing them in their own way.<sup>26</sup>

Understanding the relationship between economic growth and property rights requires that theory and empirical research be brought closer together by the conjunction of three theoretical and historical perspectives: legal scholars, social historians, and economists.<sup>27</sup> "A property relation is represented as between a person and a 'thing' which he or she owns," and in the present study, that 'thing' is the land.<sup>28</sup> The formation of private property and land is an issue that is essential to the formation of centralized states. There are many views on the relationship between the state and private property. The liberal perspective sees private property as part of the societal domain, whereas the Marxist perspective recognizes property as a set of power relations and not as a natural state. The laws of administrations represent the areas of power in which property is contained. This is part of the "constitutive" perspective which recognizes multiple actors, such as state agencies, in the state-society relationship, and the struggles of different groups which all leave their mark on the practices of the administration, thus making it unviable to view an administration's rulings simply as practices of control.<sup>29</sup>

The role of the state in a land tenure system is essential; however, the degree and method of state intervention varies. Land is a factor in the relationship between the state and its society, since it is generally agreed that "all states intervene to some extent in exercising control over access to land."<sup>30</sup> The level of intervention by the state determines the population's "opportunity of access to land." Opportunity of access is established by the state's policy on landownership and by administrative regulation. For example, some states choose to make all land publicly-owned by the state, and hence do not recognize individual property rights. In contrast, other states not only recognize but also emphasize the importance of private property rights as part of



an individual's civil rights. Most countries have a mixed system of private and public landownership, with government intervention for the development of land for certain uses.<sup>31</sup>

Imperial governments have the ability to transform claims to land by the laws they pass. The progression of market societies is linked to the formation of central bureaucratic states, which is in turn directly linked to the state making profits by establishing new land laws. Land has to become a recognized object that is taxable by the state.<sup>32</sup> Private individual landownership is therefore an essential aspect of market economies, since it allows opportunities for "private decision making" and the "mobilization of private investments."<sup>33</sup>

The State is here the supreme landlord. Sovereignty here consists in the ownership of land concentrated on a national scale. Conversely no private ownership of land exists, although there is both private and common possession and use of land.<sup>34</sup>

As the owner of public land, the state has to uphold different responsibilities from those of an individual owning private land. A private landowner is entitled to use his land for almost anything legal, whereas the state is expected, in addition, to attend to the principles of public law, including the principle of equality.<sup>35</sup> Karl Marx considered that the absence of private landownership was a characteristic of 'Oriental' society, and described two key features of what he called an 'Asiatic society': the non-existence of private landownership, and the state's domination over the producer. He claimed that without private property, the government's central role was superseded because the state became the true landlord.<sup>36</sup> Marx's analysis of the land system is considered to be an Orientalist one; however it is the more common 'colonial' perspective and is further discussed later in this chapter.

There is general agreement about the importance of shaping and implementing land property rights in any development or reform process. 'Property Rights' refers to "the establishment of international peace and domestic order, reduction of barriers to mobility of factors of production, limited confiscation and taxation by organized governments, and active measures by governments to free up actors of production, especially labour."<sup>37</sup> Property rights and privileges have many issues, one of them being the problem of overlapping interests in the same land between an inferior and a superior individual.<sup>38</sup>

According to Migdal, authorities in the state would quite often discover that the land laws they legislated did not secure state control over the land; instead they would increase the power of landlords who were against the centralization of the state.<sup>39</sup> Land tenure laws are delicate tools that give considerable results in the state's social control, although not always to the advantage of the state. If all land is owned by the state, land transfer rules will only be for accessibility for the authorities, as opposed to private gain. The state may want to aid production for the purpose of increasing its tax income; however it will then also want the majority of any surplus made by

individual investments.<sup>40</sup> Land policies and property rights significantly affect societies where most of the population depends on agriculture. Transformations in landownership change people's approaches to survival, and hence the social structure of the society is extensively altered.<sup>41</sup>

Different sorts of landownership systems illustrate the various objectives of states. The relationship between the state and landownership has been recognized as a process in which the state legitimizes its power by controlling the territory under its authority. The state refers to the institutions that hold this power, and landownership is the legal system between an individual or organization and the land. In order to legitimize its power, the state must enforce its control in all its geographical areas through land tenure laws. To eliminate any competitors in the power legitimization process, the dominant group must centralize its power. Whereas some governments have attempted to do this while simultaneously owning all land, it has generally been proved that, without the creation of private landownership, centralization of power cannot succeed. Therefore the creation of private landownership aids in the formation of a centralized state. Individual landownership is in the interests of states because it allows them to be the sole authority in taxing the private landowners. No other groups or authorities may attempt to claim ownership, and hence revenues, of the same unit of land.

The relationship between landownership and power is that a dominant power is legitimized by its control over the land. To control land, the state must pass new land laws that reinforce its organization and domination over state lands and private property, while simultaneously establishing a system that ensures tenure rights and security to the landowner.<sup>42</sup>

### **Land Tenure Systems and Security**

Land tenure is "the perceived institutional arrangement of rules, principles, procedures, and practices, whereby a society or community defines control over, access to, management of, exploitation of, and use of means of existence and production." The land tenure system is the recognition of land tenure by a system of "established rules and customary relationships in a social organization."<sup>43</sup> There are many variables that can affect land tenure, such as economic conditions, agricultural loans and moneylenders, and land and agricultural taxes, but while these variables may produce a need to change land tenure, they are not necessarily the processes that cause the changes.

However, with regard to what can in fact compete with or actually change land tenure, there are laws, land and cadastral surveys, registration, transfer, and disputes. Only after these processes have been established can the land tenure system provide the landowner tenure security.<sup>44</sup>

### ***Land Laws***

As discussed in the previous section, land legislation and land reform are government tools for the centralization of power over a given territory. They

also form the skeleton of the land tenure system, since each process in the system is established by a law. In the formation of “colonial land regimes,” laws were the instruments of control over a colonized population. “Property systems” and “institutional arrangements” consolidated the power of the colonial state and lessened the explicit use of force over the colonized. A legal system was fundamental for the ruling authority’s role as the central power, as well as for its management of transferring land from the indigenous population to the colonial settlers. As well as confirming the authority of the “new land regime,” legal systems also had the ability to hide the ousting of the local population from the land.<sup>45</sup> One author claims that laws are perceived in two ways in colonial societies: as instruments of modernization, or as instruments of “violence, conquest, and subjugation of hapless natives.”<sup>46</sup> Colonial states had the common objective of persuading the local population that the colonial government’s power was legitimate, and legislation was used as the means to achieve this legitimizing process.<sup>47</sup>

In developing countries, land tenure systems are usually a mixture of statute and customary laws, so ownership, tenure, and usage rights are not always clear and documented. The United Nations Human Settlements Programme (UN-HABITAT) estimates that up to 90 percent of land parcels in many developing countries are undocumented, which makes land management very complicated. Governments, private developers, and landowners encounter such issues as those concerning ‘who owns what’ and land usage, and what can and cannot be designated for development. This is quite apart from the conflicts that arise from the undefined land tenure systems where traditional and statute laws overlap. The ambiguity of land tenure and land titles hinders the quality of urban and other human settlements. This in turn affects property ratings and government taxation, hence inhibiting the country’s overall development.<sup>48</sup> Therefore, not only are land laws tools used by the government for securing its authority over a territory while aiding it in its political objectives, but they are also a means of security for land titles within the land tenure system, as well as in instruments in the overall development of the land.

### *Cadastral Survey*

For land tenure to be possible, two fundamentals must occur: first there has to be some means of defining the relationship to the land of the person or group concerned, and second there is a need for “that which defines the actual position and extent of the land itself.”<sup>49</sup> Without the second point, the first cannot exist. Therefore all land tenure must be preceded by some form of survey that determines the points that establish its boundaries and allow for the land concerned to be distinguished from other land.

One of the basic requirements for successful land management and the operation of land markets is information on the location and tenure of land. Land value is established by location and accessibility. If the location is in

demand and the supply is scarce, the value of the land increases. This is true whether the land is within a free market or a controlled society.<sup>50</sup> For a system of rated property to exist, a property identification system that includes land registration and index mapping is mandatory. Furthermore, informal settlement areas most often found in developing countries also have to be integrated into the national system to ensure consistent implementation of the tenure system throughout the country.<sup>51</sup>

For this reason, the entire landownership system is dependent on some form of land survey; this, whether topographical or mathematical, must exist. Only after the land has been surveyed can it be linked to an individual, group, company, or government; and this relationship between the land and the owning party can then be recorded to create the title to the land. Even where land tenure systems do not exist, there is still some form of recognition through monuments or notable natural landmarks (such as hills, trees, rivers, etc.) that define some sort of territorial boundary tying the land to a party or individual. Thus, cadastral maps are maps of property.<sup>52</sup> They are a “compilation ... showing all of the objects within a specific area,” and are also an “essential component of title registration and object-based registration of documents.”<sup>53</sup>

The national territory will be covered by a series of these maps, each map covering one area and showing all object boundaries, all object identifiers, and all restrictions easements on rights to land such as rights of way. A cadastral map is not a topographic map but it shows the ‘invisible lines’ representing the boundaries of rights to land as collected during cadastral surveys.<sup>54</sup>

Cadastral maps are also therefore a vital part of the parcellation process (the division of land into two or more parts). The parcellation process is one that overlaps almost all of the components of the land tenure system, since cadastral surveys are used to draw out the divisions. Registration of title, when ownership is confirmed, is actually the last step after the division of shares and their proportional conversion into amounts of land, and finally registering a specific plot or parcel to a single individual. Because of matters of inheritance or sale, disputes frequently arise that may delay the parcellation process. Communal landownership and the parcellation of land are discussed in more detail in the following section on the registration of title.

### ***Registration of Title***

Registration of land titles and transactions is necessary for the improvement of the quantity and quality of land information. Making land transactions straightforward not only helps reduce future conflicts over landownership, but can also promote a country’s land market. It is almost impossible to achieve a competitive land market in developing countries if land identification and

registration is unorganized or weak.<sup>55</sup> UN-HABITAT recognizes land not only as one of the most important elements in the development of human settlements, but also as “the starting point for all development.” Therefore, when the supply of land is limited or restricted, human settlements and socioeconomic development are negatively affected.<sup>56</sup>

To improve a developing country’s land tenure system, the first objective should be the “promotion of land-title registration.” The United Nations Global Strategy for Shelter to the Year 2000 called attention to the need to increase land title and transaction registrations. Improvements to these land information systems are fundamental modifications for “efficient and economical land distribution” and hence for “efficient human settlements development.” Land registration is the initial point for the creation of a solid and secure land tenure system. Efficient documentation of land registration and title security protects landownership and rights to land, while simultaneously diminishing the chances of eviction and boundary disputes. It thereby cuts down on expenses for the government and citizens, and promotes a better relationship between the state and landowners. This in turn increases overall investment in the land or property market, and financial institutions are able to supply credit to those who have evidence of landownership.<sup>57</sup>

Igbozurike notes that “Land tenure is a major social issue, which, particularly in rural and agrarian societies, is often complicated by the fragmented layout of land parcels controlled by different persons and different communities.”<sup>58</sup> Land parcellation (or fragmentation) is the division of a block of land into parts, a process that occurred on a global scale during the nineteenth century through land reform of communal land ownership. “The relative character of the content of rights under communal tenure is often seen as an impediment to security of title and thus security of tenure.”<sup>59</sup> Therefore the transformation from communal to private landownership, as described above, was seen as a form of modernization, and, in colonial landscapes, westernization. Whereas the perception of communal land tenure as a hindrance to tenure security may be accurate, there are others who not only oppose this view, but also believe that “under communal tenure market-oriented agrarian business could develop.”<sup>60</sup> In the case of Mandate Palestine, the latter belief is assumed about the *musha’* land system in Palestine,<sup>61</sup> which is discussed in Chapter Four within the topic of registration of title.

Land registration, as noted, is an essential part of a land tenure administration for the purposes of identification and security, and in market economies land registration has three additional roles. First, market economies are dependent on the concept of private landownership; therefore, land registration also protects the rights of the individual landowner. Second, all land must be registered in order for the government to be able to collect land tax. Lastly, land must be registered so that the government can control and use land resources. To carry out these functions, the land registration system must be comprehensive, precise, consistent, and continuously updated on a regular

basis. To be complete, the registration system must include all land: “urban and rural, agricultural and forest, state owned and privately owned.”<sup>62</sup>

However, the identification process within land registration not only focuses on the land and landowner, but also on the type of ownership, as in the property rights. The four principal categories of land property rights under which the land falls are: “none (or open access), communal property, private property, and state (or crown) property.”<sup>63</sup> Regardless of which category is involved, the identification of that category with that specific piece of land is established by the registration of it. Furthermore, without registration and the security of tenure that this confers, economic factors such as collateral on land for loans will also be affected, since credit institutions will not issue loans on land with insecure tenure.<sup>64</sup>

### *Transfers*

A transfer is a transaction where the title of the land is transferred, or, more specifically, there is “a change of ownership of rights in land.”<sup>65</sup> There are many economic factors linked to transactions. In areas of conflict especially, the transaction is not a simple matter of purchase and sale, since there are other factors involved, as explained later in this chapter. Land is also used as a means of collateral for loans and mortgages, and in order for this to be possible, the tenure of the land must be secure, since:

a lender, for the same reasons which concern a potential buyer or renter, would like to be assured that the borrower-operator has indeed the right to dispose of the land by sale or transfer or the right to transfer use rights (a well-defined set of use rights over a sufficiently long time period has a capitalized value which can serve as collateral).<sup>66</sup>

Furthermore, “land transactions generally increase efficiency in resource allocation, as agents with high (potential) marginal productivity of land are induced to acquire land from agents with low marginal productivity.”<sup>67</sup> But economic development often comes with an increase in numbers of individuals and entrepreneurs, and hence of land transactions. However, when those individuals are not members of the local community, what may seem to be simple processes within the land tenure system actually become much more complicated and bring with them disputes over tenure.<sup>68</sup>

### *Disputes*

Land transactions depend on land legislation for setting the legal framework for the transfer, and on the cadastral survey to identify which land is being transferred. Finally, registration of title is essential so that a legal and secure transaction of the land can occur without questions of its validity for the

sellers and buyers and in order to avoid land tenure disputes. Nevertheless, any uncertainty in the implementation of any of these actions may be the cause of the last component of the land tenure system: disputes.

Land tenure disputes can take many forms and include different actors. Some may be between individuals, some with land-owning bodies, and some even with the government itself. According to the land classification system, the tenure dispute might not be concerned with the owner's title to the land, but according to the registered classification, to his or her rights to the land. And while land transactions and the transfer of title are a common cause of disputes – for instance where “social unrest may emerge when individuals lose their land rights, especially to non-members of the community, creating a landless class”<sup>69</sup> – there are still many other reasons for disputes. For example, where land tenure is in the form of communal ownership, disputes often arise in the parcellation of the land, and are enhanced even further, like those of transfers, when “outsiders are readily detected, and the entire community has an incentive to enforce their exclusion.”<sup>70</sup> Boundary disputes may arise during cadastral surveys, whether with neighboring landowners or the government in relation to public spaces. And within families disagreements over inheritance can lead to families turning to the courts if they are unable to resolve matters themselves.

Land disputes therefore come in different forms; but it can be assumed that in areas where the main issue of conflict is land, the two significant aspects to observe are (a) the type of issue that most disputes are concerned with; and (b) the method by which the government deals with the dispute. Where land laws can be seen as the framework that establishes the base for the other components of the land tenure system, the system's method of dealing with tenure disputes reveals what problems still exist and whether or not the land tenure is secure.

### **The ‘Uniqueness’ of the Land Tenure Conflict in Palestine**

The first part of any land tenure system is the creation of land laws that set the legal framework for the entire land tenure system. All newly-established governments in an area need to confirm their legitimacy as the new authority by creating and/or reforming landownership policies in order to centralize power over the territory. However, depending on the type of government, there may be goals other than the centralization of power on the agenda. When the government is a colonial or imperial authority and needs to legitimize itself as the colonizer of a new territory, it too will adopt land tenure legislation; but it will also have other objectives too. Colonizing and imperial powers bring with them certain perceptions of themselves as well as of those they are colonizing. As Geddes notes, “In the typical study of a single case, a country, organization, or group is chosen for examination because it has experienced something unusual, sometimes because it is considered typical of a group of cases that have experienced the unusual.”<sup>71</sup>

The purpose of this section is to confirm why the case of Palestine needs to be studied in depth on its own, or, in other words, why a comparative political analysis is not a suitable approach for this book. To support this, it is necessary to ask how the landownership conflict in Palestine was unique in relation to landownership conflicts that occurred elsewhere. The answer is that the landownership issues that occurred in Palestine during the British Mandate involved a variable that was entirely different from those in any other colonized country or area of land tenure conflicts.

In colonial landscapes, the power relationship involves ‘the colonizer versus the colonized,’ however in a colonial-settler landscape this differs, and in Palestine it was the triangular relationship of the British Mandate in Palestine between the British Government, the Palestinian Arabs, and the Zionist-Jews. The Zionist movement as a colonial-settler movement and the Balfour Declaration prevented Mandate Palestine from being a typical mandate or colonial territory. “Settler colonialism destroys to replace. As Theodor Herzl, founding father of Zionism, observed in his allegorical manifesto/novel, ‘If I wish to substitute a new building for an old one, I must demolish before I construct.’”<sup>72</sup>

The most obvious method of land acquisition is force. The conquering of one population by another can result in the defeated losing the rights to their land.<sup>73</sup> However a common misconception in land transfer is that the only methods that exist are ‘conquest’ and ‘sale.’ This is assumed because they are thought to be the obvious, simple, and direct routes for changing the ownership of land. Rarely does anyone consider digging more deeply, or admit coercion was used, or observe that free will was absent when the transaction was fulfilled. Furthermore, if information or literature on the subject implies that transactions were carried out without the buyers using force, then the purchase is assumed to have been ‘fair and square.’<sup>74</sup> This dichotomous form of thinking makes all transactions translate to ‘voluntary equals fair,’ with ‘legal versus involuntary’ being equivalent to unfair conquest. However, the matter is not so simple, and to believe that things are so straightforward is actually another way of silencing the narrative of the inferior group, or in this case the land sellers. In reality, ‘human activity’ cannot be measured simply as voluntary or involuntary, but has to be considered in terms of the scale of the action because “all human activity is performed under constraints.”<sup>75</sup>

Many parts of the world that were colonized are now facing the consequences of imposed land reforms. The “insecurity of ‘forced’ transfers” does not disappear. Ethnic minorities and indigenous populations in different countries are currently regaining their rights to their land. What was in the past a compulsory appropriation of land by dominant groups (whether immigrants or governments sustained by ethnic majorities), is now being recognized as an illegitimate act.<sup>76</sup> The British Mandates in Mesopotamia (Iraq) and Palestine were categorized by Article 22 of the League of Nations as Type A Mandates, meaning that “the existence of the communities concerned as independent nations can be provisionally recognised, subject to the



rendering of administrative advice and assistance by a mandatory until such time as they shall be able to stand alone.”<sup>77</sup> In both Iraq and Palestine, the British sustained the 1858 Ottoman Land Code as the foundation of the land tenure systems, but in both cases the problems that they had to face were very different.

Obtaining the allegiance of the Iraqi people to the Mandate government instead of the previous Ottoman government was one of the goals of the British in Iraq. The British added the administrative practices applied in India to the Ottoman land system; in other words, they gave more power to landowners and tribal sheikhs.<sup>78</sup> When the tribal sheikhs claimed disputed or unregistered land as their own, the British Mandate Government guaranteed them the land tenure, which then caused large areas of land to be registered in the names of the tribal leaders alone, not of the whole tribes.<sup>79</sup> Members of the tribes became indebted to the landowners, but giving the tribal leaders more power within society resulted in greater loyalty towards the British Government. However it was also noted that the mandatory government had “deprived certain sheikhs and favored others according to their political inclinations and obedience to the central authority,” meaning that while power increased for some, for others it meant losing everything.<sup>80</sup> The land conflict in Iraq developed into an internal struggle in which the increasing power of the sheikhs and their possession of land resulted in most of the agricultural land being owned by a minority.<sup>81</sup> In 1932, the year that the Mandate in Iraq ended, a law was passed to redistribute ownership of the land; the result was in fact the opposite – by 1958, “66% of all Iraq’s cultivated land was concentrated in just 2% of the population.”<sup>82</sup>

One example of a land conflict due to a colonial settler movement is that of the United States. Over a span of 300 years, nearly all the land of what is currently the USA was transferred from the Native American Indians to “non-Indian” Americans.<sup>83</sup> The idea of landownership did not exist for Native Americans in the way it did for the European colonial settlers. ‘American Indians’<sup>84</sup> lived and depended on the land, and believed that they were linked to it; however there was no private ownership or land tenure system, although each tribe had its own territory. In the early seventeenth century, American Indians and American settlers were initially more equal in terms of power, so the land sales were mutually beneficial to both. However by the early twentieth century the power scale had become asymmetrical and what had once been legal contracts were actually legal conquests in practice.<sup>85</sup>

As power increased, it became easier to shape the legal system in order to reach the objective of securing more land for more of the new settlers. Many believed that American Indians only had the “right of occupancy” to as much land as they needed to survive.<sup>86</sup> The colonization of the United States from its indigenous inhabitants took place over many years through a “complex kind of power” that created the necessary “legal institutions and the rules by which land transactions would be enforced.”<sup>87</sup> One must ask what choices were given to the American Indians, who signed contracts and agreed to

treaties. However they did not sanction the concept of selling their land, but were instead forced to accept the situation presented to them by those who had the power.

Mark LeVine, in his study *Overthrowing Geography*, recognizes the effects of the colonialist ideology on the Palestinian landscape. In his account of Jaffa and Tel Aviv he creates a four-fold matrix, consisting of four mutually constitutive discourses (modernity, colonialism, capitalism, and nationalism), that highlights the similarities, differences, and misconceptions produced by the colonizer–colonized relationship. By identifying and exploring the way these ideas were implemented in the example of these two cities, he succeeds in “disaggregating the landscape” and releases the narratives silenced by the discourses.<sup>88</sup> While LeVine’s matrix has not been applied to the study of the land tenure system in modern Palestine, the four discourses nevertheless reveal themselves in the Zionist-Jewish and Palestinian-Arab interactions with the British Mandate Government on the subject of land, a sensitive and crucial matter for both groups of people.

The city of Tel Aviv began as a Jewish suburb of Jaffa in 1909. It was founded with the purpose of establishing a detached, modern suburb, the intention being to build a European style of living as opposed to what was described as the “dirty, noisy, overcrowded, and essentially Arab Jaffa.”<sup>89</sup> This perception is highlighted in the study of a city and the development of a suburb into a city. On the other hand, Jaffa’s residents and municipal leaders considered Tel Aviv and the surrounding Arab farms and Bedouin communities to be administratively and culturally part of Jaffa.<sup>90</sup> LeVine shows that the population of Zionist-Jews and Palestinian-Arabs were actually the “imaginers, producers, and consumers of their own modernity, or non-modernity.”<sup>91</sup> This way of thinking was shared throughout the land of Mandate Palestine. Zionist-Jews came to Palestine and purchased land with the objective of constructing an independent Jewish home, while Palestinians considered all the land to be that of Palestine.

To the average colonialist, the Palestinian people, like other Arabs, engendered the image of a backward population. According to Zionists, Arabs did not know how to make use of their own land. The general, Orientalist, perception was that Palestine and the Palestinians needed an external variable to guide and help them. The Zionists wanted to maximize the profits of the agricultural industry by using new farming techniques, and wanted to create a homeland that was modern by European standards. Instead of a form of nationalism, Zionism became associated with ‘Westernization’ and ‘modernization.’ The Eurocentric or Orientalist way of thinking was that it was necessary to separate the “rapidly modernizing West” from the idle Ottoman and ‘Eastern’ worlds. In reality, the foundations of capitalist modernity in Palestine, historically and geographically, stretch back much further; however, this has not been seen in previous historical accounts.<sup>92</sup>

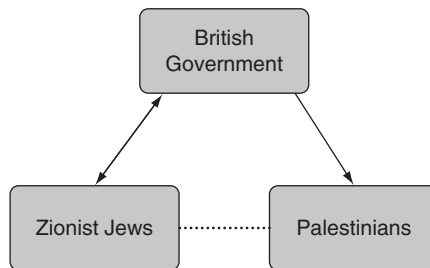
Capitalism drives market economies which cannot exist without the creation of the concept of private landownership. Colonialism brings many things

to new territories, including the goal to be the sovereign power and to benefit financially from the colonized economy. Along with these things, colonialism incorporates an imaginary impression of social hierarchy in which ‘the European’ is modern, and ‘the Orient’ is not modern. Many would say that colonialism was the catalyst that drove nationalist movements to materialize, however in the case of Palestine two nationalist movements existed: Zionism and Palestinian.<sup>93</sup>

In a sense, every land conflict may be described as distinct. The British Mandate in Palestine was, however, unique because it was not a conflict between the colonizer and the colonized, but rather a triangular relationship with the British Government at the top of the triangle acting as umpire, and Zionist-Jews and Palestinians at the lower two corners.

While Ottoman Palestine also fitted the triangle notion (with the Ottomans at the top point of the triangle, in place of the British), the difference between the Ottoman and the British Governments was their policy towards Zionist land acquisition. Prior to its decline in power, the Ottoman Empire made an effort to prevent Zionist-Jewish settlers from entering Palestine, let alone purchase its land, whereas the British Government, through the Balfour Declaration, committed itself to precisely the opposite before the Mandate had even begun.

No single country can be said to be “typical” of the Third World and its development. Palestine, particularly, had several unique aspects in its process of change. Mandatory rule, which was much less direct than colonial rule, existed only in a limited number of places. And, of course, the presence of the Jews who were trying to build an independent society and economy in the same country was unique to the history of the Palestinian Arabs.<sup>94</sup>



*Figure 2.1* The triangular relationship in Mandate Palestine. LeVine’s concept of the triangular relationship has been adapted by the author to illustrate the argument of the research: while there was cooperation between Zionist-Jews and the British Government, there was also a lack of interaction between Zionist-Jews and Palestinians

In Iraq and Palestine, private landownership was established by the Ottoman Land Code of 1858. Iraq, as another Type A Mandate in the region of West Asia, makes a good comparison with Palestine since it had the same original land tenure system of the Ottomans; but the British Mandate administration in Iraq issued its land policies to obtain the loyalty of its new subjects, whereas the land legislation in Palestine was altered to allow Zionist-Jews to purchase land.

This applies to the United States as well, although the more significant difference here was that no land tenure system existed, neither did the concept of landownership, whereas in Palestine it had existed since the days of the Ottoman Empire. Palestine is the only “twentieth-century settlement undertaken by a diasporic community and not by citizens occupying imperial territory, [and] is also the only case of successful settler nation building.”<sup>95</sup> For these reasons any comprehensive study of landownership during the British Mandate in Palestine has not been undertaken as a comparison with land tenure conflicts elsewhere.

### **Zionism: A Colonial-Settler Movement**

In order to deconstruct the role of Zionism in the land tenure system in Mandate Palestine, it is necessary to first identify the theoretical framework into which the Zionist movement and the Zionist Organization fall; and then use that theory to show how the land tenure system fell within it. This section first discusses the discourse of colonialism and how Zionism does not fit into the definition of colonialism, but rather into what is recognized as a colonial-settler movement. By identifying this, the triangular relationship between Zionism, the British, and the Palestinians can be deconstructed and, therefore, so can the role of Zionism in the land tenure system of Mandate Palestine.

The term “colonization” “designates a *process* of territorial acquisition” and “colonialism” is the “*system*” of that process. However, these concepts are based on the “notion of expansion of a society beyond its original habitat.”<sup>96</sup> Colonialism is defined as “a relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders.”<sup>97</sup> The primary decisions that shape the lives of a colonized population “are made and implemented by the colonial rulers in pursuit of interests that are often defined in a distant metropolis.”<sup>98</sup> While this is true to a certain extent in the British Mandate in Palestine, and explains the relationship between the British Government and the Palestinian society, it does not identify the role of Zionism within that. This does not mean that there is a lack of similarities between Zionism and colonialism. Colonialism is a broad term, for which one author, Jürgen Osterhammel, has identified six major forms:

- 1 total migration of entire populations and societies
- 2 mass individual migration

- 3 border colonization
- 4 overseas settlement colonization
- 5 empire-building wars of conquest
- 6 construction of naval networks.<sup>99</sup>

Of these, the fourth is the most applicable to Mandate Palestine. However, as Osterhammel describes in *Colonialism: A Theoretical Overview*, overseas settlement colonization comes in three different forms. The first type consisted of an “agrarian settlement populace that provided workers from its own ranks and by recruiting European ‘indentured servants.’”<sup>100</sup> This was seen in North America, Australia, and New Zealand, and referred to as the “*New England*” type of settlement colonization. The second type of overseas settlement colonization transpires when

a politically dominant settler minority – usually with the help of the colonial state – expels an indigenous peasant population from the best land, but remains dependent on the labor of that same population and find itself in sustained competition with it for parts of the remaining land.<sup>101</sup>

Osterhammel refers to this as the “*African*” type “in light of its most significant modern examples (Algeria, Rhodesia, Kenya, and South Africa).” And finally the third type of settlement colonization is referred to as the “*Caribbean*” type. It entailed the “recruiting of workers after the expulsion or destruction of the indigenous population by forced import of slaves and their employment in a plantation economy,” hence the label “*Caribbean*.”<sup>102</sup> Of all these types, it is evident that the one closest to that of the situation in Mandate Palestine was the second, “*African*,” however, in the Zionist movement in Mandate Palestine, Jewish settlers did not depend on the local Arab population for laborers. Nevertheless, “the struggle for land ownership was the dimension of the conflict which demanded the greatest amount of interaction between the two sides.”<sup>103</sup> From the very beginning of Zionist colonization in Palestine, it was determined that Zionist colonies would employ Jewish laborers only. “The ‘Jewish Agency,’ the ‘Jewish National Fund,’ the ‘Palestine Foundation Fund,’ and the ‘Jewish Federation of Labor’ vigilantly ensured the observance of that fundamental principle of Zionist colonization.”<sup>104</sup> While this principle may seem like a small detail, the significance of such a decision and how it took a large toll on the economy in Mandate Palestine will be further explained in Chapter Four, and in Chapter Three it will be seen how legislation was used to legalize it.

Therefore the Zionist movement does not fit under the general definition of colonialism, nor into its sub-form of overseas settlement colonization. One author who makes this distinction very clear is Maxime Rodinson in the book *Israel: A Colonial-Settler State?* In fact, Rodinson argues that Zionism is not a form of colonialism nor imperialism, but rather an ideological movement, as referred to in the excerpt below:

Israel's more or less collectivist colonies, and the institutions that have developed around the network they form, are considered, correctly, to be the concrete products of this ideological movement, and are presented as models of socialist accomplishment. The implicit conclusion is that a society so deeply permeated with the leaven of socialism cannot be termed colonialist or imperialist.<sup>105</sup>

This does not eliminate the many similarities between colonialism, imperialism, and Zionism. In fact, Rodinson explains that the relationship between Zionism and the European powers "was conceived on an imperialist-colonial basis."<sup>106</sup> But again, an important difference (or the first of several nuances as Rodinson puts it) in the Zionist movement was that "Jewish colonialists sought to forge a nation or a national identity through the colonization act itself," while "European colonialists were an extension of an already established national identity and state."<sup>107</sup> It is this key difference which prevents the Zionist movement from being labeled a colonialist one, and the reason why it is instead referred to as "settler colonialism."

As settler colonialism is different from traditional colonialism because the settlers are permanently there, and permanently in contact with the indigenous inhabitants, the "natives," the discriminatory treatment imposed upon the latter is more intense, systematic and brutal than that which the natives were subjected to by overseas imperial authorities.<sup>108</sup>

Nevertheless, it is also crucial to remember that this relationship between the settlers and the indigenous inhabitants would not exist if it were not for the support of the European powers, and particularly that of Great Britain. "The settler colonial situation establishes a system of relationships comprising three different agencies: the settler colonizer, the indigenous colonized, and a variety of differently categorized exogenous 'Others' (Veracini 2010)."<sup>109</sup> The organizers of the Zionist movement were aware of this; Rodinson goes as far as to say that when they were deciding the location of the Jewish homeland their main concerns had nothing to do with the rights of the local inhabitants of a location, but thought rather "in terms of a collision between political powers" – political Zionists were well aware that the objection of a national home was impossible without the support of another country or power.<sup>110</sup> And for this reason, the development of the Zionist movement took place as a "colonial-type situation" alongside European expansion.<sup>111</sup> In *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine* (2000), Ronen Shamir states that "all major historical studies of Zionism deal, in one way or another, with the nature of the Mandate and with the relations between Zionism and the British Government in London and in Palestine."<sup>112</sup> The Zionist movement knew that, as long as the Jewish community was a minority in Palestine, they needed the "protection of one imperialist power or another" and that they would be unable to fulfill their goals "without the

internationally legitimate physical and material authoritative presence of an imperial power.” Therefore, even when Zionists found certain policies of the British to be conflicting with the “Mandate’s original commitments,” Zionist leaders did not change their opinions on the importance of maintaining British colonial rule in Palestine until the 1940s (as will be seen in the following chapter on the subject of transfer regulations).<sup>113</sup>

Therefore, the colonial-settler movement of Zionism could only exist within the context of “a European colonizing world, which Zionism hoped it could both assist and extend.”<sup>114</sup> And this association between Zionism and Europe has led to the American and European support of the then settler-colony and the current state of Israel.<sup>115</sup> As one author, Joseph Massad, contends, Zionism not only took political advantage of European colonialism, but in order “to justify its colonization efforts of Palestine to a gentile European world, Zionism would present Jews as carriers of European civilization to a land burned by a barbaric, ‘parasitical’ population who neglected it and transformed it into a desert.”<sup>116</sup> This image of Palestine and its Arab inhabitants was taken a step further so that not only were the Palestinians seen as barbaric and in need of colonization, but that because of them the land of Palestine was not being used and was practically empty. In *Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics* (1983), Kimmerling points out a significant difference of Zionist settler colonialism (which is referred to as “immigrant-settler society”) in comparison to others. Kimmerling explains the concept of “the frontier” or “*frontierity*” of a given territory to be the amount of free land available to the immigrant-settlers, and that in comparison to other immigrant-settler societies “the Jews in Palestine had almost no primary frontierity.”<sup>117</sup>

This is evidenced in the fact that every bit of land which passed into the control of Jews, at least until 1947, was in the possession of someone else before they acquired it, and in order to transfer the land to Jewish control, the collectivity had to pay an economic, political, and social price which was high by any criterion.<sup>118</sup>

Furthermore, unlike other settlement movements in which land is chosen for “political, geographical, and economic availability,” the Zionist movement selected the land in order to solve “the Jewish Question.”<sup>119</sup> However because the land chosen by the Zionist movement was not empty or free, the cost of land spiraled during the Mandate period. Therefore, to Kimmerling, the most crucial difference between the Zionist movement and other colonial settler movements (which he refers to as “Jewish immigration” versus “other immigrant-settler movements”) was that in Palestine “there was no frontier whatsoever.” And with the increasing cost of land, the Zionist movement was dependent on external support for resources and capital in order to acquire it, which “had widespread implications for the formation of its institutions and its patterns of economic, political, and social activity.”<sup>120</sup>

The First Zionist Congress in 1897 put together a “practical program” calling for three types of action: “*organization, colonization, and negotiation.*”<sup>121</sup> The organizational action included “a quasi-state apparatus” to direct and handle the colonization process. “The World Zionist Organization – with its Federations of local societies, its Congress, its General Council, and its Central Executive – was established at Basle in order to play that role.” “The instruments of systematic *colonization*” were the Jewish Colonial Trust (1898), the Jewish National Fund (1901), and the Palestine Office (1908), whom together were responsible for the planning, financing, and supervision of the colonization process to make sure that “it would not meet the same fate which the earlier experiment of haphazard colonization had met.” And finally, “while the instruments of colonization were being laboriously created, diplomatic efforts were also being exerted to produce *political conditions* that would permit, facilitate, and protect large-scale colonization.”<sup>122</sup>

The *Yishuv*, which is often described as a “state in the making” or the “state within a state,” was the Jewish colonial-settler community in Palestine prior to 1948.<sup>123</sup> Horowitz and Lissak point out in *Origins of the Israeli Polity: Palestine Under the Mandate* (1978) that they use the term “quasi state” to describe the *Yishuv* for a few reasons, one of them being that it “was dependent on the Diaspora” for “resources of manpower, funds, and political support.”<sup>124</sup> Without the Diaspora, the *Yishuv* “would not have been able to amass the economic power or to maintain its political institutions.”<sup>125</sup> While it had no legal code or judicial functions (those services along with customs and transportation maintenance were administered only by the British Mandate government) it did have political institutions and paramilitary organizations such as the Hagana.<sup>126</sup> The *Yishuv’s* social structure and the formation of its institutions and roles were created due to the need for land acquisition. Organizations were established and specialized land buyers transpired all for the purpose of purchasing land.<sup>127</sup>

The structure and responsibilities of the *Yishuv* in Palestine were not instantly known to the Zionist movement. In fact they were established gradually, beginning with the Zionist wave of immigration in 1882, where Zionism was still considered to be “an ideological and cultural movement rather than a political one.”<sup>128</sup> Concocted by thinkers including Leon Pinsker and Moshe Lilienblum, Zionist ideology had the objective of “a territorial concentration of Jews” in Palestine through settlement. The concept of a Jewish state was not conceived until Theodor Herzl and the First Zionist Congress in 1897. As Jews settled in different parts of Palestine in the late nineteenth century, the “socioeconomic pattern” that evolved was that the settlers were dependent on “hired Arab labor.”<sup>129</sup>

Zionist colonialism in Palestine was not only of the settler-type, but also a substituting one. In other words, this type of colonialism aspired to replace the Arabs of Palestine with Jews. Conquest of land was therefore



not sufficient and had to be supplemented by the monopolization of the labor market.<sup>130</sup>

And based on this, the concept of Jewish “self labor” emerged. “This exclusion was obtained through an official boycott of Arab goods, labor, mixed government schools and local governing bodies” (this importance of “self labor” and the Zionist movement will be discussed further in Chapters Three and Four), becoming a significant tool in the Zionist movement’s division and weakening of the Palestinian Arab economy.<sup>131</sup>

Following the initiation of the Zionist movement, there were three points of concern for the organizers and leaders: first, there needed to be enough land acquisition to lay the foundation for the Jewish nation or state; second, the land to be obtained was already owned by others; this led to the last concern that, in order to acquire the land, economic and political resources would need to be allocated to ensure “the transfer of the land from one national ownership to another. ... as soon as the land was in Jewish hands, it would no longer have a purely economic meaning, but would acquire a national significance.”<sup>132</sup> In order to tackle these concerns, Zionist actors took on different roles and formed various institutions, whose tasks transitioned over the years in Ottoman Palestine, to the British Mandate, and many of whom still exist in the state of Israel. A few authors support the idea that during the Mandate years, and as early as the late Ottoman period in Palestine, the Zionist movement formulated the tools for the creation of the Jewish state. Fayez Sayegh wrote, “For Zionism, then, colonization would be the instrument of nation-building, not the by-product of an already-fulfilled nationalism.”<sup>133</sup> This book argues that Zionist actors penetrated every part of the land tenure system, legislation, survey, registration, transfers, and disputes, and, as already mentioned, land was the key element to the creation of the Jewish nation and state. In *Zionism and Territory*, Kimmerling makes a similar argument but uses a different approach. He argues that, first, “institutional tools were needed to implement the policy and allocate the resources,” such as specific “roles, organizations and institutions,” most of which were established at the start of Zionist-Jewish settlement in Palestine and developed further with time.<sup>134</sup> Kimmerling points out that not only did these institutions shape Zionist land policy, but they also “began to occupy a central place in the social structure of the Jewish society in Palestine and afterwards in Israel, and some of them became part of the symbols and values of the Zionist social system.”<sup>135</sup> Kimmerling then divides these organizations, or the institutional tools, which the Zionist movement needed for their land policy and allocation of resources into five main categories:

- 1 entrepreneurs known as speculators
- 2 semi-professional land purchasers and intermediaries
- 3 organizations or societies for land purchase for specific cultural or urban settlements for the achievement of particular goals

- 4 the Jewish National Fund
- 5 urban settlement points.<sup>136</sup>

Entrepreneurs or speculators purchased land for a short period of time in order to sell it for a profit, whereas semi-professional land purchasers were those who purchased the land “over prolonged periods, usually in the name of organizations and institutions, but who enjoyed independent status.”<sup>137</sup> Kimmerling describes that these individuals were referred to as “experts” and that they were usually Jews who were knowledgeable in both Jewish and Arab customs and language. Because the land was being purchased on an individual basis, it made the transfer much easier as it eliminated the “national and political components from the transactions.”<sup>138</sup> An example of such a case, concerning the village of Yaquq, will be discussed in depth in Chapter Seven. Amongst the various responsibilities of the Jewish National Fund was to ensure that once land tenure was obtained, the land could not be sold, but rented or leased to Jews only, and the urban settlement points were used to verify the presence of Jews on the land.<sup>139</sup> Finally, the example of an organization with the specific goal of Zionist settlement in its land purchases will be seen through the Keren Hayesod organization.<sup>140</sup> In the following five chapters examples of almost all of these categories will be found: perhaps only briefly in relation to the formation of the land tenure system, discussed in Chapters Three and Four, but in relation to the implementation of the land tenure system, discussed in the village case studies, they will be extremely evident.

### **Land Tenure and Records in Areas of Conflict**

The subject of landownership in Palestine is somewhat unique, but land tenure conflicts are not. In order to follow an organized structure for researching and studying land conflicts, an internationally recognized set of guidelines for the study of land tenure conflicts is used as a framework: the United Nations Human Settlements Programme (UN-HABITAT). The goal of UN-HABITAT is to provide adequate shelter for all. One of its many campaigns is the Global Campaign for Secure Tenure in which it works towards improving women’s land and property rights, establishing transparency in land administration, and enhancing secure tenure and urban governance.<sup>141</sup>

Conflicts over land have always included controversies over territory and boundaries, or access to land resources. There are other types of land conflicts; recently, internal conflicts have been more common, which has had consequences for land rights and occupancy by leaving millions of internally displaced people (IDP) with only their claims for plots of land. Armed groups threaten and harass the civil population, transforming them into IDPs and refugees, so that they are evicted or forced to flee from their land. Opposing groups then assert their “political power through territorial domination” in

the form of “land grabbing and discrimination” and denial of land rights. According to international law, land rights are “human rights,” predominantly confirmed by differing legal systems: formal, customary, and national. As UN-HABITAT points out, internal conflicts over land are exceptionally difficult to resolve because “what once had been ethnic, tribal or other intermingling turns into a tangled web of bitter claims and counterclaims.”<sup>142</sup>

A country-wide analysis of land tenure security and rights needs to consider that a variety of land rights may apply to a single plot of land, and that it is impossible to divide land rights between legal and illegal. Instead there is an array of informal–formal, or illegal–legal, types of land rights along a “continuum” of varying degrees of illegality.<sup>143</sup> Therefore, to implement the UN-HABITAT agenda, the extent of the illegality or informality is identified by using a set of characteristics that relate to whether or not “the land has been invaded against the owner’s permission; land has been sold by the landowner/developer with defective title/deed; settlement conforms to local authority land use controls; land was adjudicated by the state; housing conforms to building regulations.”<sup>144</sup>

If not at the core of the conflict, land and property issues are usually one of the causes. For this reason UN-HABITAT recognizes the significance of land records in conflict areas, and calls for the following: (1) a return to normality; (2) conflict management and dispute resolution; and (3) the prevention of discriminatory or otherwise unfair practices.<sup>145</sup>

As soon as the repercussions of a conflict have become apparent, it is crucial to locate the current land records, including the “land registry, cadastre, maps, possession lists, survey field records, text and graphic evidence, digital backups and paper maps.”<sup>146</sup> Land records become sources of information that are not necessarily in the interest of all parties involved, especially where land has been at the heart of the conflict. For example, the dominant power, suffering defeat, may want to take away or hide land records as they withdraw from the area, or to dispose of previously-existing records and data from before they entered the land, or even to destroy current information in order to prevent a swift and smooth return of the other party to that land.<sup>147</sup>

In conflicts where land is the central issue between different groups of people, certain individuals, depending on their status, might use their positions to access the land records for different purposes. After one party has left an area of land, the second party may try to make their changes official. However if that second party has been in exile and is returning to their land, they may take over the land records and prevent them from being corrupted, or try to protect the records by hiding them, or they might become involved in modifying the records for their own purposes, or even eliminate them altogether by burning down offices and storage facilities.<sup>148</sup>

Conflicts of landownership are more likely to arise in areas where population movement has occurred, whether this concerns internally-displaced peoples, refugees, or returnees. Amongst such populations, the dispute over landownership is most likely to be the nucleus of the conflict, rather than just

an issue. When a country is in an “emergency phase,” government institutions are unlikely to be in operation and thus will be unable to monitor and enforce land laws or prevent illegal occupation. Emergency situations open the door to land-grabbing and the abuse of land-use rights by the poor, the rich, or criminals. Groups within the population that have been discriminated against by policies before or during a conflict will try to recover their former property; some may even do so by forcefully evicting occupants, or putting pressure on owners to sell, all as a form of revenge for their own past experiences at the hands of the previously-dominant group. It is important that a legal process of repatriation be established as soon as possible so that privately-owned lands and property can be returned systematically and legitimately to their owners.<sup>149</sup>

Inferior groups in land conflicts have usually undergone discrimination by the dominant group, and may not have had any proper land or property rights. For example, during times of conflict an inferior group may have lived in “informal settlements” that were destroyed, burnt, or cleared. Such a group would have no evidence to support its claims and no legal rights binding it to the land, and therefore might be denied “housing reconstruction grants” during periods of reconstruction and reconciliation.<sup>150</sup> Some examples of discrimination against groups include: “rules demanding *prior approval of transactions* (or certain types thereof) by a certain authority ahead of completion ... *non-completion of the technical process or administrative procedure* [and] *unrecorded transfers*.”<sup>151</sup>

The property and land rights of owners who had to abandon their possessions must be cared for. Conflicts over land produce abandoned dwellings and a shortage of housing, so temporary accommodation needs to be organized until a thorough analysis of the situation can be carried out, for example through registration with the United Nations High Commissioner for Refugees (UNHCR). Those who fled or were forced out during the conflict may face greater obstacles because it is especially difficult to protect the property of absent owners. For this reason, extra effort will be needed for safeguarding their rights in the early post-conflict stages. This can be done by establishing “hierarchies of legal evidence,” so that non-discriminatory decisions can be made amongst the variety of claims without being excessively bureaucratic:<sup>152</sup> “The primary objective is to gain an overview of the data as it stood just before the conflict broke out.”<sup>153</sup>

One of the first steps should be to take an account of the available land records using previous inventories, in order to obtain a general idea of the position before the conflict began. This, however, will depend on the existing material. A review needs to be completed of both administrative and geographic data, especially for title and land registers, cadastral registers and index maps, land parcel and individual indexes, and registry maps. When dealing with this information, it should be divided into some system of units (which may already exist), such as administrative, judicial, or cadastral units, or municipalities, so that the overall evaluation will be as current and as comprehensive as possible.<sup>154</sup>

Sometimes various details and copies of land records in areas of conflict are produced in other countries or archived at the United Nations. Usually it is only international experts who will have access to these archives, but if possible researchers should try to learn what data exists, and what the chances are of this information being returned or used.<sup>155</sup> It is also important to identify how the data was collected and if it was done objectively.

When dealing with land records from an allocated time period, whether related to the past or the present situation of a conflict, the individual examining the material must remember to remain vigilant in carrying out the task, since it is known that land records can be tampered with during conflicts. Indicators that records have been tampered with include:

- unusual numbers of transactions of a certain type in a short lapse of time, or even on the same day;
- transfers between members of different groups in the conflict;
- transfers from public, common, or communal properties to private persons, often in the form of privatisation;
- periods with few transfers, if any – this may signal that certain parts of the transaction records have been removed (e.g. pages taken out);
- an absence of transfers, where data relating to the situation just prior to the conflict is missing, or a new group has come to power.<sup>156</sup>

In an area of conflict, it is most likely that information will be lost or tampered with. As previously discussed, a broad assessment of the records will help in this matter. It should be established, for example, if it is random information that is missing. Or if the records of an entire judicial unit are absent. Thorough analysis should reveal any patterns or discrepancies in the available information. However, to fill in the gaps there will need to be an emphasis on registry logs, contracts, governmental decisions, land survey observations, fieldwork, and land parcel layouts.<sup>157</sup> Even though this information is not equivalent to the actual land records, such details may collectively fill in the ambiguities, or at least provide a lead to an alternate source.

Analyzing the collection of land records will, in the short term, allow for immediate and hopefully fairer judgments to be made about land rights and other evidence being collected. In the long run it should also reveal the disparities in the forthcoming land tenure system that need to be eliminated, in order to settle all claims and avoid future conflicts. Land tenure security must be re-established for all plots of land, and to accomplish this a variety of methods might need to be applied.<sup>158</sup>

To locate information from local knowledge, it would be beneficial to interview local experts on the land tenure system and related activities. By studying records and printed information from a legal angle an outline of the land system can be established, but local knowledge will show how the actions were actually executed on the ground. It will also be necessary to consider those actions taken outside the law. In other words, “it is more

important to understand the law as enforced than the law in the statute books.”<sup>159</sup>

Using this information, this study of landownership in British Mandate Palestine has not only investigated the land registry records from that time period (Chapters Five, Six, and Seven), but also examined the formation of the system, as will be described in Chapters Three and Four.

## **Conclusion**

This chapter explored the meaning of land, landownership and tenure, and the political relationship it shares with power. The concept of land as tenure-free is difficult to track down because it seems that there has always been some kind of claim for ownership of all land. This ownership is not always apparent, but it is always there. It is also evident that control over land tenure is needed for the overall legitimization of authority over a territory. Land tenure systems are therefore an essential part of state administrations, because states cannot exist without land. There are different types of land tenure systems, and the key element to them all is registration of land.

However, depending on the type of government and economy, tenure systems may differ. In market economies, private landownership is essential because it eliminates all other claims to plots of land, and allows the government to tax the individual. As long as the rights of that individual to his or her land are secure, other opportunities will grow, such as credit and investment, and growth of the land market. Thus the establishment of a strong land tenure system is imperative, and it must be created, maintained, and updated with that value in mind.

It is evident that the different parts of the land tenure system overlap, but most importantly, that the different parts are interdependent. For example, as Feder and Feeny point out, while a registration is just one of the institutions designed to reduce uncertainty, “A functioning legal system and effective enforcement mechanisms are necessary as well,” meaning that, without laws, registration is ineffective.<sup>160</sup> Additionally, in order to register the land it must be surveyed, so that its exact boundaries can be recorded and the specific land parcel can be distinguished from other land. Furthermore, if all of these parts of the system are not assured, then the land tenure is not secure. As well as the economic implications of this (i.e. lack of investment or unwillingness to provide loans for collateral by financial institutions or creditors), there is more likely to be a tenure dispute when a transaction for transfer does occur.

UN-HABITAT sources show that land is commonly the cause of conflicts and in such situations one must move cautiously. Without all the land tenure information, it is difficult to answer the questions of this research, just as it is difficult to carry out reconciliation and reconstruction of other land conflicts without the essential information. This means ensuring that all information and the cases of the inferior group in the conflict are legitimately represented. To review land conflicts impartially, it is also necessary to examine the land

tenure laws and whether or not force or unwarranted methods were used to create them, or if there was discrimination in implementing them. Studying the printed information and records will reveal the basic structure of the land tenure system, but other methods of research must be undertaken to examine how the policies were put into action on the ground.

By understanding the relationships between landowners, the land tenure system, and the state, as well as between the parts that constitute that system, one can determine if the British Government did in fact facilitate Zionist land acquisition in the land tenure system in Mandate Palestine. Furthermore, by confirming the uniqueness of the land question in Palestine it can be concluded that the policies and components of that system should not be compared to any other one; it was not a typical colonial landscape because of the presence of Zionism alongside the British Government and the Palestinian Arabs.

Lastly, as UN-HABITAT studies have shown, land tenure records cannot be taken as they are found. The policy and the formation of the system that shaped them must also be analyzed, keeping in mind that one population achieved its goal while the other population lost its land tenure rights as a result of it. Therefore it is not enough to take the land registry records of Palestine without studying the land tenure system from the perspective of the population that lost its tenure rights. To do this, the Zionist movement has been discussed within the context of colonial theory and colonial settler movements. By analyzing what this systematic framework entails, the formation of the land tenure system and the Zionist actors within it can be acknowledged. Only then will the extent of Zionist collaboration in every part of the tenure system in Palestine before 1948 be seen.

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# 3 The Legal Framework

## Introduction

The term ‘landownership’ means more than simply ‘who owns the land,’ and in fact includes a number of processes – the first being the land laws. The Jewish Agency worked closely with the British Mandate Government to produce legislation that would legitimize Zionist land acquisition objectives. This chapter and the one that follows will therefore examine each step of the land tenure system. After breaking down the landownership system in Palestine and studying each aspect individually – particularly how it was formed, and the variables and actors involved – it will then be possible to analyze the implementation of the system on the ground through the case studies.

Rather than study the land system chronologically, as others have done, this part of the research will examine the land system in terms of the different stages that form it. In analyzing a land tenure conflict, each stage of the system needs to be scrutinized separately after the conflict has occurred, in order to identify the factors involved in each phase. An attempt was made to put these stages in the order in which they occur within the land system, beginning with the topic of legislation and ending with land sales and disputes. However, as noted in the previous chapter, many of the stages also overlap (and all are linked together as part of the land tenure system), not only in the sense of when they occurred but also in terms of their content.

Legislation was the foundation of the tenure system in Mandate Palestine. The British Government had certain objectives that the laws were intended to fulfill, and it was through Zionist collaboration that these objectives and laws were established. Land legislation on its own consists of many elements, as previously discussed, and land tenure reforms are tools for governments to utilize in obtaining their larger political objectives, as well as the means through which a power legitimizes itself within a territory. In the case of Mandate Palestine in particular, the topics that fall under the land’s legal system also include the actors behind the laws, i.e. those who wrote them, influenced them, and even chose the time that they were issued. Also, as noted in Chapter Two, the land tenure conflict in Palestine was unique because of the triangular relationship between the British, Zionist-Jews, and

Palestinian Arabs.<sup>1</sup> Therefore, even though the Zionist movement and the Jewish Agency were not the government in power over the land, the government had an obligation to them, making their objectives important as well. For this reason this chapter will also discuss what the Zionist-Jews hoped to get out of the British Mandate Government's rule over Palestine.

Kenneth Stein notes that by 1939 Zionist-Jews had purchased "the core of a national territory" through an escalating course of action:

It began under an imprecise and changing Ottoman administration; it went unimpeded because the Arab population of Palestine was economically impoverished, politically fragmented, and socially atomized; and it received stimulus through the British Mandate, which protected the Zionist minority and the national home concept. From 1917 to 1939 Zionists refined their understanding of the complexities found in Palestine's land regime. The Zionists applied their skills toward obtaining more land. Organizational cooperation and internal cohesion emerged only after ominous British policy and Arab violence threatened the national home's development from 1929 to 1933. As Palestinians sold land, they steadily lost control over their own destiny while Zionists grasped at greater control of their own fate. Palestine was being transformed into a Jewish state.<sup>2</sup>

It is argued in this book that the role of the Zionist groups, in every step of the land tenure system, was a direct one and not just one of influence on the British Mandate Government in Palestine. As author Patrick Wolfe states, "settler colonizers come to stay: invasion is a structure not an event."<sup>3</sup> The foundation for this structure is best illustrated through the laws of the land tenure system. Contrary to Stein's conclusions, this chapter shows that, at least when it came to legislation, the 'cooperation and internal cohesion' of Zionism had existed long before the development of the national home was threatened between 1929 and 1933, having been present from the early years of the Mandate and even prior to its inception.

## **Government Objectives**

### *Ottoman Centralization of Power and Land Reforms*

Palestine came under Ottoman rule in 1516, and remained a part of the Ottoman Empire for 400 years, although changes in the land system occurred only during the second half of the nineteenth century as part of the attempts for transformation and centralization of power in the empire. The British entered Palestine during World War I. The Ottoman forces surrendered to the British in 1917, and the Armistice officially put an end to the Empire in 1918.<sup>4</sup>

From the sixteenth century, centralized administrative states developed within the environment of inter-state competition and within land

limitations that prevented territorial state expansion.<sup>5</sup> State centralization was occurring in many places, such as India and China, but came to a halt between the late eighteenth and early nineteenth centuries because of local resistance or colonial intrusion. However, the regions of the Ottoman Empire that became a part of European colonization continued with these centralization reforms, as was the case with Palestine.<sup>6</sup> Until 1839, the objectives of the Ottoman Empire in Palestine were to uphold its sovereignty, collect revenues, and protect the *hajj* pilgrimage. However these objectives were modified due to the steady decline of the administration's power,<sup>7</sup> and with the end of the Crimean War, and as profits increased with the exportation of agricultural products, West Asia became part of the European capitalist system.<sup>8</sup>

The nineteenth century was the period of the Emancipation Proclamation and the freeing of Russian serfs. The Crimean War ended in 1856 and the Ottoman Empire's new land legislation was passed shortly afterwards. By this time the Ottoman Empire had become financially indebted to the European powers for their help during the Crimean War, while the Ottoman sultan was politically indebted to them and had to undertake to pass new reforms within the empire in order to prevent European intervention or conquest.<sup>9</sup>

The Tanzimat was "a grand moment of top-down internal reforms between 1839 and 1878, [that] reformed taxation, land tenure, public administration, and many other facets of life and concomitantly transformed the social hierarchy in the Empire and, within it, in Palestine."<sup>10</sup> The objectives of the Tanzimat included the formation of well-built and centralized political institutions that would be able to advance the Empire's economic growth in the European capitalist system. These reforms were perceived to be the Ottoman administration's instruments for state building. The Tanzimat came to an end four years before the beginning of "self-conscious Zionist immigration" to Palestine.<sup>11</sup>

The land system was part of the Ottoman modernization process since it mediated and translated ideas from 'the West' to Ottoman ways.<sup>12</sup> The Ottoman Empire issued the Land Code of 1858 as a method of land reform; however, as Gershon Shafir explains, in practical terms it was actually a tax reform. In Shafir's view, the outcome of the reform was very different from its original objective; this had been to reaffirm the Ottoman state's ownership of the land, which had been slipping under the *timar* – the previous ownership system.<sup>13</sup> The late nineteenth century was a period when states could increase their revenues by exporting goods to Europe. In the case of the Ottoman Empire, it was not only a matter of monetary gain, because after the Crimean War the Ottoman government was politically indebted to the British and the French for their aid. Therefore the 1858 Land Code came at a time when the Ottoman government needed to centralize itself; to legitimize its power over its region so as to secure the profits of its territory; and to maintain its existence with the rise of European expansion in the area. Ottoman Palestine was dependent on its increasing profits from agriculture, and used the Land Code

as a means of maximizing this income. To achieve this, the Ottoman government sought to increase the number of landholders and thereby to obtain a greater taxable spectrum.

Capitalism was introduced to Palestine by the Ottoman Empire, and not by Jewish immigrants or European colonialism. In Ottoman Palestine, Jews could not claim land in the way that was permitted by Britain and France in North and East Africa, Australia, and North America. In these locations, Jews were able to claim land by right of acquisition. The Ottoman administration had prohibited Jewish immigration and land purchasing in Ottoman Palestine as a response to the Zionist movement, as is discussed later in this chapter. However, as the Ottoman Empire became incorporated into the international economy in the late nineteenth century, Jewish “settler-immigrants” were able to enter and inhabit land, hence forming settlements in Ottoman Palestine.<sup>14</sup> The demands of European inter-state competition led the Ottoman Empire to respond with considerable transformations of the state.<sup>15</sup> Ottoman modernity was a mixture of the “mediation and translation” of Western ideas in a different locale throughout the Empire.<sup>16</sup> Shifts in Europe after the First World War transformed the Ottoman Empire into a centralizing state which had to change its laws in order to make a profit and to keep up with European competition and the Western capitalist system. The changes made by the imperial Ottoman government altered the landownership system in Palestine; however this was not successful and, according to some, perhaps made the system worse.

### *The Land Code of 1858*

The Land Code of 1858 was issued by the Ottoman administration as an instrument for achieving control of state-owned lands, as well as for regulating private land ownership. During the sixty years after the law had been passed, private landownership continued to increase. One of the purposes of the 1858 Land Law had been to maintain an estimate of the amount of land owned by the state; however the law did not succeed in doing this. Because there was a lack of trained officials able to implement the law, and as a strong central Ottoman government had not yet been achieved, the district governments actually outweighed the central government. Land registration overall was found to be a difficult process to introduce to the *fellahin*,<sup>17</sup> who were unaccustomed to government taxation and the concept of compulsory enlistment.<sup>18</sup>

The Land Code specified six classifications of land: *mulk*, *miri*, *waqf*, *mewat*, *mahlul*, and *matruka* (see Glossary for more information). By identifying the types of land, the administration defined its authority over all the land.

In Palestine, the two most common tenures were the *mulk* and *miri*.<sup>19</sup> “*Mulk* (meaning ‘property’) lands were those held in complete freehold and exempt from the tithe.” *Mulk* landowners were private landowners and had



the right to handle or pass on the land as they pleased. *Mulk* land was restricted to urban areas, and consisted mostly of buildings and gardens. In the city of Jaffa, however, orange orchards could also be found on *mulk* land. The majority of agricultural land was classified as *miri* land. The owner of such land was given the legal rights to the land and the profits produced from it, but not the title deed. The owner therefore did not have the power to sell or mortgage *miri* land without permission from the state, acquired via the Land Office.<sup>20</sup>

Under Ottoman rule, Arab farmers utilized the advantages of *mewat* lands. They were able to expand towns and villages, as well as increase the amount of property for working farmers.<sup>21</sup> Article 103 of the 1858 Ottoman Land Code declared that an individual could restore *mewat* land by cultivating it and would therefore obtain rights at once to the land.<sup>22</sup> Since the Ottoman government aimed to increase its profits by maximizing the agricultural industry, it took measures to ensure that land was not being wasted. If land was left undeveloped for a period of three years, it was designated as *mahlul*, meaning it was not in use, and was then returned to the state.<sup>23</sup> *Waqf* land is land “assured to pious foundations,” and *matruka* land was allocated by the state for public use.<sup>24</sup>

Another law was passed by the Ottoman Empire in 1864, entitled the Wilayet Law. Its purpose was to identify the responsibilities of the *majlis idara*, i.e. the local district administrative councils. These responsibilities included the power to control land and taxation. Members of the *majlis idara* regulated taxation, confirmed land registration, and resolved queries over landownership. The Wilayet Law also gave members of the *majlis idara* the right to voice their opinion with regard to what the government might do with land revoked by the state.<sup>25</sup>

One of the results of these land reforms was that private landownership became more attainable in the rural areas of Palestine. One of the methods used to attain modernity was the creation of a “one-to-one correspondence between a piece of property and the person(s) paying taxes on it.”<sup>26</sup> Private landowners took advantage of the reforms, not only for subsistence farming, but also to increase their profits by growing cash crops that could be sold as raw materials in the European market. Private landownership was a new opportunity that affected the structure of Palestinian society because small landowners, peasants, and small businesses could not afford to pay the higher taxes. Consequently they sold their property to wealthy urban families and large landowners who could afford them. The landownership laws had altered the allocation of production resources; however, “land, property, and the workforce” was not acquired by many. Discovering that most of their income was from the land, agricultural producers and large landowners became the new ruling elite. Members of the Zionist movement soon became aware of this and took advantage of it.<sup>27</sup>

Others, however, would argue differently. For example, according to Moshe Aumann of the Israel Academic Committee on the Middle East, the *fellahin*

were dispossessed in Ottoman Palestine by their “fellow Arabs,” in a process which included the following participants and events:

the local sheikh and village elders, the Government tax-collector, the merchants and money lenders; and, when he was a tenant-farmer (as was usually the case), by the absentee-owner. By the time the season’s crop had been distributed among all these, little if anything remained for him and his family, and new debts generally had to be incurred to pay off the old. Then the Bedouin came along and took their “cut,” or drove the hapless fellah off the land altogether.<sup>28</sup>

Aumann claims that it was the “Jewish pioneering enterprise” that disrupted and helped bring an end to “this medieval feudal system.”<sup>29</sup> This is a common argument supported by those who find Zionism to be equivalent to modernization. In theory, the elimination of the feudal relationship to land was one of the results of the Ottoman Land Law, since it restricted the power of large landowners and sheikhs, and to a large extent centralized the government’s power, even though it was not followed through and implemented. In practice, one of the results was that *mulk* and *miri* land became almost the same: *miri* land could now be sold and inherited, since the permission required from the government was merely a formality.<sup>30</sup> This book does not deny that there were advantages brought to Palestine by the Jewish immigrants, however it does argue that the changes in the land system (or loss of Arab-owned land) in Palestine were a result of the role of Zionism and Zionists in the land tenure system. And in the long run, the dispossession of the Arab landowners outweighed any agricultural or other forms of development introduced by Jewish immigrants in Palestine.

### ***Zionism and Jewish Landownership in Ottoman Palestine***

The attitude and policies of the Ottoman Empire towards Zionism from 1858 until its demise went through different phases. At first the Ottoman government tried to prevent Zionist settlement in Palestine through the prevention of land purchases by all foreigners; however on 5 March 1883 the government passed legislation specific to Jewish settlers (allowing Ottoman Jews to purchase land).<sup>31</sup> By the beginning of the twentieth century, the Zionist movement had taken off. In 1901 it was five years old, and as agreed by a resolution at a meeting of the English Zionist Federation,<sup>32</sup> the Zionists were prepared to open talks with the Ottoman Sultan on Jewish land purchases in Palestine.

When it came to land purchases, contrary to what Zionist propaganda<sup>33</sup> in the late nineteenth century might have implied, the Zionists had done their research and were continuously working on multiple ways of achieving the ultimate goal of the Zionist movement, i.e. the acquiring of land for a Jewish national home. Asher Zvi Hirsch Ginsberg, a Zionist more commonly known

by his pen name of Ahad Ha'am, wrote an essay entitled "Emet me-Eretz Israel"<sup>34</sup> about his trip to Palestine in 1891, in which he remarked that, contrary to Zionist propaganda, land in Palestine was tended and that there were "no unoccupied fields waiting to be bought and cultivated." He wrote that it was a misconception that Jews could just "come, buy up land and settle there while Arabs fail to grasp what is actually going on." And, at least under Ottoman rule, even though Arabs were aware of Zionist aims in Palestine, they were not threatened by them. Ginsberg wrote that Arabs thought they could take advantage of the situation by selling the land for high prices, but he also warned that while this might be the case for a time, once the Arabs did feel threatened and that their land was at risk, such sales would cease.<sup>35</sup>

This was an important warning to Zionists in the planning of their national home. It meant that while they could at first purchase some land quietly or freely without posing any threat to the Arabs or causing too much of a stir, they would only be able to do so for a certain amount of time, after which the appearance of constraints or obstacles would mean that a careful and well-investigated plan would need to be created to continue the purchase of land. By recognizing this early on, the Zionist movement was able, through the Jewish Agency and others, to involve itself in all the significant parts of the land tenure system so that when Arabs were not selling land to make a profit they would be selling land based on need, and, furthermore, so that other land that was not thought to be for sale would be made available for purchase and cultivation.

The Jewish National Fund (JNF) was founded on 29 December 1901; until the end of 1920 most of its work, as described by Abraham Granovsky, was theoretical and finding the means to put ideas into practice. From 1921, the JNF began to fulfill its goal of purchasing large amounts of land.<sup>36</sup> The issues that arose from the work of the JNF in acquiring land in Palestine during the twentieth century were described as "constantly becoming more numerous and complicated," since they required, among other things, "the training of townfolk in agriculture, the investigation of the methods of farming and labour that shall create the preliminary conditions for the settlement of the moneyless masses, [and] questions of credit and law connected with hereditary lease."<sup>37</sup>

In 1891 the Jewish Colonization Association (JCA) was set up to help Jews emigrating from Eastern Europe to various parts of the world, and in 1900 the JCA formed a branch in Palestine, headed by Baron Edmond de Rothschild. The JCA in Palestine (PJCA) concentrated on the construction of Jewish villages and farms, and by 1920 had obtained around 450,000 dunums of land, two-thirds of which were assigned to individual Jewish settlers.<sup>38</sup> The PJCA was officially a non-Zionist organization, thereby giving itself political independence in its efforts; however, it worked closely with Zionist organizations and officials, and during the British Mandate cooperated with the Zionist movement to attain the common objective of Jewish colonization and

the development of a Jewish national home.<sup>39</sup> Between 1882 and 1914, land owned by the Jewish population had increased from 25,000 dunums to 420,060 dunums.<sup>40</sup>

With the Ottoman Empire in decline even before the First World War had begun, the Zionist Organization was attempting through its central office in Berlin to keep all its options open in order to achieve its objectives for land purchases in Palestine. Even though the Ottoman Government had not allowed them to purchase land during Ottoman rule over Palestine, the Zionists found by the end of the nineteenth century and the early years of the twentieth century that as long as the Ottoman Government did not feel that the Jews of Ottoman Palestine would betray it and instead align themselves with the growing threat of the European Powers, this policy could be up for negotiation. At the same time, knowing that a shift in regional power was starting to occur, the Zionist Organization felt the need to contact the European Powers and to outline its interests as early as possible, so that if and when the question of Palestine did rise, it would be able to align itself with them. The Zionist Organization therefore communicated with its various offices in Russia and Europe on the subject of the preferred European Power to take control over Palestine and from which European Power it would most benefit. For example, one of the Zionist Organization's greatest concerns was that certain Powers "imbued with the worst elements of Christianity" would take over Palestine and the Holy Land, and that if they, the Zionists, did not make their claim to Palestine known to the rest of the world, they would never acquire it, thereby "allowing the whole thing to go by default." Some of the countries mentioned were Russia, the United States, Italy (reference was made to the Vatican as well), and finally England, the most preferred country of all for the Zionist cause.<sup>41</sup>

The Ottoman Government strongly objected to Zionist immigration and land purchases in Palestine, and even those immigrants who did manage to get in were unable to acquire land, as they were stopped by the Ottoman Department of Land Registration.<sup>42</sup> In 1912, Zionists were still hoping that the Ottoman Sultan would pass a decree allowing Ottoman and non-Ottoman Jews to purchase land in Palestine; for security and confidentiality reasons, however, details of this could not be written about, so the relevant letters just mentioned the issue and called for a meeting of the Jewish National Fund's Board of Directors.<sup>43</sup> Clearly their efforts were successful, since the Ottoman government granted permission in 1913 for the settlement of foreign Jews (immigrants), and with immigration came land settlement.

This idea to take advantage of the change in power was not only utilized by the Zionist community. As one author wrote, "the Jewish leaders accepted the War, as the Arabs did, as a vehicle for obtaining their desires." While the Zionist leaders were preparing themselves for a change of power that would allow them to purchase land for Jewish settlement and for the establishment of a national home in Palestine, Arabs too had caught sight of a way of getting rid of Ottoman imperialism.<sup>44</sup> Various secret societies within

the Arab national movement were supported by the French, and in 1913 the first Arab National Congress meeting took place in Paris and called for independence, or, initially at least, for Arab autonomy from the Ottoman Empire.<sup>45</sup>

For the Zionists, working with the Ottomans, as well as with the British and others in Europe to try and determine who would help them achieve their goal of a Jewish national home did not slow down the most important part of that goal, which was the purchase of land. In 1913 Zionists were actively researching, investigating, and purchasing lands for settlement in Jaffa and upper Galilee, and taking into account details such as climate and weather, distances from water, transportation to those areas, characteristics and fertility of the soil, crops or trees to be planted, population density, and of course the conditions of the purchases.<sup>46</sup>

In 1919, a confidential memorandum was released by, and to, the Engeres Aktions-Comité (EAC, also known as the Inner Actions Committee) on “The Land Question in Palestine.” This memorandum included details on every part of Palestine, and many parts of what are now Jordan and Syria (then Transjordan and Damascus), from population and area, to population per square meter, amounts of cultivable land available and already cultivated in each district, and most importantly, the best methods by which to purchase lands from Arabs. The Memorandum also noted that the largest land estates were those of “absentee capitalists.” Zionists had recognized that since the *fellah* could not repay government loans, rather than lose their land to the government they would sell it to the large landowners, have it registered in their names, and then become tenants of the land.<sup>47</sup> This was recognized early on, and was used later by Zionist land purchasers to acquire the land themselves, rather than let it be sold to the large Arab landowners. This is discussed in Chapter Four in the section on land transfers.

Other details found in this Memorandum included classification of the land – e.g. those lands of uncertain title, and land fit for afforestation – but most importantly the Memorandum stated that in Palestine there were 54 large estates (one of which, in southern Palestine, was noted to be 200,000 dunums), for many of which the owning families were far away. This will also be discussed in the next chapter, in relation to those land sellers who were unable to reach their lands once the Mandate had been established and so resorted to selling them to the awaiting Zionists. Even so, despite all this knowledge it was still concluded in the Memorandum that not enough detail was available and that many more facts would need to be collected through different types of land survey, along with more information on specific landowners, and a method for supervising transactions.<sup>48</sup>

By the end of the Ottoman Empire, the Jewish population made up only two percent of that of Palestine, and the land owned by them was also about two percent. However, that two percent of owned land was actually equivalent to between eight and fourteen percent of all the cultivatable land in Palestine.<sup>49</sup>

### ***The British Mandate in Palestine***

To better understand the objectives of the British Government in Palestine, it is necessary to understand their colonial objectives in general. The term 'colonization' refers to "a *process* of territorial acquisition," and 'colonialism' is "a *system* of domination."<sup>50</sup> Colonialism stresses the usurpation of land and space that violates the indigenous population and their land rights.<sup>51</sup> Colonial powers had certain objectives in the creating of a colonial state, as well as a standard colonial method to maintain it. This method included the creation of an alliance with large landowners and those tribal sheikhs who controlled rural areas. Such individuals were won over by the colonial powers in order to uphold the colonial state. There were two advantages to using these landowners and sheikhs. First, they were useful in maintaining control because they could manage security in the rural areas that governments could not reach because of a lack of financial or administrative resources. Second, the concept of the constitutional government was established in some states during the 1920s, and large landowners would run for the new parliaments or at least manage the rural vote. To cement this relationship, the colonial powers would give large landowners exceptional privileges, such as tax exemptions, legal power over their peasant tenants, and benefits in colonial property registration and improved irrigation.<sup>52</sup>

In the colonial relationship there are the masters and the society, which becomes the servant to the masters. The masters steal the servant society's "historical line of development, *externally manipulated* and transformed according to the needs and interests of the colonial rulers." Colonialism is not only about attainment, but also about the steady growth of the foundations of the state and the formation of society within a territorial region. Colonial powers such as the British Empire struggled to "make their administrations systematic, methodical, and even scientific."<sup>53</sup> Palestine under the British Mandate shared many colonial features with Iraq and Syria. In 1927, there were complications in Iraq and Syria with regard to the organization of land surveying and the settlement of rural land. The same difficulties were encountered in Palestine in the 1930s, but on a much larger scale,<sup>54</sup> even though territorially Palestine was much smaller in size. The reason for this is the unique variable that was not found in either Iraq or Syria, i.e. the Zionist movement and the migration of Zionist-Jews to Palestine, which made Palestine the venue for a colonial-settler movement as opposed to just a colonial one. The goal of Zionism did not change, either before the establishment of the British Mandate in Palestine, or even during the Mandate when conditions and regulations changed; the Zionist project still demanded "the expansion of Jewish agriculture [ ... ] the prerequisite is the purchase of large tracts of land."<sup>55</sup>

Although the British Mandate administration preserved many "rules and customs" in its governing of Palestine, regulations were constantly being modified according to the developing objectives of the British Government.

This was the case not only in Palestine, but also in the other parts of the world that the British had colonized.<sup>56</sup> The British had a dual obligation to the Palestinian Arabs and Zionist-Jews in Palestine, but they also had their own objectives. According to Article 22 of The Covenant of the League of Nations, one of the main objectives of the Mandate system was for the communities that had formerly been under the Ottoman Empire to be administered by a Mandate government so that they could develop and exist as independent nations, using the assistance of a “Mandatory until such time as they are able to stand alone.”<sup>57</sup>

Others argue that a main priority of the British Mandate was to help the Zionists create a Jewish state in Palestine. Perhaps this was not immediately the case in the 1920s, or when the Balfour Declaration was issued in 1917, but eventually the goal of a Jewish national home began to develop into the goal of a Jewish state and this could be sensed in the growing tension within Palestine. In his article entitled “Local Self-Government, Past and Present,” Omar Bey Salih al-Barghuthi acknowledged the development of British activities through the Government Public Health Department, and in the Arab villages, where “they organized thirty Arab village local councils and six Jewish, a thing that the Turks never did.”<sup>58</sup> However as Mrs Steuart Erskine wrote from her personal experiences in Mandate Palestine, despite all the improvements the British had achieved in Palestine, the Arabs were still resentful about their exclusion from the government, and specifically the lack of representation in the British Parliament. She remarked that what made it even more frustrating for the Palestinian Arabs was that “the Jews, through their Agency, were in touch with the Palestine Government as well as with Downing Street and the League of Nations,” whereas the Arabs “had no means of direct communication with the Mandatory or the League.”<sup>59</sup> As discussed in Chapter Two, the Zionist movement was well aware that in order to be directly involved in the creation of a land policy for Mandate Palestine, it needed to be involved not only in Palestine through the Jewish Agency, but also in London through the Zionist Organization and other Zionist representatives.<sup>60</sup>

In studying the land tenure system and the changes in landownership in Palestine – between 1917 and 1948, for example – the aim is not to make a comparative study highlighting the change in terms of ‘before and after’ differences; rather it is to analyze of the overall transformation of the land tenure system. According to historian David Fromkin, the period from 1914 to 1922 represented the “formative years, in which everything seemed (and may have been) possible,” during which, he claims, Europeans believed “Arab and Jewish nationalism to be natural allies.”<sup>61</sup> In addition he described it as the period when “Britain changed, and British officials and politicians changed their minds” and no longer believed in the plans they had generated for remaking the region.<sup>62</sup> So perhaps the goals of the British Mandate government began with the aim of helping two peoples by organizing the political and economic environment to enable one population to become independent

and rule themselves, and by providing the other with a safe area in which to create a 'national home' while bringing in new techniques and methods of agricultural production.

However, this aim was interrupted when the Balfour Declaration was issued in 1917, which perhaps explains the alteration in the British perspective, since it was not revealed to the public until 1920. Sahar Huneidi noted in *A Broken Trust: Herbert Samuel, Zionism and the Palestinians 1920–1925* that the military authorities knew that, had the Balfour Declaration been published in 1917, there would have been hostility towards it and perhaps even an uprising against it. The British had not yet been guaranteed the Mandate for Palestine; therefore it was only at the end of the military administration in May 1920<sup>63</sup> that the Declaration was read out in Palestine.<sup>64</sup> The change in the British Government's commitment towards Palestine was linked to what the Balfour Declaration came to mean in terms of policy implementation. Huneidi argues that it was never the intention of Zionists to settle for a 'national home' alongside Palestinian Arabs, but that it was in fact their ultimate goal to create an independent Jewish state.

While the Balfour Declaration achieved the objective of British support in establishing a national home in Palestine for the Jewish people, it was only the first step towards the Zionist objective of a Jewish state. Zionists knew that British or even international recognition of a Jewish 'national home' did not make it one, because their concept of a 'national home' required that land be acquired solely for Jews, and that only Jewish people could come to live on that acquired land. In fact, while the Balfour Declaration referred to it as "a national home for the Jewish people," by the 1930s the Jewish Agency's correspondence and even some of the British Mandate was referring to it as "the Jewish National Home in Palestine."<sup>65</sup> These goals were achieved through land purchases and immigration. This book argues that Zionism worked alongside the British Government at all levels of the land system, especially when it came to land legislation, in order to achieve that long-term goal.

After the issuing of the Balfour Declaration, Lord Balfour was determined that Zionists would settle the land in Palestine, not only at the cost of its Palestinian Arab inhabitants but even at that of British officers who wished to settle there after World War I. Many British and Australian soldiers applied to settle land in Palestine after the war. In one letter, the applicant was a Lieutenant Nutting, who had been communicating with the Foreign Office for two years (October 1917 to June 1919), having fought in Palestine and developed a wish to reside there. Applicants like Nutting were waiting for confirmation that Britain would become the Mandatory Power over Palestine. In the same letter, Lieutenant Nutting wrote that he was worried that their applications might have been forgotten or that the land they had asked for had already been allocated to others. Nutting's letter had been acknowledged as one of many from agriculturalists applying for a portion of land and waiting for the initiating of land settlement in Palestine. Commander-in-Chief



Allenby (of the Egyptian Expeditionary Force) wrote that “A list of the Applicants is being kept, and I presume that when PALESTINE is opened for settlement they will have equal opportunities with others.” However in July 1919 – a month before Allenby’s letter – a letter referring to the land applications of Lieutenant Nutting and others, which was sent from the Foreign Office to Lord Balfour, stated that “I fully concur with Your Lordship as to the desirability of including in the terms of the actual mandate for Palestine any preferential rights which it is decided should be given to the Zionists.”<sup>66</sup>

In *Colonial Land Policies in Palestine, 1917–1936*, Bunton argues that while the political struggle between the Arab and Jewish communities of Palestine played a large part in the outcome and analysis of colonial land policies, and as organized and engrossed as the Zionist movement was in acquiring land for Jewish settlement in Palestine, the Mandate Government’s foremost goal was for Palestine to be simply one more part of the greater British imperial administration. Bunton in fact claims that too much emphasis is wrongly given to Zionism, and that the broader and more comparative approach of his book steps back from the dichotomist outlook of Palestinian Arab versus Zionist-Jewish, and instead shows how colonial land policies in Palestine were linked to other colonial territories, such as India, Cyprus, Sudan, and Iraq.<sup>67</sup>

However, as explained in the previous chapter, even though there may have been similarities between other areas under colonial rule, and even though there were similarities and even duplications of land laws and policies, the case of Palestine was, and still is, unique. Other land tenure conflicts may have included problems with the actual land system, or issues between the colonizer and the colonized, or local difficulties where, as in Palestine, much of the land was owned by a few; but the British Mandate of Palestine was the only case in which three parties were involved, and where one of them was navigating the system at every level. Also significant was the fact that that navigator was not the British Administration. In *Israel and Settler Society*, Lorenzo Veracini challenges the idea that “the Israeli–Palestinian struggle is intractably unique and largely defies comparative approaches” and that the “struggle consists exclusively or mainly of a conflict of national/religious revival/liberation and bears little resemblance with typically colonial conflicts.”<sup>68</sup> Veracini argues that, in fact, the “current circumstances of Israel/Palestine are determined by colonial conditions and a settler colonial system of institutional and personal relationships.”<sup>69</sup> While the author disagrees with Veracini in regard to the ‘uniqueness’ of the conflict, there is absolutely no disagreement when it comes to the significance of the institutional and personal relationships between the Zionist movement and the British administration.

Since one of the main objectives of the British Mandate administration in Palestine was to establish “a Jewish national home,” landownership was characterized accordingly. Modern survey maps were created for the purposes of land acquisition, expropriation, and transfer, so that by 1920 Herbert Samuel had instigated a land registration system.<sup>70</sup>

Herbert Samuel was the first High Commissioner appointed to Palestine (from 1920 until 1925), and it was no secret, either to the Palestinian Arabs or to other British nationals living in Palestine, that Samuel was a Zionist. The fact that he was appointed as the first High Commissioner can be seen as a statement on its own about the importance of the Zionist movement in Palestine, since there was no higher authority in the Mandate Government. To the British Government, and more specifically to the individuals who appointed Samuel to the position, the establishment of a Jewish national home in Palestine was an important commitment. Prime Minister Lloyd George, Arthur James Balfour, and the Foreign Secretary, George Curzon, appointed Samuel because “it was essential to have someone who was genuinely interested in making the Zionist policy a success”<sup>71</sup> in Palestine.

Sir Herbert Samuel, was, as we have seen, an active worker for the Zionist Movement; he was also a capable administrator, and one who desired to be wholly just to both sections of the community over which he was called upon to rule. As the scale was so much dipped on the side of injustice before he, or anyone else, began to rule, his moderation was not of much use.<sup>72</sup>

However there is a great difference between being a Zionist and openly working with, if not for, the Zionist movement while simultaneously being the British Mandate’s High Commissioner for Palestine. In his memoirs, Samuel addressed the two most important goals of the Zionist movement: Jewish immigration and land purchase. On this controversial topic between Palestinian Arabs and Zionist-Jews, Samuel wrote that, in order to put an end to the strife between the two parties and in the hope of “future friendly co-operation,” the Jews must first agree that those parts of Palestine that were “solidly Arab should be excluded from Jewish settlement,” and that Jewish immigration should be restricted for a certain number of years to prevent Arabs from becoming a minority.<sup>73</sup>

In practice, this did not turn out to be the case because Jewish settlement in Palestine was not restricted to one area, but was quite widely dispersed (in fact it seemed that, as noted in the Introduction to this chapter, the only constraint on Jewish land purchases was the type of soil). Therefore if Samuel’s genuine interest in Zionism was what encouraged the British Government to appoint him as High Commissioner, how could he have been expected to be equally unbiased towards Jews and Arabs in Palestine? In relation to the purpose of this chapter – to show the role of Zionism in land legislation and how land legislation laid the foundation for the land tenure system – Herbert Samuel’s appointment as High Commissioner of Palestine is key because it led to the appointment of another Zionist, Norman Bentwich, who was to become Palestine’s Attorney General, and author of its land laws.

It can therefore be deduced that, based on their colonial goals, the British presented three official aims for Mandate Palestine: whether (1) for economic profit, strategic location, and in competition with their French counterparts; (2) for the establishment of a Jewish national home as stated in the Balfour Declaration; or (3) for protecting and developing the indigenous people of Palestine on the path to independence and self-determination, as stated by the League of Nations and the purpose of the Mandate system. As has been discussed here, it is probably still a matter for debate as to whether the British in fact actually meant to pursue all three goals, or in which order they prioritized them. The next section will show that, whatever the objectives were and, whether intentionally or unintentionally, the land tenure system of the British Government was being led by the Zionist movement.

### **Laws and Policy**

From the beginning of the British Mandate government in Palestine, the colonial legal system was the significant instrument of British and Zionist-Jewish efforts for land acquisition from the Palestinian Arabs. However the Palestinian Arabs also found the Mandate laws to be instruments of resistance and local struggle: “Law served as both an instrument of domination and a weapon of the weak,” but in most situations the former was the triumphant case.<sup>74</sup> Colonial states had the common objective of persuading the local population that the colonial government’s power was legitimate, and legislation was used as the means to achieve the process of legitimization.<sup>75</sup> While the British Mandate administration retained numerous rules and customs in the governing of Palestine, these continued to be modified as the British Government altered its objectives.

As mentioned earlier, the legislation of the British Mandate Government intended to build on that of the Ottoman Empire, as declared in Article 46 of the Palestine Order-in-Council of 1922,<sup>76</sup> and this was seen in the land ordinances of the Mandate Government. The definitions of the land classifications found in the Ottoman Land Code of 1858 were used by the British, but as Bunton has noted, “British officials nonetheless eagerly assumed a juridical vacuum wherever they thought they could.”<sup>77</sup> In *Law and Identity in Mandate Palestine*, Assaf Likhovski describes how “The law of Palestine was also a tool of power in intergroup conflicts, assisting domination and resistance. This phenomenon held especially true for land law, perhaps because land was one of the main sources of tension between Jews and Arabs.”<sup>78</sup>

### **Ordinances**

The related subjects of land ordinances and general legislation in Palestine under the Mandate have been extensively covered by many, including Kenneth W. Stein in *The Land Question in Palestine, 1917–1939*, and Martin Bunton in *Colonial Land Policies in Palestine, 1917–1936*, in which Bunton

claims that too much importance is given to the role of Zionism in British land policies.<sup>79</sup> Other books considered informative for this section include Assaf Likhovski's *Law and Identity in Mandate Palestine*, and, on Zionism and the British Government, Sahar Huneidi's *A Broken Trust: Herbert Samuel, Zionism and the Palestinians 1920–1925*. The role of Zionism is identified based on the archives cited by these works.

This chapter does not attempt to cover all the topics that fall under the heading of British land policy, let alone all the land laws and the official reports on the situation in Mandate Palestine, such as the Shaw Report, the Hope-Simpson Report, and the French Reports.<sup>80</sup> While all these reports were significant during the Mandate period, the purpose of this chapter is to focus on the actual land tenure legislation process. It does not examine the investigative reports and the individuals and bodies behind them, but looks instead only at the individuals and organizations that wrote and modified the laws themselves, and at the role of Zionism within those laws.

One source that was actually a text book for legal professionals in Palestine was published in 1935 as a guide for Land Settlement Officers. It included the history and an overall summary of land legislation in Palestine. Entitled *The Land Law of Palestine*, the book was originally written in 1927 by Frederic M. Goadby and Moses J. Doukhan,<sup>81</sup> who were regarded as the “the most senior experts on land matters in Palestine” working with Norman Bentwich (Mandate Palestine’s first Attorney General).<sup>82</sup> Both also taught at the Government Law School in Jerusalem (and Goadby had also taught in the Cairo Law School and was a British adviser on legal education).<sup>83</sup> While it was meant to be a textbook, as one author remarked it also gave “insight into how a colonial power deploys law to legitimize its rule.”<sup>84</sup> It described how the British Administration in Palestine eventually abandoned, or at least altered, Ottoman land laws for English ones in order to make the system more efficient. For example, the British Government reduced the amount of time that Ottoman law had allowed for objections to be made on acquired land, and furthermore added new legislation on the different methods that could be used by the government, the army, and the air force to acquire land. Such ordinances included the 1920 Antiquities Ordinance, the 1921 Town Planning Ordinance, and the 1924 Expropriation of Land Ordinance.<sup>85</sup>

The amount of time allowed for an individual to protest against land acquisition may seem somewhat insignificant and completely within the government’s rights to establish. However, as many of the Arab landowners lived at some distance or were absent from Palestine altogether, or were *fellahin* who were less attentive when it came to bureaucratic and administrative matters, the reduction in time for objections cost many landowners their property. Examples of this are found in the study of the villages’ land tenure disputes, where the land was sold and registered under the name of another individual because the plaintiff had not claimed it within the given period. Upon historical reflection, *The Land Law of Palestine* shows “the way in which law has been made complicit with injustice,” and that the laws were

used by the British Government as instruments of land seizure by substantiating “each change of ownership, whether by sale or expropriation ... by using the ‘authentic’ legal system of the country.”<sup>86</sup>

Much of the correspondence that took place between the Zionist Organization and the Mandate government with regard to the laws can be found at the Central Zionist Archives in Jerusalem. While carrying out this research, it became evident that not only did the Zionists send in their reactions, as the Arabs did, to the British Administration, but that the Jewish Agency would also receive a copy of any draft ordinance prior to its formal publication in the *Gazette*. This of course gave the Jewish Agency officials the opportunity not only to offer their observations and recommendations for amendments, but actually to edit the wording of the ordinance to their liking as well.

As Stein remarked in *The Land Question in Palestine*, “Zionist officials helped draft the Balfour Declaration, the Palestine Mandate, ordinances and legislation, and other important documents; [and] influence was exercised over the appointment of individuals and officials who played pivotal roles in Britain’s design and management of the Mandate.”<sup>87</sup> He claims that all these practices were part of “the Zionists’ ability to influence policymaking for Palestine.”<sup>88</sup> While there is no doubt, as Stein has stated, that all these activities did make the Zionist movement in Palestine successful in the quest for ‘the Jewish national home,’ it is difficult to refer to all of these events simply as an ‘influence.’

The Land Transfer Ordinance of 1920 was the first ordinance passed in Mandate Palestine on the issue of land tenure. Bunton described the objectives of the Land Transfer Ordinance as twofold. The first aim was to get the land market moving (all land transactions had been suspended during World War I under the British Military Administration in Palestine), while the second and more important purpose was to protect agricultural tenants.<sup>89</sup> Goadby and Doukhan regarded this as being necessary to protect the tenants from their own irresponsibility. The ordinance did not achieve its aims and had to be amended in 1921; therefore, prior to any land transaction land-owners had to obtain the consent of the government through the Director of Lands to ensure that the occupying tenants would be protected during the transfer.<sup>90</sup> But what Goadby and Doukhan failed to mention was that Jewish land purchasers had “adopted a policy of not buying land unless it was delivered free of tenants.”<sup>91</sup> Furthermore, the tenants did not utilize the rights provided to them by the ordinance. In fact, Bunton quoted Chancellor, the High Commissioner, as having remarked in 1930 that (with the possible exception of a single case) the Land Transfer Ordinance actually failed to protect tenants.<sup>92</sup>

An example of Zionist officials assisting in the editing of land ordinances can be seen in the draft of an ordinance intended to protect cultivators, dated August 1928. This became The Protection of Cultivators Ordinance of 1929.<sup>93</sup> The draft copy had been published as a Bill in the *Gazette* on 1 August 1928.<sup>94</sup> At the time there had been many reported incidences of

Arab landowners evicting the tenants (the cultivators) on their land in order to sell the land to awaiting Jewish bodies.<sup>95</sup>

The purpose of this ordinance, which was to protect tenants and *fellahin* from land dispossession due to land purchases by Zionist land companies, was originally intended to have been accomplished by Section 2 of the 1921 Amendment Ordinance to the 1920 Land Transfer Ordinance.<sup>96</sup> It became all the more ironic that the draft of it then passed under the critical eye of the Jewish National Fund. If the purpose for the administration of such ordinances was to try and supervise land transfers (even if it was just a formality), what, one wonders, was the purpose of sending the draft to the receiving end of the land transactions for any sort of criticism, thereby giving them plenty of opportunity to plan their way around its implementation?

In this case, however, when the British Acting Chief Secretary who was based in Jerusalem responded to the Jewish National Fund's suggestions for the Protection of Cultivators Ordinance, he explained point by point why many of the changes suggested were unacceptable. For example, on "payment of rent within a reasonable period" the JNF had suggested that a maximum period of six months be made in the regulations. However, the Acting Chief Secretary wrote in his response that this would not help the landlord, and might actually "encourage tenants to delay six months before paying their rent"; if the crops had failed that year, then "six months would be perhaps too short a period within which rent must be paid." This indicated that he was protecting not only the landlord, but as intended by the ordinance, the agricultural tenants as well.<sup>97</sup>

One of the most significant concerns the JNF had with this ordinance was the flexibility granted to the landlord in transferring the land (to Jewish purchasing bodies). Zionist-Jewish land purchases were only beneficial to the Zionist cause if they were purchased from the landowner in full, and were empty – meaning no Arab tenants were to be on the transferred land. The Acting Chief Officer demonstrated in his response to the JNF that he was very aware of this, explaining that the intention of the ordinance was to ensure that agricultural tenants received compensation prior to the completion of the land transfer, whether it was paid by the landlord or even by the purchaser; but that it was not the purpose of the ordinance to prevent land transfers in general.<sup>98</sup>

The Palestine Zionist Executive, F. H. Kisch, wrote to the JNF (Keren Kayemeth Ltd.), stating that their two "main points" of criticism for the ordinance had been successfully taken into consideration by the Mandate Government. The two points were:

- (a) as to limiting the protection to tenants who have cultivated a holding for at least two years, and
- (b) as to making provision for the immediate registration of a land transfer in the event of satisfactory arrangements being made to secure for the tenants the payment of compensation due to them.<sup>99</sup>

As can be seen, even though the ordinance was actually protecting the cultivators from being dispossessed during land transfers to the Jewish National Fund and other Zionist land purchasers, the ordinance was modified to take into consideration the purchasers' main two concerns, which in the end facilitated their land purchases. By reducing the number of tenants entitled to protection under the ordinance, and guaranteeing "immediate registration" once they had been compensated, transactions were simplified and could be carried out at a greater pace. It therefore comes as no surprise that other Amendments were made to the ordinance in 1931, 1932, and 1933, until finally a new Protection of Cultivators Ordinance was passed in 1933, only to be amended again in 1934 since the 1928 one had not succeeded in carrying out its goal.<sup>100</sup>

Other drafts of land ordinances that had undergone the Jewish Agency's criticism prior to being publicized were found; these included The Land Disputes (Possession) Ordinance of 1932 and amendments to The Land Transfer Ordinance. What is referred to as 'criticism' is actually editing, substitution and suggestions, and overall revisions of the ordinances, whether in communications (including Hebrew translations of the ordinances) within the Jewish Agency and other Zionist bodies such as the Jewish National Fund, or in the minutes of the confidential meetings and interviews with officers of the Mandate Government. The next example given is not a land ordinance, but an immigration one (which was related to land tenure because, as the number of Jewish immigrants in Palestine increased, so did the demand for land and hence the increase in land prices, which in turn led to more land sales). In a letter to Chief Secretary Young of the Government Office in Jerusalem on 20 July 1932, the Jewish Agency sent their thanks to Young for his letter in which he had enclosed a draft copy of the Immigration Ordinance of 1932:

Your letter was the first intimation to reach me that Government intends to publish such an Ordinance. The subject of the Bill is, of course, of paramount importance for the Jewish Agency. Even if the intention of Government is merely the consolidation of all pre-existing enactments concerning immigration, we have been looking for a long time past for an opportunity of raising various points connected with the regulation of immigration and amending the machinery and procedure hitherto applied.<sup>101</sup>

However what is important is not the enquiry about the specific ordinance but the reference to what was the accepted practice between the Jewish Agency and the British Government. This specific ordinance was to be published on 1 August 1932, and the letters were dated 20 July 1932 and were addressed to Arthur Grenfell Wachope, the High Commissioner for Palestine. The letter had no signature or name to indicate who had sent it, was marked 'Private,' and appeared to be a copy:

On previous occasions the practice was to give the Jewish Agency an opportunity of submitting their observations before the draft ordinance was published in the Gazette, and I should appreciate it very much if the precedent would be followed on this occasion and consideration in Advisory Council delayed until the return of the members of the Executive from London by the middle of August, so that we should have a chance of submitting our preliminary observations.<sup>102</sup>

Therefore not only did the Jewish Agency wish to submit their observations, but they also requested a delay in the publication of the ordinance so that more members could also study it and give their suggestions. This means that this arrangement was not something kept private between a few individuals, but rather was common practice between the British Government and the Jewish Agency, and thus a substantial reason for delaying publication. It was not apparent whether or not the publication date had been delayed, but based on what was written in a League of Nations Report on Palestine in 1932, it appears that the observations were recognized, along with those of other legislation such as the draft Education Ordinance and the Land Law (Amendment) Bill, and the Land Disputes (Possession Ordinance), as the report only mentions the Regulations of the Education Ordinances as having been modified.<sup>103</sup> This shows that while matters might have been kept private within Palestine, it was made known in the British Mandate's annual report to the League of Nations, and later to the United Nations, that the Jewish Agency's observations and criticism were taken into consideration. However there was no indication in these reports as to the extent of these suggestions.

As noted earlier, Bunton claims that colonial land policies in Mandate Palestine were driven by British imperialistic goals, and that the laws had taken many attributes from existing colonial land policies in India and Sudan. However, as the land tenure problems that occurred in other colonial landscapes were different from those of the colonial settler landscape in Palestine, British methods of dealing with the problems through land tenure legislation were also different. This was recognized even during the Mandate period by Mr W.P. Barton, a British Resident at Hyderabad, Deccan, who wrote a letter on the matter for *The Times* on 21 May 1930. The letter (see Appendix I) referred to the problems faced by the British in India, where the Muslim Punjabi community was losing its land to the Hindu moneylenders and lawyers. The British therefore established a barrier to this by passing The Punjab Land Alienation Act; according to this, "the peasant could only sell or alienate his land within his own tribal group; the land remained with the tribe or clan." However, Mrs Steuart Erskine, who quotes the entire letter in *Palestine of the Arabs*, notes that while Barton gave good advice, "as usual, the promise to allow the Jews to set up their National Home stands in the way of following it up."<sup>104</sup>

Barton's letter also refers to the land problems in Egypt (or Sudan, as Bunton has shown<sup>105</sup>), where Lord Kitchener, the British High



Commissioner, had passed the ‘Five Feddan law’ to “protect the Egyptian peasant against the Greek moneylender.”<sup>106</sup> This reaffirms the argument of this research that the land tenure conflict in Palestine is unique since Zionism was not just another community within Palestine but was a powerful force both internally and externally, and because the British promise made to the Jewish people in the Balfour Declaration prevented typical colonial land policies from being used to solve these problems, even though they might have resolved them elsewhere.

In response to Barton’s letter, another letter to *The Times* followed from the ex-Director of Lands and Survey in territories that had belonged to the Ottoman Empire, pointing out that there were already such laws as the Punjab Land Alienation Act and the Egyptian Five Feddan Law in Palestine. The letter stated that, according to the Ottoman Land Code, “when an owner of land is selling the land which he possesses in a particular village to an outsider, the inhabitants of that village have a preferential right to buy it from him for the price at which he has sold it to the outsider.”<sup>107</sup> While the intention of this policy in the case of Palestine was to protect the village lands from foreigners, such as Zionist-Jewish immigrants or land companies, in practice it was useless since the reason why the villagers sold the land was because they could not afford to keep it. (While it is known that much, if not most, of the land Zionist-Jews purchased was sold by urban or large land-owning Arabs, since legislation by the Mandate was directed more towards the *fellahin*, this issue will be discussed in the following chapter in the section concerning land transfers.) The *fellah* was much better off selling the land to a Jewish immigrant or Zionist land organization. He received enough money to pay off his debts, and perhaps even made a sufficient profit to relocate to an urban centre. Otherwise, he would lose the land to the British Government because of his inability to pay taxes on it, and a local villager would purchase the land for little more than the small tax premium due upon it.<sup>108</sup>

From another perspective, some Zionists found in the British Government’s approach to the issue of land in Palestine that “its legislative and administrative measures have very much impeded Jewish activity,” even prior to the establishment of the Transfer Regulations.<sup>109</sup> Granovsky’s claims are entirely opposite to those made in this book. Whereas it is argued here that Zionism was more than an influence in land tenure legislation, as shown by the direct editing and communication with the British Government, Granovsky argued that although the legislative system claimed to be helping the Arabs, its implementation was really inhibiting Jewish land purchases: “Allegedly to protect Arab tenants and farmers, a system has been created which makes Jewish land purchase more difficult, more complicated, and more expensive.”<sup>110</sup>

Granovsky maintained that the allegation that Jewish colonization was driving local Arabs off the land had been started in 1929 by the Shaw Commission, and that this false accusation had been spread outside the country by Sir John Hope Simpson; yet the Mandate Government was still carrying out

their policy accordingly.<sup>111</sup> He wrote that the British Government's investigation, carried out in 1931, had proved these claims were untrue, and that just as the Jews had asserted, very few Arab farmers and tenants had left the lands purchased by Jews. By the end of 1935 the 664 tenants who had left had been fully compensated by the overall advantages that the Arab economy received from the land sales. He also stated that the Mandate Government, instead of encouraging and aiding close Jewish settlement, as was their duty, was actually obstructing their development.<sup>112</sup>

One would assume that if the same practice was being carried out with a Palestinian Arab body, then it would have been fair. All communications during the Mandate would have recorded whether and when copies had been sent to other recipients, and there would then have been more correspondence to negotiate between Arab and Jewish amendments and suggestions; but this was not the case. It can therefore be concluded that this privilege was enjoyed only by one community, and that the other might not have even known about it.

### ***Norman Bentwich***

The position of an Attorney General holds considerable responsibilities, such as providing a government with legal advice and executing the law, and in Palestine, this included creating the land laws. In his memoirs Herbert Samuel described how, with the change in regime, a new code of laws was required – and Norman Bentwich had been the most appropriate choice for the task (Bentwich was also Samuel's nephew by marriage).<sup>113</sup> Samuel found Bentwich, a Zionist-Jew who knew both Arabic and Hebrew, at the head of the Legal Department; Bentwich eventually accepted the post of Legal Secretary in Mandate Palestine, and was later appointed as Attorney-General. Samuel described Bentwich as having “served with distinction in Palestine for ten years,” and stated that he was “endowed with an admirable impartiality in all professional matters,” even though there were many who would disagree with this claim.<sup>114</sup> Indeed, on the issue of Bentwich's position as Attorney-General, the Arabs argued in the 1920s that he was running a Zionist “legislation factory” in an attempt to change the character of the country. The Arab politicians complained that, in England, legislators claimed laws arose from the essence of the country, but that this was not the case in Palestine, where the laws were viewed as an encumbrance by its inhabitants.<sup>115</sup>

A translated article by Z. Ach from the Hebrew publication *Hazman*, entitled “The Acts of Mr. Bentwich cannot be put into Question” (published 28 February 1930)<sup>116</sup> supported the idea that if both Jews and Arabs raised objections, then the Government was carrying out the task correctly, and that this same idea could be applied to Norman Bentwich: “If Mr. Bentwich thinks likewise he must be pleased with himself for there are few Jews or Arabs who think well of his acts.” However the article does not succeed in

supporting this claim. It says that the Arab perspective was that the position of Attorney-General could be filled by an Arab because Arabs thought that legislation was “an easy task” that entailed no more than “copying out English or Colonial Laws, with or without slight amendments, with or without mistakes, and publishing them in the Official Gazette as a draft Ordinance which is enacted automatically by the High Commissioner at the end of a month or six weeks.” It seems strange that the argument made by Palestinian Arabs had nothing to do with Bentwich being Jewish. The article said that for the Jews, the complaint was that “although Mr. Bentwich is a Jew he does not weight the scale in their favour and they know that there would be nothing in any ordinance in their favour.” The translation of the article concluded that while the complaints by both sides were valid, it was not Mr Bentwich’s fault; it was due to “the system which vests the Attorney General with so much power.”<sup>117</sup> Nevertheless, it would seem that if the government was actually so concerned with neutrality and its obligation to both the Arabs and to the idea of a Jewish homeland, there would also have been an Arab Attorney-General alongside Bentwich, or alternatively only one Attorney-General of British, not Jewish, origin, instead of one whose family background was known to be Zionist.

But as Likhovski explains, apart from being a Zionist, Bentwich was politically a progressive, and was also pro-Labour. From his perspective, the laws of the British Mandate were tools of “development and modernization” for Palestine.<sup>118</sup> He made his views very clear in a 1937 report, when he commented on the positive influence he found the Jews had brought to Palestine. Furthermore, the Arabs would have to learn to accept that the British Government supported a community that was constantly introducing fresh enterprises; “... the first condition for co-operation is that the authority of the Government should be restored asserted [sic] and that it should be made clear to Arabs that the Government is going to carry out a definite policy.”<sup>119</sup>

In this report, Bentwich summarized and criticized other points, such as the Jewish right to Palestine, and Arab hostility towards this. On the subject of land, he believed that Arab qualms on the subject of dispossession were “extremely overstated,” but nevertheless proposed the creation of a Land Commission, similar to the one that had existed in 1920 and consisting, as before, of a senior British officer with an Arab member and a Jewish member, to investigate proposals for all large land purchases. The Arab demand for a Legislative Council should also be met.<sup>120</sup> Stein writes of Bentwich’s “unparalleled influence over land matters” during the 1920s until 1929,<sup>121</sup> and considers Bentwich, in his role as Attorney-General, to have been one of the individuals “instrumental in assisting the Zionist enterprise.” He refers to Bentwich having “Zionist sympathies” but not necessarily playing a direct role in Zionism or in Zionism’s interests in acquiring land.<sup>122</sup>

However, based on other evidence it was found that Bentwich was much more than an influence, having actively collaborated with the Zionist cause in

Palestine. Before the Mandate or Military Administration had been established in Palestine, and even prior to the secret agreement of the Balfour Declaration, Norman Bentwich had already been working with Zionists on the issue of obtaining land in Palestine. In an earlier report by him on Zionist activities in Palestine, dated July 1913, Bentwich described the progress of specific areas in Palestine where Zionist settlement had begun. He complained of the attitude of the Arabs towards these activities, along with the Ottoman Government's refusal to allow Zionist-Jews to build new houses within the old Arab villages. But his main concern was that:

in spite of the pious resolutions passed at the [Zionist] Congress, the support given to the PLDC is still sadly inadequate. There are now exceptional opportunities for buying land, and the Company simply from lack of capital cannot take advantage of them.<sup>123</sup>

In a tone of some urgency, he wrote that because of its objective of colonizing land, the Palestine Land Development Company (PLDC) was the only Zionist institution attracting people, and if it did not receive the necessary capital to purchase land, Jewish immigrants would move to towns rather than to the rural areas to become cultivators. Other subjects covered by Bentwich in this report included the Anglo-Palestine Bank and in which areas of Ottoman Palestine the Jews needed branches of the bank to be established (he mentions Tiberias and Sidon), as well as Jewish culture and education in Palestine. He also had much more to say about land, Jewish immigration, and the need for the JNF to build "garden cities" (or suburban colonies).

Furthermore, when discussing many of these points, he was not an objective outsider, but a member of a group, writing in the first person. For example, on Jewish colonization in Constantinople, and encouraging Jews to receive higher education, he wrote, "For both we may secure the aid of Non-Zionist bodies; but in my opinion it is of great importance for our purposes ...," showing that these concerns and aims were not for another people but for a group of which he was a part. On another point, Bentwich suggested that, in order to help more Jews go to Ottoman Palestine, Yemeni Jews should be encouraged for three reasons: they were already subjects of the Empire, "they are religious Jews," and "their standard of life is not higher than that of the Arabs." The report ended with the most important issue: land. Bentwich constantly stressed the urgent need for Zionists to work on the purchasing of land.<sup>124</sup>

As Herbert Samuel noted, Bentwich had been in Cairo before moving to Palestine in 1918 as a legal secretary, his occupation until he became the Attorney-General. It would seem that in the selection of an Attorney-General, "the highest legal authority in the Palestine administration," such personal involvement would be considered biased. Bentwich was not just a Zionist British Officer, but considered himself to be a member of the Zionist

movement. Even before he knew that the British would be given the Mandate for Palestine, and even before knowing that the British were going to help establish a Jewish ‘national home’ in Palestine, Bentwich had given his opinions and suggestions on how to deal with the movement’s two goals: land purchases and immigration. Therefore it cannot be argued that he only had an influential role. Not only did he play a direct part in the planning of Jewish immigration and land purchases years before the Mandate, but this was also the role he was intended to carry out.

During the Paris Peace Conference in July 1919, the issue of reopening the land registries for transactions became an issue as the Zionists wished to purchase land freely and with the approval of the British Government. In fact, while the draft for the 1920 Land Transfer Ordinance was being considered, the function of Acting Senior Official Colonel Bentwich, “who is himself a prominent Zionist,” along with managing the land registry, was to ensure that “Zionist interests will be fully safeguarded.”<sup>125</sup> This shows that even before the writing of the land laws of Palestine, it was Norman Bentwich’s responsibility to control land transactions in the attempt by the British to kick-start the land market, and that his personal ambition was to see the Zionist movement acquire as much land as possible even ahead of British commitment to the movement.

### *Transfer Regulations*

The issue of land transfers between Palestinian Arabs and Zionist-Jews was a considerable one, since it encompassed other subjects such as the economy and financial constraints and, in the case of Palestine, the land companies and individual purchasers as opposed to large landowners and the *fellahin*. All of this is discussed in Chapter Four in the section concerning land sales, whereas in keeping with the subject of land laws and objectives during the Mandate, in this chapter only the regulations for land transfer are examined.

As Jewish immigration and land purchases increased, so did the tension between Palestinian Arabs and Zionist-Jews in Palestine. Initially the Arabs had attempted to protest calmly about the issues of Jewish immigration and land purchases with the Government, but to no avail. For example, *The New York Times* of 18 January 1934 reported that Arab demonstrations against the two issues (of Jewish immigration and land sales) throughout Palestine on the previous day had passed off peacefully and had followed “the routes and procedure” established by the Government beforehand.<sup>126</sup>

In the meantime, confidential meetings were taking place between individuals of the Jewish Agency (including Chaim Weizmann, David Ben-Gurion, and Moshe Shertok) and officials of the Mandate Government (specifically with Arthur Wauchope, the High Commissioner).<sup>127</sup> In 1935, the Jewish Agency wrote in a Memorandum of the “negative policy” with reference to legislation that would put “an end as far as possible to all land transfer,” claiming that such a policy would be a mistake because negative policies

would not really help the *fellahin*. It also suggested that if the Government's intention was to help the *fellahin*, then the Government should consider a "positive one fostering, wherever possible, intensive cultivation and close settlement, jointly with a close settlement by Jews on the land."<sup>128</sup> Therefore the Zionist perspective on the prevailing situation and future policies was that it was not the Jewish land purchases that needed to be stopped, but rather that the Government needed to do more to help the *fellahin*, while still managing to suggest to include Jewish settlement as part of that help.

If there was still any doubt as to whether the role of Zionists in the legislative system, and specifically that regarding the legislation for land, was influential as distinct from collaborative, then this changed in the mid-1930s along with the secret meetings with High Commissioner Wauchope.<sup>129</sup> Many topics were discussed, such as land legislation and purchasing schemes, along with Jewish immigration, future Jewish settlement in Transjordan and even the possibility of Syria, the formation and appointments of Arabs and Jews to Executive and Legislative Councils, the appointments of Mayors and Vice-Mayors, and other topics including the "Land Question."<sup>130</sup> The extent of the collaboration between the Mandate Government and the Jewish Agency was revealed, if not on the basis of the content of such meetings alone, through the tone used by Ben-Gurion or Shertok in speaking to Wauchope. The following excerpt was taken from the minutes of a confidential interview between the High Commissioner and Moshe Shertok,<sup>131</sup> Head of the Jewish Agency's Political Department, on 16 June 1935 in Wauchope's private study at Government House:

H.E. asked me with reference to the Negev, what we thought the area would be from which the Arabs would have to be shifted? I replied that I could not give an exact figure off-hand but that the unit we had in mind for the beginning would be about 200,000 dunams.

H.E. said that he did not realise that we were thinking in terms of such large areas. He imagined I knew the difficulty of getting Arabs to shift from place to place. He himself had thought of Jewish settlement in the South in blocks of from 20,000 to 50,000 dunams.

I replied that if only water were found it should be possible to create larger blocks of the Jewish settlement in the South and that the lure of water should be a strong incentive from the Arabs to be more accommodating. If they knew that they would get the water by agreeing to be transferred I did not think that they would have put up much opposition.

H.E. declared that he was much in sympathy with the principles of the scheme, and would be prepared to give our proposals favourable consideration.

I replied that we on our part hoped to have him in the country long enough to be able to help us to carry the scheme through.

H.E. remarked smiling that if that was our wish we had better hurry up with the scheme.

I explained that what I meant was that H.E.'s term be renewed for another five years.

H.E. remained silent for a few minutes then said he assumed I knew he liked his job.<sup>132</sup>

These minutes show the casual tone used between the High Commissioner and the Head of the Jewish Agency. In the conversation above, although Wauchope seemed surprised about the number of dunums wanted in the Negev by the Jewish Agency, he was nevertheless willing to cooperate with them so that they might succeed in their scheme. While he addressed the fact that it would require the relocation of the Arabs, he did not hesitate or question the action; he was perhaps only concerned about the number of Arabs based on the number of dunums the Agency was planning to acquire, as if the Jewish Agency's proposals had already been approved. Wauchope also advised Shertok that if the Jewish Agency was to go ahead with the land purchase scheme in the Negev then they should do so at a pace that would permit him to help them carry it out. It would seem that the Jewish Agency feared that the next High Commissioner might not be as accommodating towards their suggestions and requests.

One of the main concerns in more than one of the interviews with Wauchope was the topic of the Legislative Council. The Jews were not in favor of the Government forming this, and Wauchope stated that while "no one would regret more than himself if the present relations between the Government and the Jewish Agency were to suffer" as a result of this issue, there was no way of going back.<sup>133</sup> In a secret meeting with David Ben-Gurion on 29–30 July, 1932, he reminded Wauchope that the British had pledged to help establish a 'National Home' and that the Balfour Declaration specifically said that "H.M.G. will help in the rebuilding" of it. Ben-Gurion continued that the issue of the Legislative Council was "inconsistent with the fundamental idea" of the Balfour Declaration and the Palestine Mandate, as it would be representative of the population of Palestine and that would mean "the recognition of this country as an Arab State."<sup>134</sup>

As would later happen again with the Transfer Regulations, when the Jewish Agency was informed that the formation of the Legislative Council was inevitable, it tried at least to delay its creation. Shertok wrote, "I urged that no communication be made to the Arab side before H.E.'s return from leave and that in any case no public announcement should be made present."<sup>135</sup> While Wauchope did not refuse this, he warned that he could not postpone it for long "if he wanted to prevent suspicions arising with regard to Government's intentions"; he was also concerned that the information might leak out. At this particular meeting, Shertok attempted more than once to persuade the High Commissioner to cancel the whole idea of the Legislative Council: "When we were already near the door I turned to the High Commissioner and asked him, with an ... apology for the question, whether he really thought a Legislative Council was necessary."<sup>136</sup> At this point it

appeared that Wauchope's tone towards Shertok changed as he confirmed the conclusiveness of his reply, since he gave one reason only: "The H.C. replied, very seriously ... because a pledge had been given."<sup>137</sup> However, Shertok persisted in asking why there even was a pledge and what the Government's reasoning was for having a Legislative Council; Wauchope "implied with a gesture that such questions were beyond him," but the point was that the pledge had been made in 1930 and hence it would be wrong not to follow through with it.<sup>138</sup>

Finally, on 29 January 1936, the High Commissioner read out to all the leaders of the Arab political parties in Palestine the British Government's reply to the Arab Memorandum<sup>139</sup> which had asked for Jewish immigration and land purchases to be completely stopped. On the matter of immigration the Government's response was that "its guiding principle in the admission of immigrants is a policy based on the economic absorptive capacity of the country, a principle from which the British Government does not contemplate departing."<sup>140</sup> To ensure the viability of this principle the Government had set up a statistical bureau "to carry out periodical surveys of trade, industry and agriculture and keep the High Commissioner in close touch with the changing economic situation."<sup>141</sup> Concerning the demand to cease all land sales to Jews, Wauchope said that

the British Government is considering the enactment of legislation requiring small landowners, if they are selling, to reserve for themselves the minimum area necessary to afford a means of subsistence for themselves and their families. The minimum area would be inalienable and if it ceased to be cultivated would revert to the government. The High Commissioner would reserve the right to approve the sale of the minimum subsistence area if it were in the public interest.<sup>142</sup>

All in all, while Zionists were unable to avoid the placing of restrictions on land purchases in Palestine because of the coming legislation, there would be no barriers to them immigrating to Palestine. The Arab demands on these two matters had been recognized, but only one of them would actually be considered for future legislation. As argued above, the issues of immigration and land went hand-in-hand; as long as Jewish immigration continued then the price of land in Palestine would also increase as the supply of land diminished. Therefore it was fruitless to consider legislation for one and not the other.

Surprisingly enough, the influence of Zionism on land legislation during the Mandate is clearly seen in the laws that the Arabs hoped would cause the greatest hindrance to the Zionist cause. The Jewish Agency used its relationship with Government to try to prevent the anticipated land regulations from being passed. When it became clear that the legislation was inevitable, the Agency then changed its objective of trying to delay the regulations by imposing certain conditions that would compensate Zionist land purchasing



schemes, calling its move “Suggestions as to a constructive Government land policy.”<sup>143</sup>

For example, in the Extracts from Annual Reports of the Government of Palestine prepared by the Jewish Agency, there were requests for various suggestions to be taken into consideration before the regulations were passed. For instance, certain areas were to be excluded from the restricted areas, such as the district of Gaza (note that the district of Gaza was a larger area than what is now recognized as the Gaza Strip) because the Jewish Agency claimed that there was “plenty of land and few cultivators.” The excluded “citrus belt” should be applicable not only for those lands where oranges had already been planted, but also for those lands suitable for planting oranges in the future, and in general all such areas where land was not already cultivated as well.

Other than excluding certain areas, the Jewish Agency also suggested that the laws restricting Jewish purchases should not be applied to transactions where the Government was satisfied that the seller was “adequately provided for.” In an interview in 1935 between the High Commissioner and representatives of the Jewish Agency, the High Commissioner apparently said that “discretion might be granted to the District Commissioner to exempt landowners from this compulsory protection in case he was satisfied that they would be otherwise provided for.”<sup>144</sup> The Jewish Agency claimed that all lands where the landowner was not the cultivator, as in lands where the tenants were the cultivators, should not be restricted for transfers because they are already protected by the Protection of Cultivators Ordinance.

On this point, the Jewish Agency also said that a law restricting Jewish land purchases

should not be applicable to the Jewish National Fund, Keren Hayesold, P.L.D.C. and other recognised land purchasing agencies inasmuch as Government has freely recognised that these land purchasing agencies have always made the necessary provision for persons occupying or cultivating land purchased by them.<sup>145</sup>

It further stated that all these exclusions, or “powers of exemption ... should in the first place be vested in the District Commissioner with a right to appeal against refusal of exemption to the High Commissioner.”<sup>146</sup> The Jewish Agency even suggested that if the regulations were passed, then Jews should be allowed to purchase land and settle in Transjordan; otherwise, the policy should be lifted and the issue of Jewish settlement in Jordan could be discussed later.<sup>147</sup> All these points represented the Jewish Agency’s attempt to provide criticism that would lead to what was referred to as “constructive legislation” as opposed to “negative legislation” (i.e. The Transfer Regulations to come).

It is interesting to compare the way Article 6 of the Mandate to the Transfer Regulations was interpreted by the British Administration and the Jewish Agency respectively. While the Government used it to justify the need

for the Transfer Regulations, the Agency referred to the Transfer Regulations as defying Article 6.<sup>148</sup> As a letter dated 29 January 1936 from the Office of the Chief Secretary in Jerusalem explained, according to Article 6 of the Mandate, the British Government felt that, even taking into consideration all the Jewish Agency's arguments and suggestions, it had an obligation to the Arab inhabitants that there would be "a limited measure of control" of land purchases within certain areas and that this could no longer be postponed. Furthermore, this was the better of the two options because the other solution would have been "the general prohibition of sale of lands" in specific areas. Even though suggestions made by the Jewish Agency were not specified as part of the policy, the fact that not all purchases were brought to a standstill was still an achievement. Although the Government had not finalized the control scheme, it said that "the Jewish Agency will be fully consulted before legislation is enacted and the scheme brought into operation."<sup>149</sup>

While investigating the need for the Transfer Regulations, it was found by the government that the annual land purchases by Zionist organizations and individuals had quadrupled over a period of five years, and that in a period of unemployment small landowners were unable find work and were not able to provide for themselves solely on the basis of the land:

Unfortunately ... the sale of land has of late proceeded and is still proceeding at such a rate that in spite of the money and efforts expended by Government to develop and improve agricultural areas since 1932, development has not kept pace with the transfer of land. His Majesty's Government are accordingly now satisfied that the exercise by Government of a limited measure of control over land transfers within the areas specified can no longer be delayed if the obligation under Article 6 of the Mandate is to be implemented and the position of non-Jewish sections of the population is not to be prejudiced.<sup>150</sup>

The minutes of an apparently secret meeting at Government House on 22 August 1939, between the Acting Chief Secretary, the Treasurer, and the District Commissioners and others, recorded discussion of the restriction of land transfers in order to finalize the wording, meaning, and objectives of the transfer regulations. By this point in Mandate in Palestine, the Government truly felt the need to protect the Arab landowners. One of the points suggested by the Jerusalem District Commissioner was that the regulations should empower the High Commissioner to evict the occupiers in situations where Jews who were evading the regulations provoked "Arab owners to vacate their land, and would then develop it and build upon it although they had no title thereto."<sup>151</sup>

There was no indication as to whether or not this had occurred in British Mandate Palestine, as no examples were given; it may just have been speculation for worst case scenarios. However it was also noted that the Turkish (Ottoman) administration had applied something similar when Jews, as

foreigners, could not have title to the land; in this case Jews would purchase the land but keep the title registered under the name of an Arab. The Attorney General, also present at the meeting, suggested that the matter be discussed later, since the main focus of the meeting was “the registration of transfers envisaged in the White Paper.”<sup>152</sup>

As a result of British policy, as stated in the 1939 White Paper, the Transfer Regulations were passed in February 1940 and divided Palestine into three Zones:<sup>153</sup> A (16,680 square kilometers), B (8,348 square kilometers) and the Free Zone (1,292 square kilometers). The Transfer Regulations caused the value of land to increase further. It is true that these Regulations were passed with the intent of rectifying the situation in Palestine as found in the 1939 White Paper,<sup>154</sup> but as other authorities on the subject of Palestine have suggested, by 1940 it was too late;<sup>155</sup> it has even been argued that it became clear, between Jewish immigration and landownership in Palestine, that it would only be a matter of time before the partition for a Jewish state.

“Specific patterns of land tenure, appropriation and distribution, a predominance of individual initiative over state-centered activities, and, conversely, state promotion and organization of the settler enterprise” are typical characteristics of colonial settler movements.<sup>156</sup> Having failed to stop the Transfer Regulations, the Jewish Agency created propaganda to show that the regulations went against the Balfour Declaration and Article 6 of the Mandate (which, as mentioned earlier, stated that a Jewish national home would be established in Palestine without harming the rights of the Arabs), even though this was the same Article being used by the Government to substantiate the need for the 1940 Transfer Regulations (i.e. other than the results of the 1939 White Paper). The map used in these documents, showing many of the Arab countries of West Asia, suggested that Palestinian Arabs were entitled to purchase land anywhere on the map, and showed that Zionist-Jews were only entitled to a tiny portion of the land, omitting the fact that those Arabs considered Palestine to be their home.<sup>157</sup>

Nevertheless the Transfer Regulations did not prevent Zionist-Jewish land purchasers from attempting to purchase land in Zone A (the zone prohibited to them). In one case, some land in Zone A claimed by Arab owners had been registered under the name of the Government and was still awaiting judgment in the Land Settlement Court. It was reported to the Government by telegram on 23 January 1947 that Jews were trying to “lease or acquire” Zone A lands registered in the name of the Government in the sub-district of Acre, near the village of al-Zeeb. The Arabs who wrote of this to the Government (Mohammad Tewfic Himmo, Basheer Shutah Mughrabi, Abdallah Mohammad, and Khraish Mughrabi) claimed that these lands had been taken from them and registered under the name of the Government. However, they insisted the land was theirs as it was a case between them and the Government that was “still pending in the Land Settlement” Court, which was why they objected to it being leased or sold: “We refuse any such transaction and will not allow any stranger to enter the land by any means.” Another

telegram supporting their claim was sent to the Government by Ahmad Afifi, the Secretary of the Chamber of Commerce.<sup>158</sup>

## **Conclusion**

While there are many processes that take place in the creation of a land tenure system, the structure of such a system is established by the land laws, and the foundation of those land laws are established by the goals of the government. In the British Mandate of Palestine, the official goals of the British Government were to establish a Jewish 'national home' in Palestine without harming its Arab inhabitants. But the laws and policies carried out by the Government proved to be different. This chapter has argued that the Zionist movement, and within it the Jewish Agency, had a direct role and even collaborated with the British Mandate Government when it came to legislation for land tenure. While some authors have referred to this only as 'influence,' and others have claimed that Zionism was not at the top of the British Government's agenda in Palestine, this chapter has shown that Zionism did, in fact, play a major role in the formation and shaping of the Government's land policies.

This was done in various forms, whether through certain individuals, bodies, or laws. In terms of the laws and ordinances, even those that were passed in order to protect the landowner or cultivator underwent editing and delays until they were passed by the Jewish Agency and Zionists. One can ask how 'influence' versus direct participation in laws and policies can be measured; however, as seen and described in this chapter, the direct communication with the Attorney-General and other officials in the British Mandate Government, along with the dissection and editing of the ordinances, and manipulation of when they were to be released according to Zionist 'suitability' was more than just 'influence.' And while it may have been perceived by the public that legislation was meant to help Palestinian Arab landowners, direct consultations with various Zionist individuals and companies that remained hidden ensured that in practice the Zionist movement and the land purchasers were maximizing the benefits to them of such legislation.

It cannot be assumed that every single piece of legislation passed by the British Mandate underwent the same scrutiny and editing as did the 1928 Protection of Cultivators Ordinance; however, as shown by other correspondence, such as the enquiry into the 1932 Immigration Ordinance, common practice between the Mandate Government and the Jewish Agency was for a draft of the ordinance to be sent for Zionist review before it was made known to the public. This is not to say the British Government did not try to discontinue this practice, because, as was seen with the 1932 Immigration Ordinance (a top priority issue for the Zionist cause), Zionists had to request the draft ordinance even though it had become the norm for them to receive a copy before publication. The British Administration in Palestine may have tried to stop the practice, knowing what the Zionist reaction would be on the matter.

The issues of immigration and land sales were co-dependent and were seen this way by both Palestinian Arabs and Zionist-Jews. Therefore, while Palestinian Arabs requested the complete cessation of both issues, Zionist-Jews made maximum use of the periods during which they had unlimited access to both. When these matters were under threat, the Jewish Agency and Zionist bodies did everything in their power and took exhaustive measures to avoid them, as was seen in their confidential meetings with Wauchope, the High Commissioner, or even in the earlier correspondence with the British Government before and during the early years of the Mandate.

Finally, with the first High Commissioner making Zionism a priority in Palestine, an Attorney-General (Bentwich) who did the same, and another High Commissioner (Wauchope) who was willing to accommodate Zionist demands and needs during his term in office, it was no surprise that the land legislation in Mandate Palestine significantly benefited the Zionist goal of legitimizing land acquisition.

## Notes

- 1 Mark LeVine, *Overthrowing Geography: Jaffa, Tel Aviv, and the Struggle for Palestine 1880–1948* (Berkeley and Los Angeles: University of California Press, 2005), p. 12.
- 2 Kenneth W. Stein, *The Land Question in Palestine, 1917–1939* (Chapel Hill NC: The University of North Carolina Press, 1984), pp. xv–xvi.
- 3 Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research*, vol. 8., no. 4 (Routledge, December 2006), p. 388, which refers to Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology*, p. 2; “Nation and miscegenation,” p. 96.
- 4 PASSIA, “Milestones in Palestinian History” and “Palestine Facts,” from the Palestinian Academic Society for the Study of International Affairs (PASSIA), Jerusalem (available online at [www.passia.org](http://www.passia.org)).
- 5 Huri İslamoğlu, “Towards a Political Economy of Legal and Administrative Constitutions of Individual Property,” in H. İslamoğlu (ed.) *Constituting Modernity: Private Property in the East and West* (London: I.B. Tauris, 2004), p. 12.
- 6 *Ibid.*, p.12.
- 7 Kenneth W. Stein, *The Land Question in Palestine*, p. 7.
- 8 Gershon Shafir, *Land, Labor and the Origins of the Israeli–Palestinian conflict: 1882–1914* (Cambridge: Cambridge University Press, 1989), p. 30, quoted from Alexander Schölch, “European Penetration and the Economic Development of Palestine, 1856–82,” (1982), p. 21.
- 9 Joel S. Migdal, *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World* (Princeton: Princeton University Press, 1988), pp. 58–59.
- 10 Gershon Shafir, *Land, Labor and the Origins of the Israeli–Palestinian conflict: 1882–1914*, p. 23.
- 11 *Ibid.*, p. 27.
- 12 Mark LeVine, *Overthrowing Geography: Jaffa, Tel Aviv, and the Struggle for Palestine 1880–1948* (Berkeley and Los Angeles: University of California Press, 2005), p. 9.
- 13 Shafir, *Land, Labor and the Origins of the Israeli–Palestinian conflict: 1882–1914*, p. 32.

- 14 Ibid., pp. 17, 22.
- 15 H. İslamoğlu, "Towards a Political Economy of Legal and Administrative Constitutions," p. 12.
- 16 Mark LeVine, *Overthrowing Geography*, p. 9.
- 17 Plural form of *fellah*; refers to "the Palestinian agricultural labourer." Definition taken from Kenneth W. Stein, *The Land Question in Palestine, 1917*, p. 4. Also known in English as "peasants," – see Ted Swedenburg, *Memories of Revolt: The 1936–1939 Rebellion and the Palestinian National Past* (Minneapolis: University of Minnesota Press, 1995), p. 22.
- 18 Stein, *The Land Question in Palestine, 1917*, p. 11.
- 19 Salman H. Abu-Sitta, *Atlas of Palestine 1948* (London: Palestine Land Society, 2004).
- 20 Stein, *The Land Question in Palestine, 1917*, p. 11.
- 21 Stein, *The Land Question in Palestine, 1917*, p. 11.
- 22 Jeremy Forman and Alexandre Kedar, "Colonialism, Colonization and Land Law in Mandate Palestine: the Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective," *Theoretical Inquiries in Law*, vol. 4, no. 2, 2003, p. 514.
- 23 Shafir, *Land, Labor and the Origins of the Israeli–Palestinian Conflict*, p. 33.
- 24 Salman Abu-Sitta, *Atlas of Palestine 1948*, p. 14.
- 25 Kenneth Stein, *The Land Question in Palestine, 1917–1939*, p. 10.
- 26 Mark LeVine, *Overthrowing Geography*, p. 9.
- 27 Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2004), pp. 24–25, 31.
- 28 Moshe Aumann, *Land Ownership in Palestine 1880–1948* (Jerusalem: Isratypeset and the Israel Academic Committee on the Middle East, 1974), p. 9.
- 29 Ibid., p. 9.
- 30 Herbert J. Liebesny, *The Law of the Near and Middle East: Readings, Cases and Materials* (Albany: State University of New York Press, 1975), p. 65. He also cites (for the point on 'feudal relationships') Doreen Warriner, *Land and Poverty in the Middle East* (London: Royal Institute of International Affairs, 1948), p. 17.
- 31 Mim Kemal Oke, "The Ottoman Empire, Zionism, and the Question of Palestine (1880–1908)," *International Journal of Middle East Studies*, vol. 14, no. 3 (August 1982), p. 336.
- 32 "English Zionist Federation," *The Times*, 17 December 1901.
- 33 Zionist propaganda in the late nineteenth and early twentieth centuries commonly used the following slogan when describing Palestine: "A land without a people for a people without a land," as noted by Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881–1948* (New York: Oxford University Press, 1992), p. 42.
- 34 Shapira translates this to mean "Truth From Palestine"; see Shapira, *Land and Power*, 1992, p. 42.
- 35 Ibid., p. 42.
- 36 Abraham Granovsky, *Land Policy in Palestine* (New York: Bloch Publishing Company, 1940), p. 89.
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- 66 PRO, Correspondence on “Acquisition of Land in Palestine,” in PRO FO 608/100.
- 67 Martin P. Bunton, *Colonial Land Policies in Palestine, 1917–1936* (Oxford: Oxford University Press, 2007), p. 4.

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- 70 Abu-Sitta, *Atlas of Palestine 1948*, p. 14.
- 71 Sahar Huneidi, *A Broken Trust: Herbert Samuel, Zionism and the Palestinians 1920–1925* (London: Tauris, 1997,) p. 43.
- 72 Mrs Steuart Erskine, *Palestine of the Arabs* (London: George G. Harrap & Co. Ltd., 1935), p. 69.
- 73 Viscount Herbert Louis Samuel, *Memoirs: By Viscount Samuel* (London: Cresset Press, 1945), p. 285.
- 74 Forman and Kedar, “Colonialism, Colonization and Land Law in Mandate Palestine,” p. 516.
- 75 *Ibid.*, p. 495.
- 76 Article 46 states: “The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on 1st November 1914, and such later Ottoman laws as have been or may be declared to be in force by Public Notice, and such Orders-in-Council, Ordinances and Regulations are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted; and subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, and the doctrines of equity in force in England, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and Justices of the Peace in England, according to their respective jurisdictions and authorities at that date, save insofar as the said powers, procedure and practice may have been or may hereafter be modified, amended, or replaced by any other provisions. Provided always that the said common law and doctrines of equity shall be in force in Palestine so far only as the circumstances of Palestine and its inhabitants and the limits of His Majesty’s jurisdiction permit and subject to such qualifications as local circumstances render necessary.” Copy of Article 46 taken from Herbert J. Liebesny, *The Law of the Near and Middle East: Readings, Cases and Materials* (Albany NY: SUNY Press, 1975), p. 91.
- 77 Martin P. Bunton, *Colonial Land Policies in Palestine, 1917–1936* (Oxford: Oxford University Press, 2007), p. 26.
- 78 Quote taken from Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: The University of North Carolina Press, 2006), p. 7. Likhovski refers to Mark LeVine, “Conquest through Town Planning: The Case of Tel Aviv, 1921–48,” in *Journal of Palestine Studies*, vol. 27, 1998, p. 36. See also Martin Bunton, “‘Progressive Civilizations and Deep-Rooted Traditions’: Land Laws, Development, and British Rule in Palestine in the 1920s,” in Gregory Blue, Martin Bunton, and Ralph Croizier (eds.) *Colonialism and the Modern World: Selected Studies* (Armonk, NY: Sharpe, 2002), p. 145; also Foreman and Kedar, “Colonialism,” p. 491; Kenneth Stein, *The Land Question of Palestine, 1917–1939*; and Shepard, *Ploughing Sand*.
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- 80 Kenneth W. Stein, *The Land Question in Palestine, 1917–1939*, 1984, p. 214.
- 81 Frederic M. Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv: Shoshany’s Printing Co., 1935).
- 82 Dov Gavish, *A Survey of Palestine under the British Mandate, 1920–1948* (London and New York and Palestine Exploration Fund: RoutledgeCurzon, 2005), p. 142.



- 83 John Strawson, "Review of *The Land Law of Palestine*," in *The Palestine Yearbook of International Law 2000–2001*, vol. XI (The Hague: Kluwer Law International, 2003), p. 400.
- 84 *Ibid.*, p. 399.
- 85 *Ibid.*, p. 400.
- 86 *Ibid.*, p. 401.
- 87 Stein, *The Land Question in Palestine*, p. 80.
- 88 *Ibid.*, p. 80.
- 89 Martin P. Bunton, *Colonial Land Policies in Palestine, 1917–1936* (Oxford: Oxford University Press, 2007), p. 66.
- 90 "Agricultural Tenants have in Palestine appeared the most to stand in need of special protection against eviction from their holdings and particularly so when a change of landlord has taken place by the sale of the reversion. The special necessity for protection in Palestine is due to special causes. In part it is a need for protecting the tenant against his own folly and recklessness. In the very early days of the Mandatory regime steps were taken to protect the sitting tenant of land upon a sale thereof." Quoted from the chapter on "Protection of Agricultural Tenants" in the textbook by Frederic M. Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv: Shoshany's Printing Co., 1935), p. 233.
- 91 Bunton, *Colonial Land Policies in Palestine*, p. 69.
- 92 Chancellor to Passfield, 17 January 1930, CO 733/182/8/77050, 82, as cited in Bunton, *Colonial Land Policies in Palestine*, p. 69.
- 93 Frederic M. Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv: Shoshany's Printing Co., 1935), p. 234.
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- 95 Amos Nadan, "Failing to Aid: British Administrators and the Palestinian Peasants, 1922–47," in Zach Levey and Elie Podeh (eds) *Britain and the Middle East: From Imperial Power to Junior Partner* (Brighton, Sussex and Portland, OR: Sussex Academic Press), 2008, p. 84.
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- 98 CZA, Letter from the Acting Chief Secretary of the Mandate Government on 19 September 1928 in response to the proposed amendments of the Jewish National Fund, CZA S25/7456.
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- 102 CZA, Letter to A.G. Wauchope on 20 July 1932 on immigration ordinance, CZA S25/5799.
- 103 "Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of Palestine and Trans-Jordan for the Year of 1932," 31 December 1932, League of Nations. Document, Mandate 1932. Available online at <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/73f844e0122d6772052565d80053b611?OpenDocument> (accessed 26 September 2009)

- 104 Steuart Erskine, *Palestine of the Arabs* (London: George G. Harrap & Co. Ltd., 1935), p. 96.
- 105 Bunton, *Colonial Land Policies in Palestine, 1917–1936*, p. 66.
- 106 W.P. Barton, “Palestine Land: An Example From the Punjab,” letter to *The Times* (21 May 1930), republished in Mrs Steuart Erskine, *Palestine of the Arabs* (London: George G. Harrap & Co. Ltd., 1935), pp. 96–97.
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- 108 In an interview in February 2008, Jaffa refugee Ibrahim Ahmad Suleiman Quteifan, from the village of Beit Nabala, said that he remembered in Jaffa that those landowners who did not pay their taxes for some years would have their land taken away by the British. He said that once when his father was in the city of Jaffa there was land for sale because the owner could not afford to pay his taxes and the Mandate Government was going to take it away from him. His father paid the tax due on it, 10 Palestine Pounds, and obtained the land, which was registered in his name.
- 109 Abraham Granovsky, *Land Policy in Palestine* (New York: Bloch Publishing Company, 1940), p. 7. This statement was made by Granovsky, the original Hebrew version of whose book was published in 1937; in his “Note to English Edition,” published in 1940, the author stated that while the statistical data had been updated, the text had not.
- 110 *Ibid.*, p. 7.
- 111 *Ibid.*
- 112 *Ibid.*
- 113 Kenneth W. Stein, *The Land Question in Palestine, 1917–1939* (Chapel Hill and London: The University of North Carolina Press, 1984), p. 127.
- 114 Viscount Herbert Louis Samuel, *Memoirs*, p. 155.
- 115 Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: The University of North Carolina Press, 2006), pp. 185–86.
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- 120 *Ibid.*
- 121 Kenneth W. Stein, *The Land Question in Palestine 1917–1939*, p. 46.
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- 123 CZA, Report by Norman Bentwich on Zionist activities in Palestine, July 1913, CZA Z3/1516. This is not a new document, but neither Stein nor anyone else seems to have referred to it before, or indeed to any other document in this folder (although Stein has made use of a number of other folders within the same record group – Z3)
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- 128 CZA, Confidential Memorandum, London, 13 October 1935, pp. 7–8, CZA S25/3823.

- 129 CZA, Reports of interviews with the High Commissioner, 1934–35, CZA Z4/30205 (previously file no. CZA Z4/4100).
- 130 Ibid.
- 131 Later to be known by the name *Moshe Sharett*. See “Sharett, Moshe (Shertok; 1894–1965), Israel Statesman and Zionist Leader,” on the website of The Jewish Agency for Israel, available online at [www.jafi.org.il/education/100/people/BIOS/sharett.html](http://www.jafi.org.il/education/100/people/BIOS/sharett.html) (accessed 14 September 2009).
- 132 CZA, Confidential Minute of an Interview with His Excellency the High Commissioner on 16 June, 1935, CZA Z4/30205 (previously file no. CZA Z4/4100).
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- 135 CZA, Confidential Minute of an Interview with His Excellency the High Commissioner on 16 June, 1935, CZA Z4/30205 (previously file no. CZA Z4/4100).
- 136 Ibid.
- 137 Ibid.
- 138 Ibid.
- 139 The Arab Memorandum, which demanded the establishment of a democratic government, as well as a total cessation of all Jewish immigration and the prohibition of land sales to Jews, had been submitted to the British Government in November 1935.
- 140 “Britain Answers Demands By Arabs: Won’t Stop Jewish Immigration to Palestine, but Plans to Restrict Sale of Land,” *The New York Times*, 30 January 1936.
- 141 Ibid.
- 142 Ibid.
- 143 CZA, Criticism of the Administration of State Domain submitted to the Anglo-American Committee of Inquiry by the Jewish Agency for Palestine in Jerusalem, March 1946, CZA S25/6916; also found in CZA S25/9745.
- 144 CZA, Criticism of the Administration of State Domain ... March 1946, CZA S25/6916; also found in CZA S25/9745.
- 145 Point (n) in CZA, Criticism of the Administration of State Domain ... March 1946, CZA S25/6916.
- 146 Point (o) in CZA, Criticism of the Administration of State Domain ... March 1946, CZA S25/6916.
- 147 CZA, Criticism of the Administration of State Domain ... March 1946, CZA S25/6916.
- 148 Article 6 of the Mandate for Palestine (1922): “While ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency ... referred to in Article 4, close settlement by Jews, on the land, including State lands and waste lands not required for public purposes.”
- 149 CZA, Chief Secretary J. Hathorn Hall to the Executive of the Jewish Agency, 29 January 1936, CZA S25/6916.
- 150 CZA, Letter from the British Mandate Government to the Jewish Agency (received 29 January 1936) enclosing the text of a statement which was to be made on the morning of 29 January 1936 by the High Commissioner to representatives of various Arab political parties with regard to the imposition of restrictions upon the purchase of land, as quoted and cited in “Land Policy in Palestine,” in CZA S25/6916.
- 151 CZA, “Notes of Meeting held at Government House on the 22nd August, 1939, on the Subject of the Restriction of Land Transfers,” CZA S25/22787.
- 152 Ibid.
- 153 Descriptions of the 1940 Transfer Regulations Zones are from *A Survey of Palestine*, Volume I, p. 261: “Zone ‘A,’ in which the transfer of land save to a

- Palestinian Arab is prohibited, except in case of a transfer made in execution of a judgment or order in satisfaction of a mortgage executed and registered before the 18th May, 1939, or delivered or made before the 28th February, 1940, or, with the High Commissioner's permission, for the purpose of consolidating holdings or of effecting the parcellation of masha'a or in cases where the land already belongs to a person who is not a Palestinian Arab and in certain other circumstances." "Zone 'B,' in which the transfer of land by a Palestinian Arab save to a Palestinian Arab is prohibited, except in the case of a transfer made in execution of a judgment or order in satisfaction of a mortgage executed and registered before the 18th May, 1939, or delivered or made before the 28th February, 1940, or with the specific approval of the High Commissioner which the High Commissioner may in his unfettered discretion grant or refuse." "'Free' Zone, in which no restriction is imposed." Description of the 1940 Transfer Regulations Zones are from *A Survey of Palestine*, Volume I, p. 261.
- 154 Ilan Pappé also describes the White Paper of 1939, which was "the British gesture towards the Palestinians and the Arab world," as having been "too late." See his *A History of Modern Palestine: One Land, Two Peoples* (Cambridge: Cambridge University Press, 2004), p. 108.
- 155 This is one of the reasons why authors – such as Kenneth Stein in his book *The Land Question in Palestine, 1917–1939*, for example – choose to go only as far as 1939.
- 156 Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave Macmillan, 2010), p. 13.
- 157 CZA, "Why do the Jews oppose the new land restrictions?" CZA S25/6933.
- 158 ISA, Telegrams to the Chief Secretary on 23 and 25 January 1947, protesting against Jews attempting to acquire land in Zone A of Palestine, ISA M305/3 Land Transfer Regulation Protest by Arabs, Volume 2.

# 4 Land Settlement, Transfers, and Disputes

## Introduction

The first part of the land tenure system is actually intertwined with every part of the system. Legislation and the policy behind it set the framework for the surveying of the land, the registration of title, the transfer of tenure rights, and the disputes. Once the legislation for land tenure as a tool towards a greater objective has been examined, as well as the factors involved in forming it, the layout of the land tenure system has been established. But however significant government objectives and landownership laws are to the overall tenure system, they are not the only part of it. The remaining stages of the land system – cadastral surveying, registration, transfers and disputes – have been grouped together for a specific reason. While all the different parts of the land tenure system are interdependent, the system components discussed in this chapter may overlap the most. These links may not be as visible in this chapter; however they will become clear in the village case studies, where the implementation of the entire system becomes visible and where it will be seen that cadastral surveys, registration, and disputes and sales were being dealt with almost simultaneously.

The purpose of this chapter is to determine whether or not the British Government made it possible for the Jewish Agency and Zionist objectives to play a part in the cadastral survey, registration of title, and transfers and tenure disputes in Mandate Palestine. Even though Zionist collaboration with the British Government was evident when it came to certain political objectives, land policies, and legislation, those issues were rather ‘behind the scenes’ within the system; the processes discussed in this chapter were, conversely, more to the fore. For example, not much can be hidden from landowners in a cadastral map or registration of title for their land parcels, let alone the judgment of a legal dispute. The background to a land law, however, can be hidden – if not in terms of the actors involved, at least with regard to the timing of its issuance. Nevertheless, each of them can change the outcome of landownership and therefore are all crucial parts of the land tenure system in Palestine.

## Land Survey

Rarely does one think of a map as a political instrument, but cartography can be a mode of “knowledge” and “power” to a surveyor: “So the surveyor, whether consciously or otherwise, replicates not just the ‘environment’ in some abstract sense but equally the territorial imperatives of a particular political system.”<sup>1</sup> This means that no matter what the intention of a surveyor or the objective of a map might be, it cannot detach itself from the power of its administrators. It is therefore argued in this section that the surveying and mapping of the land of Palestine was not only influenced, but was actually led by the Zionist Organization. Even though it was the government of the British Mandate which was actually the administrative power, the role of Zionism was so strong at this stage of the land system that it actually directed the way in which lands were to be mapped.

This argument is not new, and is discussed only briefly in this book. On the other hand the works of Dov Gavish examine the theme in considerable detail. Concerning the survey system, Gavish wrote in *A Survey of Palestine Under the British Mandate, 1920–1948* that “the system was formally established in July 1920 with only one objective: to survey and map the lands of the country as demanded by the Zionist Organisation, in order to implement legally binding land settlement and registration of tenure rights.”<sup>2</sup> He noted that this is further seen in the present map of the state of Israel, which in many ways is a manifestation of the “geodetic, mathematical, and cartographic infrastructure” of the British Mandate Survey Department in Palestine.<sup>3</sup> Gavish uses “historical-cartographic” research to combine what the map tells, along with its history and construction, and the reasons and conditions for its creation.<sup>4</sup>

Prior to the British Mandate there were no cadastral maps for Palestine, and by the end of the Mandate the territory that is now the West Bank had no cadastre. The significance behind this is that a cadastral survey is necessary for registration of title for all landowners as well as for land to be purchased. Gavish defines cadastral survey as “an official, accurate, and systematic survey of land for division into permanent area units, and their registration by identifying numbers given to each parcel and block.”<sup>5</sup> This is not to say that a land survey had never been carried out in Palestine prior to the Mandate. On the contrary, with its significant religious history Palestine had been surveyed by many before the Mandate, but this will not be discussed in this section since the history of the land survey of Palestine would have at the very least to begin with the French surveyors of Napoleon Bonaparte’s campaign in Palestine.<sup>6</sup> In fact, this was one of the reasons why the Ottoman Land Code of 1858 was unsuccessful in implementing the registration of arable land, even though the laws of the Land Code required it: “much land remained unregistered since the books were based on registration of deeds and not on any preliminary systematic survey.”<sup>7</sup> The documents of registration were assembled from “a vague verbal description of the boundaries of the property in

question; unsupplemented by maps or plans, they did not reflect the exact geographical location of the property.”<sup>8</sup>

At the Jordanian Department of Lands and Survey in Amman, where the Ottoman *tabus* and maps are kept, the author confirmed that the Ottoman maps were not based on a systematic survey. In the preface of his book, Gavish mentions that he was unable to find the archives of the British Mandate in Palestine’s Survey Department in the Israeli State Archives.<sup>9</sup> While carrying out the research for the case studies at the Department of Lands and Survey in Amman, the author discovered that the survey maps of the Ottoman Empire and the British Mandate (as well as the Jordanian maps of the West Bank post-1948) were located there, along with the surveyor’s notebooks. The cadastral maps for each registration block were filed separately within the village registry records (the significance and contents of these files and how they made their way to Amman is discussed in Chapter Five). None of these documents were available however for the villages and land of what is now the Palestinian territory of the West Bank – only for those areas which are now a part of the state of Israel.

As with the legislation on land tenure in Palestine, Zionist demands over the survey of the land also started before the Mandate had begun. The Zionist Organization “early in 1918 initiated and demanded the undertaking of surveys and planning for ascertaining the resources of the country,” but Gavish notes that “the authorities delayed action in order to protect Arab interests.”<sup>10</sup> The Zionist Organization was trying to be directly involved in the cadastral survey of land in Palestine, but Clayton, the British Chief Political Officer, kept trying to conceal these attempts by deleting passages from the minutes of Jewish Council Conferences. Yet the Zionist Organization did not give up its demand to be actively involved in the cadastral survey

that could prove fateful to the entire Zionist undertaking in Palestine ... On the contrary, the Zionist Organisation continued to demand the implementation for a cadastral survey, including measurements, registration, verification of title deeds, and investigation of the legal status of the lands.<sup>11</sup>

Clayton rejected the proposal and, as Gavish explains, rejected every proposal that “held any suspicion of Zionist participation in the administration of the country.”<sup>12</sup> Clayton’s reasoning was that the Land Commission, land settlement, and cadastral survey were responsibilities of the civil Government, and that Zionist participation, whether consultative or financial, “would entail their taking part in the administration.”<sup>13</sup> Nevertheless, the Zionist Organization did not give up and made another Proposal at the Paris Peace Conference, where it was decided that the Mandate Government would form a Land Commission in which there would be a Jewish Council that had the power “(a) to make a survey of the land and to schedule all lands that may be made available for close settlement, intensive cultivation and public use; (b) to

propose measures for determining and registering titles of ownership of land.”<sup>14</sup>

After the British had taken over Palestine from the Ottomans, a number of delays caused the incomplete cadastral survey of the land, beginning with the lack of cooperation between the Survey of Palestine and the Land Registry Office of the British Mandate Government, who were unable to work together in the organization of the infrastructure of a land settlement system.

The use of maps, from providing coordinates for objects in the field to updating and correcting them, requires close contact between the registry and the survey. In place of such cooperation there was in the department a feeling of helplessness resulting from the absence of legally laid down procedure for conducting investigations, for settling property rights, and for the juridical connection between the two departments.<sup>15</sup>

Finally, in 1923 the Government gave Ernest Dowson<sup>16</sup> the task of reforming the land settlement and registration system. It would take five years before he could establish the Torrens system<sup>17</sup> in Palestine, which would in turn shape the 1928 Land Settlement Ordinance<sup>18</sup> that “launched the cadastral survey in Palestine practically from scratch in its new, clearly-defined, juristic form.”<sup>19</sup> The survey maps first divided villages into fiscal blocks, which were then used to survey and divide the land further into parcelled registration blocks.<sup>20</sup> The formation of the cadastral survey system in the early years of the Mandate was not the only delay in the survey of Palestine: shortly after it had begun it was further impeded by the Arab uprising (1929) and the Arab Revolt (1936–39), and finally by World War II (1939–45). Since the British Government could only work in the areas they deemed to be safe, at such times they would keep to places “such as the plains and valleys. Here the Jewish settlers, appreciative of the benefit of the project in reinforcing legal ownership of their settlements, welcomed the land surveyors and settlement officers,”<sup>21</sup> whereas the Palestinians resisted the land survey system by “chasing the surveyors away or destroying their equipment” on finding the system was led by “Zionist motives.”<sup>22</sup>

Therefore the author’s main – and perhaps most simple – observation, which supports the argument of Zionism leading the way for the mapping of the land in Palestine, is that during the Mandate the land and villages of Palestine that currently make up the territory of the West Bank did not undergo a cadastral survey until after 1948. When the West Bank became part of the Hashemite Kingdom of Jordan, the Department of Lands and Survey employed Palestinian surveyors from the area to map the land and villages. Therefore the land of what is now the Palestinian territory of the West Bank had been surveyed by the Ottomans and others before the British Mandate of Palestine, and the cadastral survey was carried out while it was under Jordanian rule, but was not surveyed in between by the British. It was also confirmed that the land in the West Bank today was also not surveyed



until the territory came under Jordanian rule. Palestinian surveyors based in Jerusalem who worked for the Jordanian Department of Lands and Survey were interviewed about this, and confirmed that since there were no British maps or notes to work from, they had to start from scratch in the cadastral survey, parcellation, and registration of title of the lands.<sup>23</sup> Furthermore, at the Jordanian Department of Lands and Survey in Amman, it was observed that when an enquiry regarding the location of a piece of land could not be resolved on the basis of the Jordanian surveys, the sources utilized were the Ottoman *tabus*. Therefore, with the absence of cadastral maps during the British Mandate for the land of the West Bank, parcellation and registration could not exist, and official transfers of land could not take place.

Some might argue that perhaps the British were moving inwards from the coast, and by the time partition occurred and because the period of the British in Palestine came to an end, there was not enough time to reach the eastern part of Palestine. However, as Abraham Granovsky explained in *Land Policy in Palestine*, Zionists were only interested in using their national capital to purchase land in the coastal plain and the north of Palestine; otherwise, the cost of purchasing and preparing the land for settlement would have outweighed the agricultural profits and would prevent future land purchases, as was experienced by Zionist land settlements in the Valley of Jezreel, the Beisan district, and the Valley of Huleh. Granovsky described how the high prices for land and the necessary investments for preparing the soil for cultivation gave the immigrant farmers no chance of even covering their costs.<sup>24</sup>

All these considerations force us to the conclusion that it is inevitable for us to buy land in these particular regions with national capital ... Only after national capital has paved the way and created the conditions for the settlement of other types of colonists, will private purchases in those regions become possible and even desirable.<sup>25</sup>

The first ordinance passed on this process in the land tenure system was the Cadastral Survey Ordinance of 1920.<sup>26</sup> Many other ordinances<sup>27</sup> were passed with regard to land survey, but this was perhaps the most significant one because there had been “no Ottoman surveying authority, but only a varied selection of maps of diverse origins for what normally would be expected of a central or governmental mapping establishment.”<sup>28</sup> It is important here to note the difference between land and cadastral surveys because, as mentioned in Chapter Two, a cadastral survey is one that divides the land into blocks and parcels; it is a survey for the division and identification of land.

There were other points that emphasized the strong link between the cadastral survey of Palestine and Zionist motives. One of the major ones, as discussed by Gavish, was the location of the office of the Survey Department. All offices of the Mandate Government in Palestine were based in Jerusalem,

except that of the Survey Department. Gavish explained that the reason behind the different location was “the directive to survey the coastal plain first.”<sup>29</sup> Initially, in 1920, the department office was based in Gaza, but it was moved to Jaffa a few months later. There had been recommendations or attempts to transfer its location back to Jerusalem in 1925 so as to eliminate miscommunication problems between Jaffa and Jerusalem, since the Survey Department’s work, and specifically that of the Directorate, required frequent cooperation with the Treasurer of Palestine and the Land Registry Department.<sup>30</sup> While the fieldwork of the Department of Survey did not seem to be affected by the distant location, the interdepartmental communication of the government did. In 1928, the controversy over the location of the Department was again raised, but it was cut short on the grounds of the financial considerations involved in transferring the Department to Jerusalem compared with constructing it a building in Tel Aviv. By 1929, it was concluded that it would be more economical to construct a building, and that “the department should remain in Jaffa as long as the land settlement process was going on in the vicinity, and there was no choice but to set up a special building for the Survey.”<sup>31</sup> The issue, however, is that since the Survey Department’s Office was in Jaffa, the lands that were surveyed and settled were those lands nearest to Jaffa, along the coast to the north and south of Jaffa, along with the northern part of Palestine.

Would the outcome have been different if the office had been based in Jerusalem, along with the other governmental offices? Perhaps it would have allowed land that was not being pursued by Zionists to have been surveyed and settled as well; it might also have allowed more land in general to be surveyed if interdepartmental communication had been more efficient with all the departments in one location. It was apparently a matter of high priority since in 1935 the question of the Survey Department’s location was again re-examined, but once more to no avail.<sup>32</sup> “Thus, the site of the Survey of Palestine was determined by its close proximity to the heart of the region of the cadastral survey, even at the cost of efficient communications with other governmental departments and offices.” To this day, the Survey of Israel is “located in the same place, at the corner of Yehudah Halevy and Lincoln Streets in Tel Aviv.”<sup>33</sup>

Comparing what land underwent cadastral survey is not the only way of determining whether the British Government helped Zionist land objectives in Mandate Palestine. Usually, when a territory is surveyed the first step is the creation of topographical maps.<sup>34</sup> The British Government was under pressure to complete the authentication of land title in Palestine,<sup>35</sup> because once titles had been validated, classification of the land would also be validated, distinguishing privately-owned land from state and waste lands, and thereby identifying lands “open for Jewish settlement.”<sup>36</sup> The Zionist haste for land acquisition meant that the Government had to fairly speedily determine which land was available for Jewish settlement; however this was also at a cost to the Government since the land survey department was “hastily established”

and this “haste and lack of direction to define landownership wasted almost 8 years.”<sup>37</sup>

As mentioned earlier, the sections that make up the land tenure system overlap in many areas. Unlike in the land laws of Mandate Palestine, Zionist objectives were not evident in the formation of the cadastral survey, but rather in relation to the overall product. As mentioned in Chapter Two, a complete series of cadastral maps would cover a national territory to show the invisible lines (boundaries) of landownership. When looking at the collection of cadastral maps of Mandate Palestine, it is apparent they are incomplete and this is where the Zionist ‘influence’ or manipulation with the British Government is most evident. Therefore, according to Gavish, “by 1948, the Mandatory Government of Palestine had completed the land settlement of only about five million metric dunams, which represent just 20 per cent of the 26 300 square kilometers of the total land area of Palestine.”<sup>38</sup> Gavish and Kark also point out that

This settled area is almost identical to the boundaries of the northern part of the State of Israel recognized by the United Nations in 1947. Judea and Samaria, which were occupied by the Hashemite Kingdom of Jordan from 1948 until 1967, were not surveyed under the cadastral project and, therefore, have remained ever since the focus of constant disputes over landownership.<sup>39</sup>

In fact, Palestinian geographer and cartographer Khalil Tufakji<sup>40</sup> confirmed in an interview that all land was to be partitioned as part of the Israeli state was settled by undergoing cadastral surveys and registration. This, for example, included West Jerusalem, but not East Jerusalem. Other methods of Zionist land acquisition were included in the planning and zoning of the land in order to register the title deeds (and are discussed in the next section under the topic of *musha’* land parcellation).<sup>41</sup>

While the Mandate Government was committed to the establishment of a Jewish national home, as declared in the Balfour Declaration and the Articles of the Mandate, the key factor in this goal was land. In order to “implement its commitments,” the government had to organize a legal land tenure system for land settlement, and as Gavish concludes, “Such a land settlement was impossible to achieve without surveying and mapping.”<sup>42</sup> The Zionist Organization used surveying and mapping to differentiate the types of lands (such as distinguishing “state domain and uncultivated lands”) as a means towards the fulfillment of the Balfour Declaration. Gavish comments that

if from strategic aspects the Empire profited from the cartography of Palestine during a hundred years of British mapping, from an historical and geographical vantage point Palestine/Israel benefited manifold from the cartographic legacy of the British when they left Palestine in 1948.<sup>43</sup>

## The Land Registry Office and Registration

The Balfour Declaration made it a responsibility for the British Mandate in Palestine to establish “a Jewish national home,” and landownership was characterized accordingly by the administration. Modern survey maps were created for the purposes of land acquisition, expropriation, and transfer, so that by 1920 Herbert Samuel had instigated a land registration system.<sup>44</sup>

Even before the Mandate was actually established, while Palestine was still under British military rule, the need of the Jewish Agency to get the land tenure system established was made known to the British Government. In one letter from Major-General, Chief Administrator H.D. Watson wrote to the Chairman of the Zionist Commission in Jerusalem to inform him that, with reference to his letter sent on 12 August 1919, “no change in the system of land tenure can be made by the Military Administration until the Peace [Conference].” However, he would inform the Chairman accordingly if there were to be any changes.<sup>45</sup> This would be the subject of correspondence for many years to come between the Zionist Organization or land companies and the British Government, with the military administration, the Mandate government, or (within the Mandate) the Land Settlement Office (as will be seen in more detail in Chapters Five, Six, and Seven, and especially regarding the sub-district of Jaffa where the majority of the population was Jewish).

The Ottoman Land Code of 1858 had attempted to eliminate the *musha'* system. However, villagers would register their *musha'* shares under the name of a local notable for fear of taxation. Therefore it was the goal of the British Mandate in Palestine to set up a land tenure system where land would be registered under private ownership since, as discussed in Chapter Two, without privately registered landownership, governments could not hold a landowner accountable for tax payments. Since the beginning of the agricultural way of life in West Asia, landownership had existed in two ways;

collective, by the settling tribe or the established village community; and private, by individual family units. In both, the major objective of landownership (that of a sense of security and the right to enjoy the products of one's labor) was attained to one degree or another.<sup>46</sup>

Prior to the Mandate, in a previously-mentioned memorandum by the Zionist *Engeres Aktions-Comité* (known as the EAC or Inner Actions Committee), it was noted as a conclusion that in order to reduce their tax payments the *fellahin* did not register all of their lands, and furthermore that the cadastral maps, along with the registration, needed to be completely redone.<sup>47</sup> Palestinian villagers were well aware of this, since under Ottoman rule being a registered landowner and paying taxes represented a form of identification for those who could be called to serve in the Ottoman army. Therefore it was common practice for the villagers to have their land registered under the name of a large landowner, a local notable.<sup>48</sup> As mentioned in Chapter Two,

land reforms were taking place on a global scale in the latter half of the nineteenth century; thus, “The gradual decline of Palestine’s fellah population had its roots in the last decades of the nineteenth century,” due to this change to a market economy and to the “commercialization of agriculture.”<sup>49</sup>

The Zionist land companies and Zionist-Jewish individuals were both interested in there being private landownership as opposed to land that was classified as *musha’*, the reason being that as long as the land was communally owned, it could not be sold by only one individual. It was really a scheme of ‘divide and conquer.’ Only when the *musha’* lands had been divided into parcels could land be purchased by Zionist companies and immigrants. For the *fellahin* who could no longer afford to sustain their way of life, the only way to cut their losses was to sell their land to the waiting Zionist-Jewish land purchasers; but a transfer of title required the shares of the *fellah* to be separated from the land of the other landowners. Therefore it is not surprising that under Ottoman rule Zionists were unable to purchase land, not only because Ottoman law did not allow it, but because the *musha’* system, along with *waqf* lands, “hindered the sale of lands to Jews.”<sup>50</sup>

The *musha’* land system had at its core collective village ownership or collective tenure of a land area, with each qualified participant in a village or other designated area entitled to shares, generally not parcels, in a particular land area. On a periodic basis ... shares were redistributed allowing each qualified shareholder the opportunity to use the more fertile and arable lands which corresponded to particular shares within a collective unit.<sup>51</sup>

According to Stein, this “periodic redistribution” was the detrimental characteristic of the system because most of the *fellahin*, knowing the land was temporary (being usually held for one, two, or five years), were not interested in developing the land, hence lessening soil quality and productivity.<sup>52</sup> In *Mandated Landscapes: British Imperial Rule in Palestine, 1929–1948*, El-Eini makes a significant point concerning the subject of *musha’* land as examined in Stein’s *The Land Question in Palestine, 1917–1939*, noting Stein’s argument that “in the latter half of the nineteenth century and throughout the Mandate period, the notables gained many *musha’* shares, and ... therefore supported the *musha’* system as a form of ‘leverage’ over the peasantry.”<sup>53</sup> Other scholars disagree with this, stating that here were a great number of *fellahin* who took out loans from moneylenders and would therefore lose their tenure over the land to urban merchants when they could not repay their loans. According to Mahmoud Yazbak:

It is important to note, however, that this did not entail the dispossession of the *fellahin* from their land. On the contrary: for the new landowners the *fellahin* formed the only agricultural labour force available and keeping them on the land guaranteed uninterrupted production. Because no

harm had come to his livelihood, it made little difference to the fellah that he had now turned into a tenant or farm labourer.<sup>54</sup>

This of course made it “mutually beneficial” for both the *fellahin* and the notables. In fact, Yazbak asserts that it was only when Palestine fell under the Mandate that a major and increasingly detrimental change occurred as “the government facilitated the transfer of ownership of agricultural land from local merchants and landowners to agents of the Zionist movement.”<sup>55</sup> However the crucial difference was that when Zionists became the landowners they would also bring their own laborers. Therefore, even though the *fellahin* may have lost tenure over the land, they were no longer in debt and still had a means of sustaining their livelihood. Zionists had learned the significance of “self-labor” during the waves of Zionist immigration prior to the Mandate, and knew that the exclusion of Arab labor would weaken the Palestinian Arab economy.<sup>56</sup>

Stein also claims that “The *musha'* land system was described by every major authority on land in Palestine as the most debilitating factor affecting the economic betterment of the Palestinian fellaheen.”<sup>57</sup> Perhaps at the time Stein’s book was published (1984) this was the case, since the main authority on land was considered to be Abraham Granovsky. Another firm believer in this view was the High Commissioner, Herbert Samuel, who believed that the land tenure reforms dividing the *musha'* shares were to the economic advantage of the *fellah*.

Primitive systems of land tenure and of taxation discouraged good agriculture. No effective reform was possible without a land survey and registration of titles for the whole country. This would take a long time and cost a great deal of money with no visible or immediate result; but it had to be done. It was put in hand accordingly; and the completion of the survey enabled my successors to carry out fundamental reforms of tenure and taxation, which, by enabling the good cultivator to reap a reward for his skill and labour, encouraged a progressive agriculture. They thereby helped to raise a poverty-stricken and debt-ridden class of *fellaheen* to a degree of well-being such as they had never known.<sup>58</sup>

But since then literature on land in Palestine has proved otherwise, and there is an opposing view. Some found that the *musha'* system was “the most impressive feature of communal life ... a voluntary method of cultivation based on the rotation of collectively owned plots of land among villagers, so that all would in turn have the benefit of the more fertile parcels.”<sup>59</sup> Others, however, found it to be backward. *Musha'* cultivation continued to exist even after the Ottomans had attempted to eliminate it, “until it was finally abolished during the mandate by the British, who saw it only as a primitive form of agriculture. As a result, life became unsustainable for poorer peasants [who were] totally dependent on their land.”<sup>60</sup>

Ernest Dowson, who was the architect of the land settlement program of Mandate Palestine “admitted that the British obligation to the Jews accelerated the need for a new order in land registration”;<sup>61</sup> therefore the process of dividing *musha’* land for the purpose of registration opened another method of Zionist land acquisition. However, this was not Dowson’s only objective for the parcellation process, since he believed that “land registration, along with the partition” of the *musha’* land would greatly enhance the economic condition of the *fellahin*.<sup>62</sup>

The partition and registration of the land was agreed upon by the villagers and the Land Settlement Officer, and the villagers would have a Village Settlement Committee which would be responsible for this process (this committee and the parcellation process is discussed in detail in Chapters Five, Six, and Seven). After a proposal for the division of the land had been agreed upon, the appeals would be settled in the Land Courts (which are discussed later in the section on land disputes). Nadan claims that resolving these disputes was the main reason for the slowness of the land settlement process, and shows in his book that this settlement process had negative consequences for the agricultural productivity and tenure security of the land.<sup>63</sup>

Stein refutes Nadan’s argument, claiming that, due to the *musha’* system and a lack of private ownership, individuals were prevented from securing a mortgage on the land.<sup>64</sup> However, on the basis of the interviews in Nadan’s research, two ways were found to contradict this. The first was joint investment for all the sharers, while in the second method, when a single shareholder within the *musha’* land needed to take out a mortgage, the other sharers would allot the individual a separate and permanent parcel or set up a *qur’a* (a lottery).<sup>65</sup> Nadan’s book *The Palestinian Peasant Economy Under the Mandate* suggests that the real issue concerned the availability of agricultural loans for the *fellahin*, and not whether or not the *musha’* land could be put up as collateral for a mortgage.

In one of his articles, Stein stated that there was evidence to show that from 1932 and for up to a decade, “90 percent of all Arab land sale transactions to Jewish purchasers were made by owners of less than 100 dunams.”<sup>66</sup> However, as has been the main point of this book, the assumption that Jewish land acquisition was only carried out in the form of purchases is a false belief: Zionist methods of land acquisition can be found in every part of the land tenure system. Since cadastral mapping and registration of most of the rural areas (where the majority of small landowners were located) did not occur until the 1930s, just because sales by Arabs were of less than 100 dunams does not mean that this was the only land being acquired by Zionist-Jews. If anything, the following three chapters on the villages will prove that in the 1930s one of the greatest methods of land acquisition by Zionists was through land settlement during the processes of cadastral surveys, registration, and more specifically, the parcellation of *musha’* land. While this land as well might all have been in small amounts, compared to the thousands of dunams per transaction purchased from large landowners, Zionists still managed overall

to acquire much of the land through their collaboration with the Land Settlement Office and Survey Department in the parcellation schemes of the villages.

The Registration of Title, published in the Schedule of Rights or Schedule of Decisions by the Land Settlement Office, could not occur until the land had been surveyed and divided into registration blocks, and within those blocks further divided into parcels, with the number of dunums per landowner allocated according to how many shares they were entitled to. Gavish claims that, in fact, it was through the Land Transfer Ordinance of 1920 that the Cadastral Survey Ordinance and the Land Registry “were tied together for the first time.”<sup>67</sup> Therefore, in order to register the title deed for a parcel of land for an individual landowner, a surveyor had to establish the boundaries of the village, town, or city, and then, within that, divide the land according to the number of landowners and convert the percentage they were entitled into dunums. However, before doing so legal disputes between landowners had to be resolved in order to verify how much land each owner would receive.

Disputes included issues of inheritance, incorrect classification of land, division of shares, and very commonly, transfers of land. Land transfers or transactions were not only restricted to such disputes over division of *musha*’ lands and shares for registration of title. However, land cannot be sold without proof of title, and for this reason the legal disputes are the final element in this study of the land tenure system. Abu Sitta noted that “By the end of the mandate, the land title was ‘settled’ in less than 20 percent of Palestine, primarily in areas where Jewish colonies were established.”<sup>68</sup> Furthermore, “the land-settlement program” that was meant to help the economic situation of the *fellahin* “severely undermined it instead.”<sup>69</sup>

## **Transfers**

There can be no doubt that the Zionist goal of a Jewish national home was dependent on land purchases. There were two types of buyers for Zionist-Jewish land purchases: “national institutions” such as the Jewish Colonization Association (JCA) and the Jewish National Fund (JNF), and “private initiatives,” which included “the associations and individuals holding their land in unrestricted private ownership.”<sup>70</sup>

The subject of land purchases and settlement by Zionist-Jews has been covered extensively in works by other authors who focus on their global fundraising capabilities and purchasing schemes in Palestine. These include, for example, B. Kimmerling’s *Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics* (1983); Stein’s *The Land Question in Palestine, 1917–1939* and Aryeh Avneri’s *The Claim of Dispossession: Jewish Land-Settlement and the Arabs, 1878–1948* (both published in 1984); *Land and Power: The Zionist Resort to Force, 1881–1948* by Anita Shapira (1992); Yossi Katz’s *The Battle for the Land* (2005); and Eric Engel Tuten’s *Between*



*Capital and Land: The Jewish National Fund's Finances and Land-Purchase Priorities in Palestine, 1939–45* (2005).<sup>71</sup> Therefore this section does not try to cover the historical detail of how Zionists raised financial capital and their land purchase schemes, but instead approaches it from a different perspective that will reconfirm the argument of this book. This section contends that land transfers from Palestinians to Zionist-Jews occurred due to the economic and political conditions set by the British Mandate Government and Zionist-Jews.

The weight of Zionist pressure on the British Administration over the issue of land transfers in Palestine began not long after the Balfour Declaration in 1917. In 1918, Chaim Weizmann presented Arthur James Balfour with the Zionist Commission's agenda, which included a proposal "forbidding land transfers as long as the country remained under military occupation" in order to prevent land speculation.<sup>72</sup> On 7 June 1917, during the Paris Peace Conference, the Zionist Commission sent an urgent telegram to the British Foreign Office stating that "land registers for ordinary land transactions are to be re-opened shortly under control of administration."<sup>73</sup> There was no response to, or elaboration on the topic; but it seems strange since the Zionist Commission appeared to be contacting the Foreign Office on behalf of the Military Administration. Why was the telegram not sent from the Military Administration itself?

Zionist land policy had already been established by 1919. In a statement by the Zionist Organization, the first two questions that were taken into consideration were: What were the "general objectives of the Zionist Organization in respect to the land"? And what were the "means or instruments" through which these "objectives" might be obtained? The answer to the first question was to place land under "Jewish hands" while keeping in mind the "rights and feelings" of the Arabs, as well as avoiding "extravagant prices" and "increases in land value." Also the land needed to be worked and cultivated by the occupants rather than by "capitalistic owners with hired help." The first of many steps in creating the means or tools for the Zionist Organization to achieve these objectives was to, as quickly as possible, purchase land by a central agency that would "become the inalienable property of the Jewish people"; more specifically, this agency would be the Jewish National Fund.<sup>74</sup> The history of the JNF until 1948 was described by Granovsky as being divided into two periods. The second period, starting in 1921, was when the large amounts of land were finally purchased. Between 1901 and 1920, Granovsky describes the share of the JNF's purchases as insignificant; during this period, when most of the land purchase was done privately by individuals such as Baron de Rothschild, they had only acquired 24,920 dunums.<sup>75</sup>

Three decades before the Mandate had begun, Zionist acquisition of land (over 400,000 dunums) had been mostly by Jewish individuals.<sup>76</sup> In the 1920s, Zionist land purchases were not strategically planned, as they were during the 1930s and 1940s. In *The Roots of Separatism in Palestine: British Economic Policy, 1920–1929*, Barbara Smith commented that up till then there was

competition amongst the various Zionist land agencies and individuals, even though they all had the same goal,<sup>77</sup> while Granovsky indicates in *Land Policy in Palestine* that while the goals of agency and individual purchasers were the same, their policies were different. He claimed that JNF purchases were at their height when political disturbances or slumps occurred in Palestine.<sup>78</sup> While the private land purchaser would be driven away by such events, the JNF would increase its purchases. Granovsky does not specifically describe how it would do this, but he refers to certain dates, such as the example of the Arab Revolt between 1936 and 1939, a three-year period during which the JNF purchased 106,000 dunums while private land purchasers bought only 20,000 dunums.<sup>79</sup>

Granovsky's book, *Land Problems in Palestine*, is a collection of ten of essays with one common theme: "that the Jewish Homeland can be erected only upon nationalized land."<sup>80</sup> But there are many elements that support this, and Granovsky wrote that 40 years of experience in colonizing Palestine proved that "Jewish agriculture can maintain itself only by Self-Labor."<sup>81</sup> Furthermore, while Zionist acquisition depended on as much land as possible being purchased, once it had come under Zionist-Jewish ownership it had to stay that way:

From the *national viewpoint* all colonization on private land is dangerous because there is no certainty that it will not at some time be sold out of Jewish possession. Non-Jews might even penetrate into the heart of a Jewish settlement. Granted, this has rarely occurred hitherto because the Jews now in the country are so strongly nationalistic that they do their utmost to prevent such sales. But the eventuality ought to be forestalled entirely.<sup>82</sup>

In other words, Zionist land acquisition depended on the British Mandate Government helping them make land available for purchase, as well as on Arab landowners selling their land. However, once it had been purchased it had to be nationalized, in order to ensure that it could not be lost through the way it had been received.

For this reason, in the state of Israel even today, the concept of tenure is considered to be "unusual for a country with an advanced economy."<sup>83</sup> In fact, Israeli sources (who refer to the land of Israel as including the Golan Heights and East Jerusalem but not the West Bank and Gaza Strip), claim that 93 percent of the land "is owned by the state and by public bodies, and by law cannot be sold to individuals." As discussed in Chapter Two, lack of private land-ownership within a state has been identified as an impediment to the overall development of a state: "Although the institution of public land ownership is recognized in the Western world, no other democratic country runs a land regime which freezes the vast majority of the land area under ownership of the state and national institutions."<sup>84</sup> However, for Israel, it is a matter of self preservation of the state, and was identified as such by

Granovsky during the Mandate years when he pointed out that the way land for the Jewish national home was being acquired could be the method of its future downfall.

### ***Financial Constraints and the Economy***

As discussed in Chapters Two and Three, the commercialization of agriculture in Palestine led to the need to reform the land tenure system, something that by then was occurring on a global scale. While the notables became wealthier in terms of landownership under the Ottoman Empire, in the British Mandate, as Yazbak comments, “the influx of Zionist capital completed the process of change that ensured the elimination of pre-capitalist landlords and the traditional peasantry.”<sup>85</sup> Yazbak also noted that

Turning land into a source of wealth was also behind the Land Law of 1859; as part of the Tanzimat it was intended to help the empire fend off the encroachment of the West, [but] in the case of Palestine it proved more of a Trojan horse.<sup>86</sup>

In fact, the historian Eric Hobsbawm refers to the “transformation of land into a capitalist tool for the creation of wealth” as having first occurred in Europe in the early nineteenth century, beginning with land being turned into a commodity that could be privately purchased; moving on to ownership that could be transferred for self-interest and profit; and finally transforming the majority of the rural population into “freely mobile wage-workers for the growing non-agricultural sector of the economy.”<sup>87</sup> In the case of Palestine, however, had the British Government not opened the path for Zionist immigration, capital, and demand for land in Palestine, they might have not interrupted this otherwise standard transformation of local land and the economy.

Studies of the economy and agricultural loans in Mandate Palestine have been undertaken by various authors, including Jacob Metzger in *The Divided Economy of Mandatory Palestine* (1998); Barbara Smith in *The Roots of Separatism in Palestine: British Economic Policy, 1920–1929*; and, as the economy was an agriculturally-based one and therefore dependent on land tenure, in the works already discussed by Roza El-Eini (in both *Mandated Landscape* (2006) and her research on the Agricultural Mortgage Bank), Kenneth Stein, and Amos Nadan.<sup>88</sup> Agricultural loans can be used either as an instrument of financial aid for the peasant, or as a method of acquisition. While travelling in the West Asia region during the nineteenth century, British author Laurence Oliphant described Balqa, the north-eastern part of Jordan (and currently a governorate). He described how the land of the villages there had not been registered, and how he had therefore recommended to a land settlement company that it should purchase and resettle the land, and for the Ottoman government to establish a bank that would allow the

villagers to take out loans by mortgaging their land, as opposed to the practices of money-lenders who held “the peasantry in bondage by liens on their crops.”<sup>89</sup>

The British Government’s policy on agricultural loans in Palestine was discussed at the Foreign Office during the Paris Peace Conference in July 1919, prior to the Mandate. Dr Chaim Weizmann raised the matter of agricultural loans as one of two grievances relating to the land question in Palestine. The first of these was the opening of the land registries for small transactions for private land, and the second was that of British Government agricultural loans to cultivators in Palestine. On 29 April 1919, the British Government had issued a scheme for cultivators to receive Government loans, which required the cultivators to have legal title to the land. Therefore this was not available for Jewish immigrants (or ‘colonists,’ as they were referred to in the file) until the Land Registry office had opened and land transfers could be recorded and registered. “Indeed most of the Jewish colonists already have credits from another source and could not give the Government the first mortgage apparently required.” Weizmann found this was of benefit only to non-Jewish cultivators; so from his perspective it was the equivalent of being discriminatory to Jewish cultivators.

It is also evident that Weizmann believed Arab cultivators would abuse the agricultural loan scheme by claiming “pretended titles.” Furthermore, according to Weizmann’s sources, the government’s agricultural loans scheme was for £500,000, advanced by the Anglo-Egyptian Bank to the British Administration. Weizmann feared that if this information was correct, it would create a “loophole for a large measure of control over the land of Palestine by a group of outside non-Jewish financiers,” which would go against Great Britain’s policy of “economic preference to the Jews of Palestine.” The Foreign Office decided that it was not a matter to be dealt with by the Peace Conference and left it at that.<sup>90</sup>

A Memorandum by the Jewish Agency sent to the Anglo-American Committee in 1937 stated that, as had always been Zionist opinion, “it was not the intention of the Jews to carry out their colonization work at the expense of the fellaheen,” and this included displacing them. The Jewish Agency claimed that doing so would have been “inconsistent with the whole spirit of the Jewish National Home,” while at the same time it wished to “safeguard the stability and organic growth of the Jewish community” through the acquisition of rural land and Jewish immigration.<sup>91</sup> However there was no indication of any change of practice; instead the Jewish Agency said that:

Despite the obligations contained in the Mandate, the Jews have not obtained from Government any assistance such as is ordinarily granted to agricultural settlers in new countries, as grants of state lands, financial grants for reclamation and amelioration works such as drainage and irrigation or credit facilities in Government banks.<sup>92</sup>

The Memorandum went on to mention that the Government had taken the first step by establishing the Agricultural Mortgage Bank in 1935. In the report, the Jewish Agency did not appear to consider how, if the government was unable to provide the existing local agricultural inhabitants with such assistance, it could also do the same for the new settlers, given the rate at which they were migrating to Palestine. Again the Jewish Agency wrote of the developments in Palestine as made by Jews, but criticized the Government for not doing enough to help them, while also criticizing it for not helping the *fellahin*. The Jewish Agency believed that if the Government further reduced *fellahin* land leases to less than two years' duration, then this would provide them with the "incentive to improve their methods of farming."<sup>93</sup> However, based on the economic situation of the *fellah*, it would be safe to argue that it was not the incentive that was their problem but rather the financial constraints between debts, taxes, and the competition of an intensive agricultural Jewish economy growing separately beside it.

In what some have considered as being from a biased perspective, or from an Arab propaganda publication about the situation in Palestine during the Mandate,<sup>94</sup> Mrs Steuart Erskine emphasized the ill treatment of the *fellahin* in her book *Palestine of the Arabs* (first published in 1935). She noted that while the *fellahin* had always been poor, they had been terribly affected by the results of the First World War; in such desperate conditions they had been left with no alternative than "to borrow from the inevitable money lender."<sup>95</sup> Mrs Erskine claimed that if there was ever a time to protect and help the *fellahin* recover their losses, it was then, before the Mandate had even begun. She believed that with the limited resources available to them, the British Military Administration in Palestine had done all it could, as it had granted them agricultural loans in 1918 and 1919 (to be repaid in installments with six percent interest), and furthermore had also established an Agricultural Department.

But now, explained Mrs Erskine, all these developments were useless because of "insurmountable obstacles," the most significant of which was the "influx of Jews after 1920, who were employed in public works, cutting the ground from under Arab workers, while professionals were also flooding a restricted market." While Zionist-Jews claimed to take the local Arab population into consideration in their actions, whether in their land purchase schemes, or the settlement of new Jewish immigrants, she pointed out that in fact "the acts of the Jews ... spoke far more forcibly than any words could." She did not hide her resentment, blaming the Zionist movement for not upholding its responsibilities to the Mandate by taking into account the rights of the local inhabitants and for eliminating all forms of economic integration and exchange. According to her, the other two obstacles endured by the *fellahin* were taxes and grievances.<sup>96</sup>

Zionists such as Granovsky claimed that Jewish land purchases were to the advantage of the Arab population, and furthermore that "Jewish immigration and colonization have enriched Palestine and have made it an island of

well-being in the sea of economic backwardness of the Arab countries.”<sup>97</sup> He also claimed that the large land-purchasing companies that had bought the majority of the land would make sure that actual land transfers were as convenient as possible for the Arabs.<sup>98</sup> Granovsky used the colonial perspective to the advantage of the Jewish community in Palestine by comparing Zionism to a movement of modernity in Palestine. Furthermore, he claimed that “the sale of land to Jews was one of the best means of advancing the Arab economy,”<sup>99</sup> since it brought wealth into the system from outside Palestine that would otherwise not have existed. Granovsky believed that the economy in Palestine suffered the most from the lack of capital, and the fact that Zionist-Jews were bringing in capital showed that they had brought with them “a significant factor of progress.”<sup>100</sup>

Therefore when Arab leaders expressed Arab resentment and opposition to Jewish land sales, Granovsky made it sound as if they were ungrateful, and that Jewish colonization and land purchases were the saviors of Palestine’s economic situation and therefore the only solution to the country’s economic problems. Granovsky claimed that Arabs overlooked the benefits, which, apart from capital, included technical skills, new development, and “tremendous stores of human energy.” He even made it seem that it would take them time to realize all these things because of their “backwardness”; “It will take a long time yet for Arab circles to become aware of this. As things stand now their opposition, even though without basis in fact, must revive serious consideration in any discussion of land problems.”<sup>101</sup> However, as noted earlier, after having thoroughly studied the peasant economy in Palestine, Nadan has confirmed the argument that Arabs did not overlook the benefits, as the costs of the losses were far greater.<sup>102</sup>

### ***Different Sellers, Non-Palestinians, Notables, and Fellahin***

Without a doubt, the imperative for Zionist-Jewish colonization was “the purchase of land for settlement.”<sup>103</sup> This meant that while there could be a variety of vendors and purchasers, the ultimate goal was the same. The following table shows the different vendors from whom Zionist-Jews purchased land.

Table 4.1 shows that Zionist land buyers purchased land from every possible source. Land transfers from large landowners, notables, and foreigners were used to acquire the larger land areas. However, the parcellation of *musha’* land was useful for the smaller ones. While the table shows that by 1936 around 50 percent of Zionist land purchases were from absentee landlords, that amount had increased even further by the end of the Mandate (Table 4.2).

It has been established by many authors that the lands in northern Palestine were sold to Zionist-Jews by non-Palestinians. Almost all the lands shown in Table 4.2 were in the sub-districts of Safad, Tiberias, and Tulkarm. A concession of Lake Huleh lands was “granted by the Ottoman Government in 1911 to Arab landlords of Beirut,” so that they could develop and drain

Table 4.1 Transfers of Arab-owned land to Jews, 1918–36<sup>1</sup>

<i>Vendor</i>	<i>Total Land Acquired (dunums)</i>	<i>Percentage</i>
Large Absentee Owners	358,974	52.6 %
Large Resident Owners	167,802	24.6 %
Government, Churches, and Foreign Companies	91,001	13.4 %
Fellahin	64,201	9.4 %
Total	681,978	100.0 %

<sup>1</sup>Table copied from Mahmoud Yazbak, "From Poverty to Revolt: Economic Factors in the Outbreak of the 1936 Rebellion in Palestine," *Middle Eastern Studies*, vol. 36, no. 3 (July 2000), p. 102; also available in Abraham Granovsky (1952) *The Land System in Palestine, History and Structure*, London: Eyre and Spottiswoode, p. 278. Yazbak also notes that, according to the Peel Commission, p. 238, the "Agricultural land owned by Jewish colonizers until 1918 amounted to about 650,000 dunams."

Table 4.2 Land sales to Jews in Palestine by non-Palestinian absentee landlords

<i>Name of Seller</i>	<i>Area in Dunums (sic)</i>	<i>Locality</i>
Lebanese		
Heirs of Salim Ramadan	3,000	Hittin
Heirs of Jammal and Milki	2,500	Nimrin
Gulmia and Jbara	4,000	Zuq et Tahtani
Emir Chehab family	1,100	Khalisa
Franics family	3,000	Dafna
Dabki and Shams families	1,600	Ed Dawwara
Farha family	1,400	Ez-Zawiya
Chehab family	1,300	En-Na'ima
Farhat & Bazza families, & Mardinis (of Syria)	9,000	Qaddas
Bazza family	3,500	El-Malakiya
Ahmad el As'ad	2,000	El Manara & Udisa
Moitenes villagers	1,200	Jabal Meimas
Father Shukrallah	900	
Father Shukrallah	700	Yarda
Deishum villagers	1,100	Hawwara
Ali Salam	41,500	Hula Concession Area
Najib Sursock	26,500	Tell el Firr & Jalloud
Sursock family	240,000	Marj ibn 'Amer (Plain of Esdraelon)
Zu'rob family	5,000	Hanouta
Quteit villagers	4,500	Samakh
Qweini family	2,500	Nahariya
Tayyan family	31,500	Wadi el-Hawarith
Sub Total	389,300	
Heirs of Emir Jazairi	34,000	Kfar Sabt and Sha'ara
Heirs of Emir Jazairi	3,000	Kirad El-Kheit, Baqqara and Ghannama

Table 4.2 (continued)

Name of Seller		Area in Dunums (sic)	Locality
Syrians	El-Akrawi family	1,600	El-Khaffas
	Emirs Fa'our and Shaman	800	Salhiya
	Fadl family	1,200	Barjiyat
	Zaal Salloum	1,500	Khirbet es-Summan
	Bozo family	4,000	Khiyam el Walid
	Qabbani family	10,350	Wad el-Qabbani
	Sub Total	56,450	
Others	Bahai Persians (Iranis)	8,000	Nuqaib
	Comte de Shedid (Egyptians)	7,500	Samakah
	Sub Total	15,500	
	<b>GRAND TOTAL</b>	<b>461,250</b>	

<sup>1</sup>Table copied from Salman H Abu Sitta (2004) "Table 2.16: Land Sales to Jews in Palestine by Non-Palestinian Absentee Landlords," Atlas of Palestine 1948, London: Palestine Land Society, p. 27. Abu Sitta's source is the "Memorandum to Arab Higher Committee," dated 26 February 1946, Arab League, Cairo.

<sup>2</sup>Abu Sitta notes that "this sale displaced 1746 Arab farmer families comprising 8730 persons." See the "Shaw Commission Report 1930" (Cmd. 3530), p. 118, in Abu Sitta's Atlas of Palestine 1948, p. 27; this table can also be found in Sami Hadawi (1988) *Palestinian Rights and Losses in 1948: A Comprehensive Study*, London: Saqi Books, pp. 66–67.

the swamp land. However at the end of World War I, the Huleh lands became a negotiation issue between the British Mandate government for Palestine and the French Mandate government for Lebanon, respectively.<sup>104</sup> In 1923 it was agreed that the Huleh valley would be within the borders of Palestine, but the Arab landowners based in Beirut were guaranteed their tenure rights by the High Commissioner of Palestine.<sup>105</sup> Therefore for many of these Beirut- and Damascus-based landlords, "the insecurity as to their future was of course a factor in prompting them to get rid of these assets."<sup>106</sup> For example, correspondence between some of these Lebanese landlords between 1939 to 1947 showed that they did try to access their land to gather their maize crops as well as to collect rent from the tenants, however they were prohibited from crossing the border between Lebanon and Palestine by car, and even if they did they were not allowed to do so for a period of more than five days.<sup>107</sup> While this may not have been the reason for all the non-Palestinians who sold their land, it nevertheless is a substantial reason for those landowners who were unable to access their properties and resorted to selling to the awaiting Zionist buyers instead.

The next type of land seller was the urban elite, or urban notables of Palestinian Arab society. In *The Land Question in Palestine, 1917–1939*, Stein concludes that the social and political division of Palestinian Arab society



allowed Zionists to enter “the land sphere without real opposition.”<sup>108</sup> While it is true that urban and rural society were to a great extent separated from one another, socially and politically this setting was not unique to Palestine. The main source of power for the social and political urban elite in Arab society was landownership in rural areas.<sup>109</sup> In “Urbanization and Political Change: The Impact of Foreign Rule,” Joel Migdal studies the political and economic transformation from rural areas to cities during the end of Ottoman Palestine until 1948. Migdal discusses the need to identify external factors in the study of transformations, and how Zionism was the external factor in Palestine interrupting the transformation. The study of the political economy of Palestine during this period indicates that Zionist land purchasers took advantage of the occurring transformation by purchasing the source of power of the urban elites, the rural land. “The autonomy the landowners had enjoyed under Ottoman rule ... diminished as the city became an administrative center of the British and an economic center of the Jews.”<sup>110</sup> It is no surprise then that many notables first came across Zionism in Mandate Palestine within the local municipalities, “where they passed resolutions calling on authorities to halt Jewish purchase of land.”<sup>111</sup>

While the loss of land for urban notables meant the loss of power, in the case of the *fellahin*, it was the loss of a livelihood. The *fellahin* sold their land because of the economic conditions in Palestine that were being shaped by the British Mandate Government and Zionist actors. Yazbak quotes a *fellah* interviewed by the *Filastin* newspaper, who said:

I sell my land and my property because the government forces me to pay taxes on it while I cannot even get the basic needs for my own and my family’s sustenance. So, I am forced to go to the rich people for a short-term loan at 50-per cent interest.<sup>112</sup>

Yazbak states, as this *fellah* claimed, that this was the reason why 121,000 dunums of land were sold off between 1934 and 1936, with the average parcel being not more than 52 dunums.

Hillel Cohen, author of *Army of Shadows: Palestinian Collaboration with Zionism, 1917–1948*, also refers to the same period of land sales (1934–36) as being the one in which “thousands of Arabs of all walks of life ... acted contrary to the norms laid down by their national movement.”<sup>113</sup> His argument here is that while it was true that most of the land sold to Zionist-Jews was by the notables, i.e. large landowners, “numerically there were many times more *fellahin* who sold land to the Zionists.”<sup>114</sup> But given the financial conditions confronting the *fellahin*, it seems to be inaccurate to argue that they sold the land in opposition to the national movement in Palestine.

Palestinian peasant resistance starting more than a century ago was the first harbinger of a conflict which throughout has focused on control of land, and has been animated on the Palestinian side by a dynamic often propelled from below rather than from above. It was peasants driven off their farmland by

Zionist land purchases, mainly from absentee landlords, in the late nineteenth and early twentieth centuries, who first understood the nature of the process of colonization affecting Palestine. Their struggle for their rights in turn alerted the urban intellectuals who thereafter played a prominent role in the opposition to Zionism, even as they helped to shape Palestinian identity.<sup>115</sup>

Many note that one of the main reasons why the *fellahin* resorted to selling their land was the economic recession in Palestine during the period of the British Mandate; and it is generally argued, not only for the case of Mandate Palestine, that “farmers’ problems were largely of their own making, with only minor influences due to industrial conditions.”<sup>116</sup>

However it is also important to remember that the economic situation was not exclusive to Palestine; since The Great Depression had begun in the United States in 1929, countries around the world, both rich or poor, were being affected domestically, as were many industries such as agriculture, not to mention international trade. For example, in an article on farm debts during The Great Depression by a member of the US Bureau of Agricultural Economics the author stated that the fact that the debt on “owner-operated farms” and on small farms was significantly heavier than on “other farms among their respective classes” was reasonable.<sup>117</sup> The article goes on to describe how, even with their agricultural loans, due to a reduction in income, farmers were unable to repay their mortgage loans and hence lost farms and land. There is no way of knowing whether this would have been the case with the *fellahin* in Mandate Palestine, however by eliminating the role of the bank and the variable of agricultural loans completely, the in-between was cut out between the indebted *fellah* and the Zionist land purchasers, resulting in the landowners not having a chance to save their means of livelihood. The study concludes by highlighting the significance of agricultural financial institutions: “The depression has shown more clearly that further progress in farm mortgage finance requires greater reliance upon institutions functionally adapted to the nature of the responsibility [and the] elimination of arbitrary loaning restrictions which have no basis in economic experience.”<sup>118</sup>

The JNF did not hide its intentions or goals. In a JNF book, *Land Tenure in Palestine*, thought to have been published in 1917, the authors drew on an example given in a German book, *Das Deutsche Leid* [The German Suffering],<sup>119</sup> where the author complained of the influence of the Slovenes in Styria. Oppenheimer and Oettinger, the authors of the JNF book, referred to this German book as having the solution to the problem: “the buying out of the Slovenian landowners and the settlement of small German farmers upon their former estates, of such farmers who do not need Slovenian labourers.”<sup>120</sup> This was exactly the process used by all Jewish land companies in Palestine, which was to buy out the Palestinian land, especially the large estates and parts of the *musha’* lands, divide it up and settle it with Zionist-Jewish settlers, and ensure that they did not use Palestinian Arab laborers on the land. Thus it had actually been established by the JNF prior to the Mandate that one of the problems it would encounter while purchasing land

in Palestine would be having Arab laborers on Jewish lands; this would have to be considered a national loss for Jews since “the whole of this territory acquired so laboriously with Jewish money and Jewish toil would be completely Arabised.”<sup>121</sup>

This separatist Zionist policy had a great impact on the economy because, once land was under Zionist-Jewish ownership, it was not only no longer available for purchase but was also no longer available for Palestinian laborers to work on. The Jewish Agency made sure of this. Even more significantly, the British Mandate Government was aware of it, as the previous chapter on Zionist intentions for ‘The Protection of Cultivators Ordinance’ indicated. However, as the previous chapter also showed, this ordinance was drafted and amended with the Jewish Agency, and therefore the objective of acquiring ‘empty’ land could still be attained. By doing so, not only was one group buying the land of the other, but it was also making sure that once the object in demand was acquired from the local inhabitants, all ties were cut off from them in order to acquire economic dominance over them, and reinforcing the separatist economy of the Zionist movement. This characteristic is actually unique to Zionism, as most colonial-settler movements have been known to depend on the indigenous population to be the laborers on the land.

Nadan also discussed this in *The Palestinian Peasant Economy under the Mandate: A Story of Colonial Bungling*: “Jews preferred to buy plots from big owners and ... when the availability of large estates diminished as a result of progressive land purchase, they targeted owners of smaller estates.”<sup>122</sup> He explained that *mafruz* land, or the “permanent partition of plots,”<sup>123</sup> was preferred over *musha’* land because unless Zionist-Jews purchased “100 percent of the shares (especially of large estates), it was virtually impossible to create a Jewish settlement.”<sup>124</sup> Arab landowners in the *musha’* system were disinclined to allow a permanent plot to be purchased because “the transfer of a large plot into Jewish hands meant the erection of a Jewish settlement, prohibiting further use of that land by Arabs.”<sup>125</sup> Not only would it mean the loss of tenure over the land, but of course those *fellahin* that worked on the land would also be affected (here Nadan mentioned the Johnson-Crosbie investigation, which found that “about 65 percent of landowners were additionally employed on the farms of others”).<sup>126</sup> Furthermore, Nadan’s book showed that *musha’* lands had many advantages for the development of the land, and that registration of title could have taken place without land reform or land parcellation: “Paradoxically, the most significant effect of land settlement was the transfer of lands from Arabs to Jews, an unexpected and destructive by-product of the reform.”<sup>127</sup>

Once the land had been acquired and was under Zionist-Jewish control, there had to be a method of guaranteeing that it could not be transferred again. In a letter dated 9 June 1921 from Abraham Granovsky, Head of the Jewish National Fund, to the Zionist Commission of Palestine, Granovsky stated clearly that if land was sold to banks or private customers, each parcel of land that was sold to a non-Jew would be lost forever. He gave the example

of the Anglo-Egyptian bank, amongst others, reiterating that the land would then certainly be lost to the Jewish people, and suggested that instead the land could be leased to the banks for a prolonged term, thereby keeping the ownership of the property with the Jewish people and community.<sup>128</sup>

However, with all this it was, and still is, commonly believed by many today that while Zionist-Jews enhanced the economic situation in Mandate Palestine, the Palestinian Arabs had betrayed themselves. “In settler colonies, the caste division between the settler and the idigene is usually built into the economy, the political system, and the law, with particular economic activities and political privileges ... reserved for members of the settler population.”<sup>129</sup> Possibly Zionist penetration was not as noticeable in this part of the land tenure system, especially in comparison to the previous parts. However, the ultimate Zionist-Jewish objective was to acquire land for the Jewish national home; therefore even if Zionist collaboration with the Mandate Government was not as lucid as it was in the other parts of the system, the goal of transferring of title was perfectly clear.

### **Legal Disputes for Land**

In *Colonial Land Policies in Palestine, 1917–1936*, Martin Bunton stated that according to a review of published law reports on land disputes during the British Mandate, the significant disputes that took place were between the government and landowners, or amongst Arab landowners themselves.<sup>130</sup> He referred in particular to *The Law Reports of Palestine ... : [1920–1946]*, edited by Michael McDonnell and Henry E. Baker, as well as to Naomi Shepard’s *Ploughing Sand: British Rule in Palestine 1917–1948*.

After conducting this research using various archival resources, whether at the Central Zionist Archives, the Israeli State Archives, the British Public Records Office, or the Islamic Heritage Centre in Jerusalem, it appeared that the way to determine the nature of land disputes was not on the basis of the few scattered cases found in these places, as there were too many variables involved, but by comparing all the land disputes that existed according to the population make-up of the sub-district as well as who owned most of the land in a specified area in an Arab village, a Jewish village, and a mixed village, as is done in the following chapters. Therefore, because this has already been done in the study of the three villages, the present section does not try to give a proportional representation of the types of land tenure disputes that existed in Mandate Palestine; rather, in keeping with the argument of this book, it sets out to show how collaboration between the Jewish Agency and the Mandate Government existed within the land tenure system.

Prior to the Mandate it was the role of the village *mukhtar* to settle disputes among the villagers. However, once Zionist land companies and Zionist-Jews became the purchasers, the method of resolving tenure disputes needed to be changed. As with other land tenure matters during the British Military Administration in 1918, it was announced that “until further notice the courts

should not give any judgment deciding upon the ownership of land.” This policy remained unchanged even after the 1920 Land Transfer Ordinance had been passed, with the exception of cases on land partition or “actions concerning ownership of land by special fiat of the Attorney General.” In 1922, under the Palestine Order-in-Council, the High Commissioner was finally given the power to establish Land Courts that would hear cases on title to immovable property, and an “Establishment of Courts Order” was passed in 1924 (and was later repealed by The Establishment of Courts Order 1932).<sup>131</sup> Of course, the consequence of this was that land disputes were left unsettled. The purpose of the Land Courts was “to accompany the surveyors from district to district in order to clarify and determine all claims and disputes regarding boundaries of parcels and property rights, so as to arrive at settlement as quickly as possible.”<sup>132</sup> This will be seen in Chapters Five, Six, and Seven.

Land disputes were an important part of the land tenure system, and after having survived all the other parts of the system, this was the last chance for tenure to be refuted. In a confidential record of a meeting in January 1936 between Wauchope, the High Commissioner, and the Head of the Jewish Agency’s Political Department, Moshe Shertok, one of the major points raised by Shertok was “the sore subject of land disputes.”<sup>133</sup> The matter would appear to have been discussed many times before, but in this meeting Shertok adopted a stronger stance. He claimed that up until then he had been the “buffer” between the Government and the Zionist land companies in order to help the British Government, and furthermore that he had been “counselling patience to the companies” so as to find a compromise on the issue of land disputes.

I could no longer take this attitude from now on. Government could not beat us with two ends of one stick – both make it impossible for us to buy new land and take away from us land which we had already bought. Seeing that our land purchase opportunities were going to be restricted, we would have to insist that every dunam we bought should remain in our hands.<sup>134</sup>

The restrictions referred to here by Shertok were the 1940 Land Transfer Regulations. The purpose of land disputes was to sort out in an official capacity the tenure of the land; therefore even after a transfer of title had occurred, if there was any question as to the validity of that transfer it had to be resolved before tenure rights and registration could be finalized.

It would seem that the more appropriate action would have been to review the methods of land purchases to avoid disputes altogether, and furthermore to demand that, if land restrictions were to be imposed, all land tenure disputes should be judged in favor of the Zionist Jewish landowners. The High Commissioner sympathized with the Jewish Agency, but said that:

The trouble, however, was that it was impossible in many cases to do anything before the dispute had been settled by a decision of a competent

Court and even when the claims were fictitious Government could not dispose of them if the claimants insisted on going to Court.<sup>135</sup>

The two major complaints by Shertok on the point of land disputes were first that the British Mandate Administration was not executing the judgment of the Land Courts, and second that the cases were taking too long (“months and even years”) to be resolved. The High Commissioner claimed that he too was concerned with these issues and would make a point of looking into them. There were also other matters of concern to Shertok, who complained that when it came to land disputes there were “difficulties of procedure which had to be removed and gaps in the legislation which had to be filled,” such as the ability of a party to defy the judgment of a Magistrate’s Court.

However, for Shertok the most significant of all the concerns over land disputes was “the question of the administrative practice and of the whole attitude of the Administration with regard to land disputes breaking out between Jews and Arabs.” In this, Shertok was referring to the Government’s reluctance “to drive any Arab away from Jewish land no matter how flimsy the pretext on which he took hold of the land ... there was an incentive for them to encroach and trespass.”<sup>136</sup> Strangely, Shertok was complaining of the ability to defy a Magistrate’s Court judgment, even though it will be seen to the contrary in a land dispute in one of the villages that was tried in a Magistrate’s Court (Chapter 6: Cases: Land Transfers and Question of Title).

While there were many land dispute files available in the Israeli State Archives, as well as disputes over *waqf* lands in the archives of the Islamic Heritage Centre, it was decided that Zionist interaction in this part of the land system would be better scrutinized within the context of all the disputes in a village, as opposed to singling out cases on their own. It will be seen that not only did Zionist collaboration with the Mandate Government exist within the land tenure disputes, but that the types of disputes reflected the population and landownership of the village concerned.

## **Conclusion**

While all the components of the land tenure system are found to be linked to one another, the connections between the different processes have perhaps been made more evident in this chapter. The main objective of the Jewish National Fund and all Zionist organizations was to purchase as much land as possible for Zionist Jewish settlement. This chapter has shown that the cadastral survey and registration of title (through the parcellation of *musha’* lands) were used as tools in the land tenure system to achieve their objective. The main argument here is that in order for land to be settled, it needs first to be surveyed, so that the title can be registered. The only land surveyed was that under Zionist demand, along the coast of Mandate Palestine and in the north. These were also the lands with the best quality of soil in Palestine, and

therefore would not require the expenditure needed to develop other lands for agricultural production.

With transfers it was more difficult to show how the British Mandate government facilitated Zionist land purchases, and in this regard the chapter highlighted two points. The British Government did not prevent the separatist methods of Zionist Jews in Palestine, therefore allowing two economies to form within Palestine, one of which flourished while the other was declining. Second, the arguments that Zionist Jews and British Mandate land reforms were to the advantage of the *fellahin* are misconceptions. When Jewish immigrants came to Palestine they did not integrate into the already-existing Palestinian economy, but rather separated themselves from it. Once the land had been purchased, there was no other form of financial interaction between Zionist Jews and Palestinian Arabs, and the British Mandate Government did not change this. Therefore, the common Zionist argument about Zionist Jews developing Palestine and benefiting the local inhabitants cannot be valid, as can be determined by the basics of economics.

In terms of the factors of production, i.e. land, labor, and capital, the following issue is clear: if the land was purchased from the *fellahin* who could not afford to keep it, and they were then not permitted to earn wages by working on it either; if they did not know how to do anything else, what were they all going to do with the capital? While the British Government cannot be blamed entirely, it is difficult to understand why it took so long for them to interfere, for example, with the 1940 Transfer Regulations, knowing that the JNF and the Jewish Agency had been studying and laying out their objectives years before the Mandate had even begun.

Finally, on the matter of land tenure disputes British and Zionist collaboration is not as apparent as it had been in the actual disputes; however, behind the scenes the British Mandate Government's handling of land disputes tried at the very least to facilitate the needs of the Jewish Agency. Based only on this, it is difficult to conclude any collaboration between the two, since land dispute cases vary, not only in what they are concerned with, but also in the actors involved, and of course in the actual handling of the case. For this reason land disputes have to be compared and analyzed as a group, since to single out cases would undoubtedly lead to a biased approach. This is why the part of the land tenure system concerned with land disputes is better seen in the village chapters, where village disputes reflected the types of tenure problems that existed.

The village constitutes not only the keystone and highest hope of the Jewish National Home, but likewise the position which must face the gravest dangers; and hence the one most requiring support. As a weak plant it called for particularly careful tending. Other matters must take second place in the activities of the Jewish National Fund.<sup>137</sup>

In the three chapters that follow, the extent of Zionist involvement in village land settlement processes, including purchases, parcellation of *musha'* land,

and legal disputes over tenure, will show that this point by Granovsky was not just theoretical, but so practicable that it was visible in at least one case, if not more.

## Notes

- 1 J.B. Harley and Paul Laxton describe this link to Foucault and Anthony Giddens in *The New Nature of Maps: Essays in the History of Cartography* (Baltimore, Md.: Johns Hopkins University Press, 2001), p. 54–55.
- 2 Dov Gavish, *A Survey of Palestine under the British Mandate, 1920–1948* (London, New York and Palestine Exploration Fund: RoutledgeCurzon, 2005), p. xiv.
- 3 *Ibid.*, p. xii.
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- 15 Gavish, *A Survey of Palestine*, p. 125.
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- 26 Frederic M. Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv: Shoshany's Printing Co., 1935), p. 269.
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- 29 Gavish, *A Survey of Palestine*, p. 59. Since the building was in Tel Aviv, Gavish must be referring to the sub-district of Jaffa.
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- 31 *Ibid.*, p. 59.
- 32 Gavish, *A Survey of Palestine*, pp. 63–64.
- 33 *Ibid.*, p. 64.
- 34 By the end of the Mandate, topographical maps had been made for all of Palestine except for the lower Negev (cf. Salman Abu Sitta, "Map and Grab, book review of Gavish's *A Survey of Palestine ...*" p. 102).
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- 39 Gavish and Kark, "The Cadastral Mapping of Palestine, 1858–1928," p. 79.
- 40 Tafakji was Mapping and Survey Director at Orient House and has many publications on the subject of Palestinian maps, Israeli settlements, and the Jerusalem Municipality.
- 41 Interview with Khalil Tafakji of the Mapping and Geographic Information Systems Department of the Arab Studies Society, Jerusalem, 26 August 2007.
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- 52 Ibid.
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- 58 Viscount Herbert Louis Samuel, *Memoirs: By Viscount Samuel* (London: Cresset Press, 1945), p. 163.
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# 5 The Case Studies

## Sarafand al-Kharab

### **Introduction to the Case Studies**

It is now necessary to combine the information regarding the formation of the land tenure system with that regarding the implementation of it on the ground by investigating the land registry records in Palestine during that period. Only then can it truly be determined whether or not the land tenure system in the British Mandate in Palestine facilitated Zionist Jewish land acquisitions, along with the extent of Zionist Jewish involvement in the land settlement process and the tenure system.

Many people have attempted the search for the land registry records. In *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*, historian Michael Fischbach emphasized their importance in his own research, which assessed the value of Palestinian refugee property and compensation, noting that “by far the richest source of data on the refugee land losses were the land registers and land tax data compiled by the British during the Palestine mandate.”<sup>1</sup> After the British withdrawal from Palestine, the documents ended up in different places.

### ***History of the Land Registry Records***

In July 1944 the Land Registry Office in Jerusalem was destroyed by a bomb and the records were severely damaged: “some registers were destroyed, while others were damaged by fire and water.” A Land Registers Ordinance was passed in 1944 to enable the damaged registers to be copied (in different colored inks to identify the copies), while those that had been completely destroyed or were regarded as illegible would be publicly advertised in the *Palestine Gazette* and undergo “a quasi-judicial enquiry.” In addition, every new entry would have to be certified by a senior official approved by the Land Registers Ordinance.

It became obvious from this loss that a copy of the land records was needed. However nothing was done until October 1947, when the British Government was preparing to vacate Palestine. Fischbach describes what happened:

That December, three Watson recording cameras were purchased in England and flown to Palestine. Supplemented with two cine cameras, British officials began photographing their land registers in January 1948 at the former Park Hotel in Jerusalem. As of November 17, 1947, the mandatory government possessed 844 Ottoman land registers, 2,192 of its own registers of deeds along with 1,424 registers of title produced by the land settlement process ... Units from the British army and the mandatory police brought the documents from the various land registries scattered throughout Palestine to Jerusalem. Those relating to the Gaza, Nablus, Tulkarm, and Beersheba districts later were returned but the rest were kept in Jerusalem after the process was completed.<sup>2</sup>

This process had two main problems: it was a time of war and the workers frequently had to stop abruptly because of gunfire, while errors in filming made it “virtually impossible to coordinate the films in order to see both halves of the same land transaction.”<sup>3</sup> Furthermore not all the registers of deeds were even photographed. Nevertheless, the films were sent to the Crown Agents for the Colonies at the Colonial Office in London in August 1948, and were then developed by a division of Kodak called ‘Recordak.’<sup>4</sup> These films remained in London until Israel made a formal request for them in 1951, at which time John Measham Berncastle of the UNCCP<sup>5</sup> asked for the existing set be handed to the Commission. Since it was an international organization the films could be divided from there between the Jordanian and Israeli Governments when the Commission came to an end. Another suggestion by Berncastle was for the originals to remain with the UNCCP and for duplicates to be made and divided between the two governments.<sup>6</sup>

Attempts were made to access the UNCCP archives in New York during summer 2006. However, while the request was recognized, it was made clear that it would be fruitless. The only time the archives had been opened for research was for Professor Michael Fischbach; after the publication of his *Records of Dispossession* it was highly unlikely that anyone would be allowed access to the archives again, although access to the UNCCP’s index was permitted.<sup>7</sup>

As for the original land registry records, they were to be placed by the British with “the community having the paramount interest in it.”<sup>8</sup> The records left in Jerusalem were taken into the custody of the ‘Supreme Moslem Council’ and the Jewish Agency. The Supreme Moslem Council received the registers of some of the Beisan area, Acre, half of Safad, Hebron, Jaffa, Jenin, and Nazareth (except the Plain of Esdraelon), while the Jewish Agency took custody of the registers of Tiberius, half of Safad, some from Jaffa to Tel Aviv, Haifa (“not for custody but only for transmission to Haifa”), and the Plain of Esdraelon. Spry’s memorandum (see n.5) stated that these steps had been taken following discussions, and with the general agreement of Arab and Jewish representatives.<sup>9</sup>

From that point onwards the dispersal of the original land records was wide-ranging. The Jerusalem records were left with the International Red

Cross of Geneva at the Jerusalem YMCA. The Israelis reported that the Beersheba district registers had been lost. Hadawi<sup>10</sup> took some from the Russian Compound to the Old City. Almost all the registers accepted by the Supreme Muslim Council were hidden in the complex of Jerusalem's Haram al-Sharif under the control of the Jordanian Arab Legion; they were later kept by Ya'qub 'Atallah, a former employee of the British Mandatory land department, who had been appointed as the first land registrar in the West Bank in December 1948. This is how the records arrived at their current residence, the central office of the Department of Lands and Survey in Amman, Jordan.

Fischbach reported in a paper presented in 2003 that the Jordanian Ministry of Finance's Department of Lands and Survey and the Foreign Ministry's Department of Palestinian Affairs, funded by the Prime Minister's Office, had agreed to create a computerized database of the UNCCP records and that this had been completed in July 2001.<sup>11</sup> While the research for this book confirmed the existence of the computerized database of the UNCCP records at the Department of Lands and Survey in Jordan, this was not the case for the Ottoman and British land registers. Staff of this department in Amman told the researcher in August 2007 that digitization of the Ottoman *tabu*<sup>12</sup> had just begun, and would in due course be followed by the British Mandate land registry records. The researcher was also informed by Fischbach that these were the UNCCP's records only, and were not the original land registry records of the Mandate.<sup>13</sup>

In order to study the implementation of the landownership system on the ground in Palestine, and after having failed to access the UNCCP archives in New York, the research for this section had to rely entirely on the land registry records at the Department of Lands and Survey in Amman. All these factors, along with the extensive and rough journeys the land registry records had endured since 1948, and their continuous concealment from the public, made it difficult to determine whether the records might or might not have survived, and what they contained. Fortunately a great deal remained extant, as far back as the Ottoman *tabu* and up to the maps that had been surveyed under Jordanian rule.

While wide-ranging, the archives from the British Mandate are nevertheless incomplete and somewhat inconsistent. For example, a considerable number of surveyors' notebooks have been kept, as well as hundreds of cadastral maps. However, in searching the archives – the majority of which are separated by towns or villages, most from the sub-districts of Ramleh or Jaffa – the researcher discovered, simply by looking at the numbered labels of the registration blocks, that files were missing. A set of records for a single village would typically include, though would not be limited to: the draft and final registration block maps; the Schedule of Claims, Schedule of Decisions, and Memorandums of Claims for each registration block; public and progress notices, preliminary notices of intended settlement, and notices of the reading of the Schedule of Rights; folders for boundary disputes, government claims,



parcellation notices, and the Village Settlement Committee; and folders for the cases (legal disputes), each containing the proceedings and decision, witness summons and summons to the parties involved, documents for Power of Attorney, memorandum of claims, and general correspondence between legal representatives and the Land Settlement Office. However, certificates of transactions were rarely found within the village records.

Chapters Three and Four showed that the land policies, from which the landownership statistics stemmed, were shaped with Zionist participation in one form or another in every part of the British Mandate landownership system. Therefore it was necessary to link the landownership system with the landownership statistics. This was done by studying the implementation of the land policies of the Mandate Government, and looking in detail at three villages: one where Arabs owned most of the land, another where most of the land was owned by Jews, and lastly a mixed village in which landownership was half Arab and half Jewish. In this way it was possible to determine whether implementation of the landownership system differed from one area to another in Mandate Palestine.

### *The Selection Process for the Three Villages*

The British Mandate Government in Palestine was divided into six districts: Gaza, Lydda, Jerusalem, Samaria, Haifa, and Galilee. Initially, those districts were then divided into 18 sub-districts; however two of them (Bethlehem and Jericho) eventually (in 1944) became a part of the sub-district of Jerusalem, leaving the following 16 sub-districts: Acre, Beersheba, Beisan, Gaza, Haifa, Hebron, Jaffa, Jenin, Jerusalem, Nablus, Nazareth, Ramallah, Ramle, Safad, Tiberius, and Tulkarm.

Within each sub-district there were several villages and an urban centre, after which the sub-district was named – for example, the city of Jaffa in the sub-district of Jaffa, or Jerusalem city in the sub-district of Jerusalem. However, in practice the government headquarters in one sub-district had responsibility for at least one or two others. In most cases, too, each sub-district had its own administrative division, containing a Land Settlement Office, located in the urban centre of that sub-district, to which all the villages within the sub-district were linked (exceptions were villages in the sub-district of al-Ramleh, where the Schedule of Decisions for the villages were recorded in the Land Settlement Office of Jaffa). Table 5.1 shows the administrative hierarchy of the Mandate government. The first column represents the six districts, the second column shows their headquarters, and the last column shows the sub-districts run by those headquarters.

There were 793 Arab Palestinian villages in Mandate Palestine, whose average size, in terms of land, was 13,741 dunums, and 163 Zionist Jewish villages or “expanded colonies,” with an average size of 4,520 dunums. While the author has used the terms ‘Palestinian Arabs’ and ‘Zionist Jews’ throughout this book to refer to the populations involved, it is important to

Table 5.1 Districts, headquarters, and sub-districts of Mandatory Palestine in 1945<sup>1</sup>

<i>District</i>	<i>Headquarters</i>	<i>Sub-Districts</i>
Gaza	Gaza	Gaza Beersheba
Lydda	Jaffa	Jaffa Ramle
Jerusalem	Jerusalem	Jerusalem Hebron Ramallah
Samaria	Nablus	Nablus Jenin Tulkarm
Haifa	Haifa	Haifa
Galilee	Nazareth	Nazareth Acre Beisan Safad Tiberias

“Table 2.4: District and Sub-District Official Names and Areas (1945)” from Salman H. Abu Sitta (2004) *Atlas of Palestine 1948*, London: Palestine Land Society, p. 12.

note that the British Mandate classification used ‘Arabs’ and ‘Jews.’ Therefore, to avoid confusion when examining the three villages, the British Mandate classification was used. It is also important to note that in this context the term ‘village’ is used to denote a place with a population of less than 5,000.<sup>14</sup>

For the purpose of this research, the selection of the three villages was undertaken in two steps, the first being selection, according to population, of the sub-district in which the village would be located. This was necessary because, if there were to be differences or discrimination in the implementation of the land policies, the majority population of the sub-district might influence the tactics of the Land Settlement Office responsible for that village. Therefore the village with land that was mostly owned by Arabs would also be from a sub-district where the population consisted mostly of Arabs; the Jewish village would be from a sub-district where the majority population was Jewish; and the mixed village from a sub-district where the population was as close as possible to 50 percent Arab and 50 percent Jewish. Second, once the sub-district had been chosen according to the make-up of the population, the village would be selected based on landownership within the already-chosen sub-district, using the same guidelines.

### *Village Statistics of 1945*

To carry out this procedure, it was necessary to use a reliable source for the population and landownership data of Mandate Palestine. For this reason, the source to which all secondary sources refer was employed: Sami Hadawi’s

*Village Statistics 1945: A Classification of Land and Area Ownership in Palestine.* In the opening sentence of his foreword, Hadawi states,

This publication is not meant to be a study of the land situation in Palestine as it existed during the period of the Mandate ... [rather it aims] to reproduce the important yet little known detailed data which the Palestine Government had put out during the latter years of the Mandate.<sup>15</sup>

Even though almost half of the Palestinian population in 1944 was rurally-based, continuous data on village development was not available, especially for the Arab villages. Jewish villages, on the other hand, were planned, organized, and funded by Jewish organizations; so, although it was not in the hands of the British Government, there was plenty of information about them.

In the mid-1930s, the Mandate government provided the *mukhtars* (plural of *mukhtar*, meaning “the village headman”<sup>16</sup>) of the village with Village Notebooks “to record information on agriculture, public works and other related matters”; but these were not used consistently.<sup>17</sup> The first compilation of this information was the Palestine Government’s *Village Statistics*, printed in 1936 when the government of Palestine was asked to accumulate statistical material for the *Report of the Palestine Royal Commission* (the Peel Report).<sup>18</sup> Further compilations appear to have been published in February 1938 and April 1943,<sup>19</sup> but Hadawi did not mention any further issues after that.<sup>20</sup> As Abu Sitta’s *Atlas of Palestine 1948* explains,<sup>21</sup> the difference between the 1943 and 1945 publications is evident: the 1943 edition only gave information on Jews and non-Jews, whereas the data in the 1945 edition was published in the form of a large book (37 inches wide). Thus when the Mandate of Palestine came to an end, the last statistics were those of 1945. They were collected and published, with explanations, by Sami Hadawi, who as noted, was the Palestine Government’s Official Land Valuer and Inspector of Urban Tax Assessments between 1935 and 1948; Hadawi was also “the officer who was entrusted with the task of compiling the figures on classification of land and area ownership.”<sup>22</sup> As he commented:

The original document had limited circulation when it was first published, and with the termination of the Mandate, the last edition ceased to be available. Hence, public opinion remained largely ignorant of the facts, thereby giving a semblance of authenticity to the extreme form of Zionist propaganda allegations that Palestine was a Jewish country and that the Arab inhabitants constituted an insignificant minority of nomads who roamed the countryside. The reproduction of this official material, despite its inaccuracies, should help to set the record straight and ensure that the Arab personality of Palestine is not lost upon serious researchers.<sup>23</sup>

Not only does *Village Statistics 1945* provide data on population and land-ownership by village and town, but it also gives figures for cultivable and uncultivable land. Since 1948 this publication has been one of the most widely used sets of data for the Mandate in Palestine, whether in its original format or in the more convenient version published by Hadawi in 1970. The best example to illustrate this came shortly after 1948, with the original publication of the statistics by the Government of Palestine.

John Measham Berncastle had worked for the Palestine government since 1935 as an Assistant Agent and was then an Acting Agent for the Haifa (Reclaimed Area) Estate until 1938, at which time he became a land officer and eventually the Chief Land Valuer in the Department of Land Settlement. After the end of the Mandate in 1948, he worked for the Ministry of Local Government in Britain, and then in 1951 he went to work for the UNCCP. Berncastle's assignment was to set a global evaluation on Arab Property; this "Global Estimate of overall refugee losses" gave an approximation "of how much land the refugees had left behind and how much it was worth." So the first step was to find records but, more specifically, for them to be neutral. Having worked for the Mandate government for over a decade, he knew of the land registration and taxation records that the British had kept until 1948. In 1951 he went to the Colonial Office in London to access the records and was given a copy of the government publication of *Village Statistics 1945*.<sup>24</sup> Fischbach quoted from the UNCCP records the following comment by Berncastle about the data in *Village Statistics*; this was indicative of:

years of conscientious work by officials of the mandatory government and may at least be regarded as unbiased since they were prepared at a time when their use for the present purpose was unthought of. Although it may be easy to point to inaccuracies of particular figures from which the statistics were compiled, e.g. of assessments of particular properties, nevertheless when taken as a whole, they are at least as likely to be accurate as the opinions of individuals, especially of interested parties.<sup>25</sup>

After eliminating many options for ways of deciding what land could be accounted as refugee land, and aware that some Arabs were critical of the accuracy of *Village Statistics 1945*, Berncastle nevertheless found it to be unbiased, as well as the speediest and most accurate method of verifying the amount of land in each village and how much of it was Arab land; this meant it was possible to calculate refugee land losses.

Salman Abu Sitta's *Atlas of Palestine 1948* is another significant and fairly recent source that used data from *Village Statistics 1945*. In his second chapter he discusses the problems of the population and landownership figures of *Village Statistics*, noting that

The main defect in the *Village Statistics* lies in the classification of land for tax purposes which in turn affected the extent of Arab ownership ...

No problem arose in respect of Jewish-owned lands because Jewish purchases had been properly surveyed and registered.<sup>26</sup>

He also explains that the landownership statistics were from two sources. The first was the *Tax Distribution Lists* that had been compiled for villages where settlement of title had been completed (thus excluding those lands where the government had not completed the settlement of title). This meant that if the land was not taxable, it was highly unlikely it would be on the list (ignoring non-taxable land was common practice even under the Ottoman government). The Department of Land Settlement then noted this difference between the size of the village area compared with the size of the village according to “the fiscal records for non-settled land,” and the difference between them was then included under the category of ‘Public’ land, even if it was not owned by the government. As Abu Sitta remarked, this did not seem to cause any harm at the time. When ‘settlement of title’ land operations reached a village, the officials “would adjust the ownership situation to agree with the actual position.”<sup>27</sup>

It can therefore be concluded that, even though it was known that *Village Statistics* had some faults in its calculations because of its dependence on Mandate fiscal records, it remains the most accurate data available to researchers; it is also considered to be the most neutral. For these reasons the selection of the three villages for this case study was based on information from *Village Statistics 1945*.

### ***Population and Landownership: Choosing the Villages***

So as to eliminate additional variables while researching the implementation of land policies in the villages, the following points were decided on, as explained below:

- 1 The villages would be on land regarded as being of ‘first’ or ‘medium’ quality but not of ‘poor’ quality.<sup>28</sup>
- 2 The villages would be within what is now the State of Israel.
- 3 The villages would not be from the sub-district of Jerusalem.

As mentioned in Chapter One, there were three grades of soil (first, medium, and poor), reflecting the fertility and cultivability of the land and influencing irrigation as well as the crops that could be farmed. Thus there would have been too great a difference if one of the villages contained poor soil for cultivation while the others were of the first or top quality; but it would also have been too constrictive to state that all soil grades had to be only of first or medium quality, because population and landownership still needed to be taken into consideration. The second decision was concerned with keeping (literally) within the boundaries of this research: that is, the land policies of the government were implemented in what is now the State of Israel, and

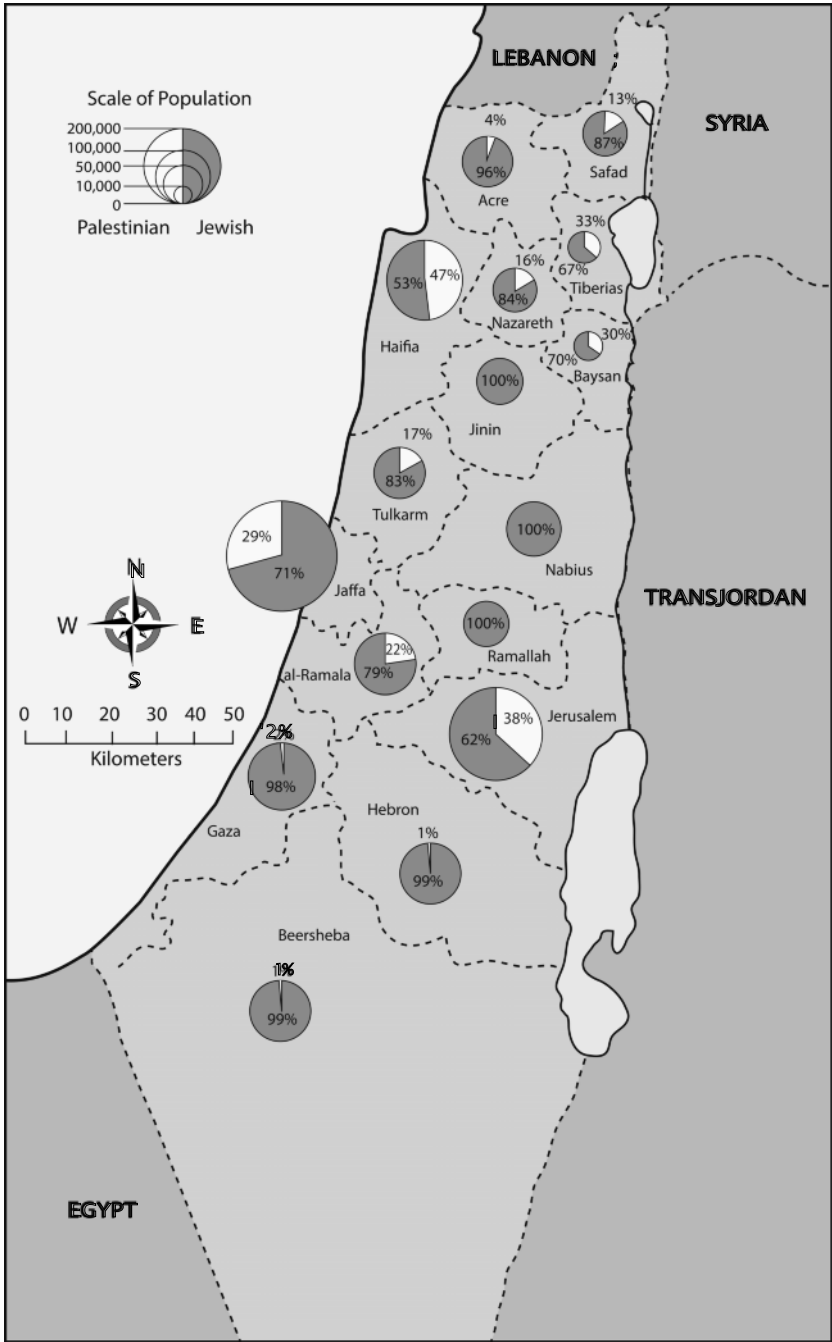
under the British Mandate, land in what is now called the West Bank was not under purchase demand by Zionist Jewish immigrants. Therefore, since it was already known that the land policies for these areas were very different, there was no point in making a comparative study of their implementation.

Lastly, the sub-district of Jerusalem was withdrawn from the list of sub-districts from which the villages were to be chosen; again, it carries with it too many variables. Particularly because of its religious significance and population makeup, the administration for that sub-district has always been unique, as is further proved today through its divided status. Therefore the sub-districts from which the villages could not be selected were Beersheba, Hebron, Jenin (although some of it forms part of Israel, the majority of it remains within the West Bank), Jerusalem, Nablus, and Ramallah. This left the following sub-districts from which to choose: Acre, Beisan, Gaza (it is important to note that the sub-district of Gaza had different boundaries from what is now known as the Gaza Strip, so most of this sub-district is now part of Israel), Haifa, Jaffa, Nazareth, Ramleh, Safad, Tiberias, and Tulkarm.

The government of the British Mandate kept very detailed population statistics; however the only Palestine population censuses that they undertook were on 23 October 1922 and 18 November 1931. The Department of Statistics stated clearly in *Village Statistics 1945* that the population figures were estimates but, as already noted earlier, these statistics are still considered to be the most accurate and neutral data available. Table 5.2 and Map 5.1 show the number of Arabs and Jews in each sub-district, and their respective percentages within it. The un-shaded rows represent the sub-districts that have been eliminated from the selection process.

Table 5.2 Population of Palestine in 1945 (village statistics)

Sub-District	Arabs		Jews		Total
	Population	Percentage	Population	Percentage	
Acre	65,380	95.68	2,950	4.32%	2,950
Beersheba	53,550	99.72	150	0.28%	150
Beisan	16,590	70.33	7,000	29.67%	7,000
Gaza	134,290	97.89	2,890	2.11%	2,890
Haifa	120,120	53.47	104,510	46.53%	104,510
Hebron	89,570	99.91	80	0.09%	80
Jaffa	109,700	29.35	264,100	70.65%	264,101
Jenin	56,880	100.00	0	0.00%	0
Jerusalem	147,750	59.59	100,200	40.41%	100,200
Nablus	89,200	100.00	0	0.00%	0
Nazareth	38,500	83.51	7,600	16.49%	7,600
Ramallah	47,280	100.00	0	0.00%	0
Ramle	97,850	76.88%	29,420	23.12%	29,420
Safad	46,920	87.50%	6,700	12.50%	6,700
Tiberias	26,100	66.58%	13,100	33.42%	13,100
Tulkarm	71,240	82.70%	14,900	17.30%	14,900



Map 5.1 Palestine 1946: Distribution of population by district showing percentages of Jews and Palestinians. Map copied from [www.palestineremembered.com](http://www.palestineremembered.com)

It is evident from Table 5.2 that the only sub-district in which Jews constituted a majority of the population was Jaffa. However for the mixed and Arab villages it was not so straightforward. Haifa was initially chosen for the mixed sub-district because it had an almost 50:50 ratio of Arabs to Jews, which made it the ideal mixed sub-district. However, due to restricted availability within the land registry archives, not many villages in Haifa were available, and of those that were not a single one was a mixed village. It was therefore necessary to return to the population data table (Table 5.2) and select another sub-district that could be considered as mixed. The next closest mixed sub-district was that of Tiberius, with a Jewish population that constituted 33.42 percent of the total.

Finally for the Arab sub-district there were many villages to choose from: Acre, Beisan, Gaza, Nazareth, Ramleh, Safad, and Tulkarm. It was decided, however, that regardless of the availability of the archives, if Jaffa was to go to be the Jewish sub-district with a still-significant Arab population of almost 30 percent, the Arab sub-district should also have a similar ratio of Jews. This narrowed things down to the sub-districts of Beisan and Ramleh, both of whose populations included at least 20 percent Jews. In the event, it was the accessibility of the records that determined that the final choice for the Arab sub-district would be Ramleh.

With the three sub-districts that were chosen based on population – Ramleh, Jaffa, and Tiberius – the next step was to choose villages within these sub-districts that reflected the same majorities, but by population rather than by landownership. It would be more or less impossible to mention the numerous villages that had available records in the Jordanian Department of Lands and Survey without listing an entire index of villages. Ideally, the selection of the Arab and Jewish villages would have been based on average land figures, the average size of an Arab village being 13,741 dunums, while the average Jewish village was 4,649 dunums;<sup>29</sup> thus for the mixed village, the average of these two figures suggested a size of 9,195 dunums. However this was not feasible and the final selection of the villages was determined mostly by what was available in the archives.

Furthermore, just because the name of a village was listed did not mean that all the necessary files were present. Sometimes there might be a few disputes available but not a single map or schedule of title for a single registration block. Therefore, based on the availability and the time permitted by the Lands and Survey Department, it was decided that the maximum size of each village would be 10,000 dunums according to the listing in *Village Statistics 1945*. This was to ensure that the three chosen villages could be completed within the designated research period.

So, keeping in mind the availability of the land registry records, the amount of time permitted to access the archives, and the goal of studying three villages, the following final selections were made. The Jewish village in Jaffa was represented by Al-Haram, which consisted of 8,065 dunums, 4,745 of which were owned by Jews, and 2,681 by Arabs. For the Arab village, Sarafand al



Kharab was chosen; of its total of 5,503 dunums, 3,545 were owned by Arabs and 1,611 by Jews. Finally the village of Yaquq in Tiberius was selected for the mixed village; it consisted of 8,507 dunums of which 4,229 were Arab-owned and 4,275 were owned by Jews.

In this and the following two chapters, the land registry records for these three villages are closely examined in order to provide a profile that is as comprehensive as possible. This will enable the issues within each village and the administrative practices of the Mandate government to be scrutinized, based on the population make-up of the administrative area and the land-ownership of the individual village. Through a thorough analysis of the landowners in the village, along with an examination of the parcellation and registration, transfers, and tenure disputes, the extent of Zionist involvement will be seen. Furthermore the involvement of Zionists in each of these sections may have differed according to the overall landownership of Zionist Jews within the village, therefore requiring the amount of land owned to be established first.

### **Location of the Village of Sarafand al-Kharab**

The village of Sarafand al-Kharab was situated in the “middle of the coastal plain” of British Mandate Palestine (PGR131149), in the sub-district of al-Ramleh, 7 kilometers away from the city of al-Ramleh.<sup>30</sup> It was also known as Sarafand al-Sughra (“the smaller Sarafand”) in order to distinguish it from Sarafand al-Kubra (“the larger Sarafand”), another village just five kilometers away – also located in al-Ramleh – and more commonly known as Sarafand al-‘Amar.

### **Origins and History**

*Kharab*, in Arabic, means ‘ruins’ or ‘wreckage’; thus Sarafand al-Kharab translates directly as “Sarafand of the ruins,” whereas its sister village, Sarafand al-‘Amar means literally “Sarafand the built-up.” Historically, Sarafand al-Kharab was reduced to ruins on several occasions. The origin of the name is uncertain. Shurrab believes it was connected with an event in the 1920s involving the British,<sup>31</sup> but Khalidi offers a more feasible history, having traced the village back to the sixteenth century through Ottoman records that listed Sarafand al-Kubra (the nearby village). From these records it may be assumed that both villages had been in existence since 1596. Edward Robinson, who passed by the villages in 1838, recorded another account in 1841, describing one as populated while the other was in ruins. The *Survey of Western Palestine* maps show that the village was repopulated in the late nineteenth century.<sup>32</sup> Shurrab and Khalidi both describe how Sarafand al-Kharab was again reduced to ruins in the late 1920s.<sup>33</sup> It was burned by the British, in revenge for the killing of drunken British soldiers who had attacked the village, “violating the sensibilities of the inhabitants” and

apparently committing some offence that enraged the inhabitants.<sup>34</sup> As a result, much of the population fled to the surrounding villages; however, Sarafand al-Kharab was eventually restored.

In 1931 there were 206 houses in Sarafand al-Kharab. Made of mud and straw, or cement, they were arranged in rows, and were attached to one another. The villagers had built a school in 1920; this evolved into a full elementary school and by the 1940s had 258 pupils from the village and from the neighboring villages of Wadi Hunayn, Bir Salim, and al-Nabi Rubin. A girls' school was also opened in 1945, with an enrolment of 46 students.<sup>35</sup> Sarafand al-Kharab was an agricultural village, and the fertility of the soil was due partly to the underground water basins that existed in the village and were the main irrigation source.<sup>36</sup> The villagers drilled wells that allowed for the cultivation of fruit and vegetables, with citrus fruit being the main crop.<sup>37</sup> Since the economy of the village depended on the cultivation of the land, the livelihoods of the inhabitants thus depended on their ownership of that land.

### **Statistics for Ramleh and Sarafand al-Kharab**

According to Hadawi's *Village Statistics 1945*, in 1931 the sub-district of Ramleh had a total population of 127,270, of which 97,850 were Arabs and 29,420 were Jews.<sup>38</sup> The area of Ramleh was 870,192 dunums, of which 686,056 were owned by Arabs, and 122,159 were owned by Jews; the remaining 61,977 were owned by the government and were therefore classified as public land. *Village Statistics 1945* lists 100 villages in the sub-district of Ramleh, 20 of which could be classified as predominantly, if not entirely, Jewish towns or villages with populations ranging from as few as 20 inhabitants to the largest, the town of Rehovot, with 10,000 inhabitants.

The total population of Sarafand al-Kharab was 974, of which 971 were Arabs and 3 were Jews. In 1944/45, the population had reached 1,040 people, 930 of whom were Muslims and 110 were Christians; there were no Jews.<sup>39</sup> In that year the village consisted of 5,503 metric dunums; 4,798 dunums were cultivable and 33 dunums were built-up. Since the primary crop was citrus fruit, 3,148 dunums were exclusively for citrus and bananas, and 268 dunums for cereals.<sup>40</sup> Arabs owned 64 percent of the land (3,545 dunums), 30 percent was owned by Jews (1,611 dunums), and 6 percent (347 dunums) was publicly owned. By 1944/45, as these population and landownership statistics show, Sarafand al-Kharab was an entirely Arab village; even so, according to Hadawi, although there were no Jewish inhabitants in the village, Jews owned 1,611 of 5,503 dunums (about 29 percent).<sup>41</sup>

Because of the difficulty of finding any other information from secondary sources that would be relevant to this case study, the study of this village was entirely dependent on the land records of the British Mandate in Palestine, now located at the Department of Lands and Survey in Amman, Jordan. The village of Sarafand al-Kharab was located in the southern district, in the

sub-district of al-Ramleh, and consisted of a total of 15 registration blocks. Each block was divided into parcels, the number ranging from a block of only two parcels to one with 111 parcels.

The village archives found in Amman contained the following files. Each of the 15 blocks was separated into a folder, each block folder containing the preliminary and final maps, and sometimes even the croquet maps (maps listing features under consideration or development). The Schedule of Rights, in English, was also included, usually along with at least one other copy in Arabic or Hebrew. There were 16 legal cases concerning the village, as well as other folders for various matters, such as correspondence that took place between 1928 and 1929, land registry transactions in 1929, plans, boundaries, and roads, general claims and schedules of claims, cases pending at the magistrate's court, applications for partition, annexation of parts of blocks, and exchanges of parcels. There was also a folder with all the attachments from the mortgage leases, certificates of succession and parcel partition, and *kushans* (title deeds).<sup>42</sup>

### **Landownership**

To understand the extent of Zionist involvement within the village land settlement process, the amount of land owned by Zionist Jewish companies and individuals needs to be determined. As noted, the area of Sarafand al-Kharab, according to Hadawi, consisted of 5,503 metric dunums in 1944/45. However, as indicated by the British Mandate archives at the Lands and Survey department in Amman, the village consisted of 15 blocks, and based on the final maps, the total of those blocks was 10,046.16 metric dunums. But when the figures were calculated based on the registry and more specifically on the Schedule of Decisions, the total came out at 10,050.76 dunums.<sup>43</sup> The Schedule of Decisions for the village was recorded between 1929 and 1931, whereas the *Village Statistics* provided information from 1945. Clearly there was a discrepancy of 4.6 dunums between the schedule and the maps; nevertheless both calculations based on the archives are almost double the figure listed in *Village Statistics*, making Sarafand al-Kharab a much larger village than was presumed. Its size could have increased even more during the period between 1931 and 1945.

According to *Village Statistics*, Arabs owned 64 percent of the land, Jews owned 30 percent, and 6 percent was publicly owned. Clearly these percentages cannot be applied to the village because of the discrepancy in size. However if the same percentages are calculated based on the Schedule of Decisions, they produce the following figures. Public land, i.e. made up of land registered under the names of the village *mukhtars* or the name of the High Commissioner, comes out to 500.683 dunums, approximately 5 percent of the land, whereas Arab-owned land (i.e. owned by Arab individuals and the Supreme Moslem Council) is equivalent to 3,644.049 dunums, which is only 36 percent of the village, and is in stark contrast to the 64 percent listed

Table 5.3 Differences in land areas in Sarafand al-Kharab, 1929–45

<i>Block No.</i>	<i>Area in Metric Dunums according to Final Maps of Sarafand Al-Kharab</i>	<i>Area in Metric Dunums according to the Schedule of Decisions</i>	<i>Sami Hadawi's Village Statistics (1945)</i>
1 (1930)	924.758	924.758	–
2 (1930)	1,045.847	1045.847	–
3	603.568	608.0985	–
4	784.665	784.665	–
5	835.855	835.9196	–
6	313.188	313.188	–
7	<i>missing</i>	943.056	–
8	794.942	794.942	–
9	782.225	782.225	–
10	918.554	918.554	–
11	334.959	334.959	–
12	249.046	249.046	–
13	609.689	609.689	–
14	850.811	850.811	–
15	55.001	55.001	–
Total	10,046.160 <sup>1</sup>	10,050.760	5,503

<sup>1</sup>The final map for Block 7 was not amongst the village's archives; therefore the total includes the amount of 943.056 (taken from the Schedule of Decisions) as the area for Block 7.

in *Village Statistics*. Land owned by Jews consists of that owned by individuals, by the Palestine Jewish Colonisation Association (also known as the PICA), and by Keren Kayement Le-Israel Ltd. (JNF), and comes to a total of 5,906.027 dunums, making it 59 percent of the village. Therefore the village chosen to represent a village that had a majority of Arab-owned land on the basis of the available statistics was actually a majority Jewish-owned village. However based on the coordinates of the village from the land registry files, it can be assumed that the reason for this large difference is not a matter of discrepancy but rather because the village was then divided. In other words, it would seem that Zionist-Jews first purchased land in the village, and then also along its boundaries extending outwards, keeping all Jewish owned land together so that, once large enough, the village could then be divided into two separate ones, one Arab and one Jewish.

There were four types of land registered in Sarafand al-Kharab. The most common type (approximately 94.13 percent of the village) was registered as *miri* land, while 4.65 percent was *matruka* land (all public land was registered under the name of the “Mukhtars for the time being of Sarafand al-Kharab on behalf of the village of Sarafand al-Kharab” and “The High Commissioner for the time being, in trust for the Government of Palestine”).<sup>44</sup> Lastly, 0.15 percent was *mulk*, and 0.07 percent was Waqf land. Interestingly, all the *mulk* land in the village was located only in Block 15 and was only owned by Arabs, whereas all Jewish-owned land was *miri* land.

Most of the land owned by Jews was owned by Jewish individuals rather than associations. Of the 59 percent of Jewish-owned land, 39 percent (3,982.21 dunums) was leased under names of individuals, 17 percent (1,675.92 dunums) was leased by the Palestine Jewish Colonisation Association (PICA), and approximately 3 percent was leased by Keren Kayemet Le-Israel Ltd (JNF). The individuals have been grouped by families, and accordingly there was a total of 67 Jewish families. The largest land area – 841.961 dunums, or slightly over 8 percent of the entire village – was registered to an individual from the Branitaki family, based in Rishon Le-Zion (no one else with the same surname had land in Sarafand al-Kharab) for. The next largest area – 395.2689 dunums, or almost 4 percent of the village – was to the Loewenstein family (of Nes-Ziona), and after that there was an individual from the Boxer family from Nes-Ziona with 2 percent. The Zeyger, Abramovitz, Rappaport, and Hillel families from Rishon Le-Zion, and the Tepzers and Zerkoffs from Nes-Ziona, were each leasing just over 1 percent of the village. The smallest area of land leased by a Jewish family (the Windman family of Rishon Le-Zion) was 0.0494444 dunums, or 0.0005 percent of the village.

Unlike for the Arab names in the Schedule of Decisions, the parcels registered under Jewish individual names did not leave the Address column blank. However, it could be seen that the majority of Jewish families listed addresses in Rishon Le-Zion or Nes-Ziona, whereas the Palestine Jewish Colonisation Association was based in Tel Aviv, and the Keren Kayemet Le-Israel Ltd. was based in Jerusalem. The addresses of a few individuals were actually completely outside the region, from cities such as Swansea, New Jersey, and Paris. Of the 67 Jewish families that leased land in Sarafand al-Kharab, only five individuals did not have an address listed in the Schedule of Decisions. This could have meant either that they resided in the village or that the space was simply left blank. Even though the number of dunums in *Village Statistics* became inapplicable, the population census can perhaps still be applied, since it states that there were no Jewish inhabitants in the village. The information in the Schedule of Decisions leans more towards this assumption, meaning that without any Jews effectively living there, Jewish landownership was altogether 59 percent in a village that was in a majority Arab-populated sub-district (Ramle). This made Sarafand al-Kharab an ideal case for examining the methods of organization and objectives in Jewish land purchases.

Contrary to the Jewish landownership statistics of the village, Arab landownership in Sarafand al-Kharab was all in the hands of Arab individuals, with the exception of one parcel in Block 12, an area of 7.017 dunums. This was a “Moslem Cemetary”; it was the only parcel of land classified as *waqf* and was owned by the (Jerusalem-based) Supreme Moslem Council. Arab families from Sarafand al-Kharab owned 3,637.0319 dunums in the village (approximately 36 percent), of which 14.88 dunums were classified as *mulk*, while the rest was *miri* land. The *mulk* land was owned by members of 43 Arab families; no Jewish families owned any *mulk* land.



landowners, addresses were not recorded, nor were numbers of shares evaluated into percentages; therefore the actual per-person amount in dunums within the parcel was not calculated. The column labeled 'Shares' then either contained the word 'Whole' (making the listed name the sole owner of the parcel), or was divided into shares, each of which could be from a half to hundreds and sometimes thousands. The 'Nature of Right' for most of the land (unless Public) was almost always 'Proprietorship (Full Title).' Otherwise it was either labeled as 'Public' or 'State Domain.'

The 'Remarks column' described the land: whether it was arable or a building site, if it was a private road, and if it had trees, wells, yards, and/or buildings (the number of rooms in each building was also included). If it was a parcel of public land it would then be labelled accordingly: as a village road, village threshing floor, village well, railway reservation, or a scheduled road. The 'Other Rights' column stated whether the parcel enjoyed 'passage servitude' for another parcel; was encumbered with 'passage servitude' or irrigation for another parcel; or if it shared a wall with another parcel of land. This column also described miscellaneous information, such as whether there was a letter attached from the Magistrate regarding the parcel, whether or not it contained trig points (used in the triangulation system of land surveying), and whether or not the parcel of land was mortgaged, to whom, and for what sum.

Many of the parcels of land owned by Jewish families were described as mortgaged under 'Other Rights.' About 424 dunums were mortgaged to the Palestine Jewish Colonisation Association, and a few parcels that were owned by Arab landowners (of the Hamdan and Al-Ghusain families) were mortgaged to Jewish individuals. There was also one parcel, owned by the Zaitsof family, which was mortgaged to the Central Bank of Co-Operative Institutions in Palestine Ltd.

Some miscalculations appeared in the Schedule of Decisions for some of the blocks. These seem to have been typical human errors. In some cases it was possible to deduce the correct information – for example if the error was mathematical, or where it concerned different ways of transliterating an Arab or Hebrew name into English. As far as possible these differences were reduced to make the information coherent. Examples of some of the mathematical errors that were found are the following:

In Block 12, parcel number 34 was registered differently from any other share, in the sense that the 13,264 dunums of which it consisted had been labeled into three types of parcels. The first type was 13,264 shares distributed among eight individuals. The second type was one individual registered as owning the 'Whole' parcel even though they were listed as owning only 1,706 out of 13,264 shares. Last were two individuals sharing what was divided as a parcel consisting of 16 shares, even though they too had been listed as owning 3,169 and 212 shares respectively out of the 13,264 shares listed first. For this reason it was difficult to calculate the actual distribution since the individuals came from various families; furthermore it

prevented an accurate total for the number of dunums in the block and hence the village. It was clear, however, that it was registered as *miri* land, and that the names of the registered owners in the parcel, from whichever part of it, were all Arab owners. With regard to how this parcel added up to the rest of the village, it was decided that the calculations would be made using the information of the first section. Another point in Block 12, related to the last issue, was that the total area of land in the block was off by 60 dunums when the Schedule of Decisions was compared with the Final Map.

In Block 15, parcel number 106 consisted of 0.436 dunums owned by four individuals. The parcel had been distributed into 370 shares; however, based on the registry the number of shares that each individual owned added up to more than the total. This was problematic because the four individuals were not all from the same family – two were from the Al ‘Attar family and two from the Hamdan family. This was clearly a typographical error in the registration ( $270 + 270 + 13 + 17 \neq 370$ ). Possibly one of the individuals of the 270 shares should have been registered as 70, so that the total would be  $270 + 70 + 13 + 17 = 370$ .

Therefore with the majority of the land owned by Zionist Jews, it can be assumed that Zionist Jews played a significant role in the different parts of the land tenure system of this village.

### **Land Registry Transactions (1929)**

Many documents among the files of the village revealed that some of the Arab owners were running into debt and as a result had had to sell their land. For example, on 20 June 1929, advocate A. Makoff, based in Jaffa, wrote to the Land Settlement Officer in Rehoboth stating that an individual from the Radwan family of Sarafand al-Kharab owed his client P£150,<sup>46</sup> as decided by the local courts. Because of this, the property of A. Radwan “[has] been put out for sale by public auction by the Execution Officer, Jaffa, and the formalities of sale have reached their last stage.”<sup>47</sup> Advocate Makoff explained that since A. Radwan had agreed to sell his land rather than have it auctioned for a low price, he was therefore asking the Land Settlement Officer to “effect the transaction in view of the urgency”<sup>48</sup> of the case. In other cases there was no documentation of sellers in debt; rather there were letters written by lawyers, in Arabic and with translated copies available, as well as Powers of Attorney addressed to the Land Settlement Officer on behalf of their Arab clients, most often selling an individual’s shares in a parcel of land to a Jewish purchaser.<sup>49</sup>

Another document showed Jewish landowners requesting permission to mortgage their land. One example was the Zaitzov family, who wrote to the Survey Department for permission to mortgage citrus-planted land in Sarafand al-Kharab for the purpose of “cultivating the young orange grove,”



the mortgager being the Central Bank of Jerusalem.<sup>50</sup> Other documents sometimes did not mention the actual mortgager, but rather were letters from individuals to the Land Settlement Commission in Sarafand al-Kharab requesting permission to take out a mortgage in their name; as one such example explained: "I am in need to the said sum of money in order to have the possibility of continuing the cultivation of my orange grove and its improvement," the sum being 600 Palestinian Pounds. There was only one document from Arab landowners (the Hamdan family), who requested permission to mortgage their land for a loan, not however to a bank, but rather to Mr J.Y. Bassrawi (who appeared neither to reside or to own land in Sarafand al-Kharab), also for the purpose of improving and maintaining the orange-grove.<sup>51</sup>

It appears therefore that the procedure for taking out a mortgage on one's land required the Survey Department's permission before the bank would approve a loan, and furthermore that banks such as the Central Bank of Jerusalem would only do this for Jewish landowners. Otherwise, why would Arab landowners in a sub-district that was 77 percent Arab in terms of population have to resort to selling portions of their land in order to keep the rest of it? Or in the case of the landowners from the Hamdan family, why would they mortgage it to another Jewish landowner, rather than obtain a loan from the bank in the way that the Jewish landowners, who did not even reside in the village, had done? It did not seem to be a question of the Survey Department or any other part of the Mandate administration depriving Arab landowners of such permission, since there were no documents in any of the land registry records for the village to indicate that applications for mortgage approval had been declined. Such letters simply did not exist from Arab landowners, even though they were present for the Jewish landowners.

One example of the mortgage loans taken out by Jewish landowners through the Central Bank of Cooperative Institutions in Palestine Ltd. in Jerusalem was made by individuals who were members of an organization – the Kuppa Chaklaitn (Agricultural Treasury) Reishon-le-Zion Cooperative Society Limited. A six-page agreement stating the loan conditions was made out to the society and signed in July 1929 by the Assistant Manager, H. Cohn. The loan was for two individual Jewish landowners from the Hillel family (which, all together, owned 103.55 dunums in the village). I. and H. Hillel, who were members of the society, each owned about 17 dunums of land. The loan was for two parcels of land that amounted to about 34 dunums in total, and the loan was for P£400 (four hundred Palestinian Pounds), i.e. P£200 each. Of this, each would receive P£175 in 1929 and the remaining P£75 in 1930. The agreement document was very detailed in describing the basics of any loan, when the interest would begin, and the repayment plan; it also stated the years in which the orange crops would be charged to the Central Bank. The agreement was drawn up in both English and Hebrew.<sup>52</sup>

There were also many documents requesting a simple change of names in the Land Registry because of a transaction that had been made. Some of

these were between Arab individuals, and many times they were for different members within the same family or because of inheritance. There were also many cases where Arab individuals sold their shares to individual Jewish purchasers – for example, when two individuals from the Hamdan family sold to D. Khavkes, who lived in the Ness-Ziona colony. Khavkes explained that since he had a mortgage contract due to start in one month (the creditor was Mrs Z. Zirkoff), this transaction needed to be done rather quickly; if it was not done in time and he did not fulfil his part of the mortgage agreement, he would be unable to afford to meet the liability.<sup>53</sup> Another Hamdan family member sold some shares of a parcel (a total of 5.57 dunums) to Mr E. Woldenberg for the sum of P£33.50.<sup>54</sup>

A few cases involved the selling of shares by one Arab to another, such as F. El-Khoury to N. Ameereh. As with all these transfers, it was the purchaser who was registered as the owner in the Schedule of Decisions. El-Khoury sold 17,829,504 shares out of 1,233,477,204 in a parcel of land in Sarafand al-Kharab. A similar transaction was made between H. Ibrahim and three purchasers, all of whom again were Arab, G. and J. Kutteh, and S. Dahdah, for 7,3470 shares out of 15,615,600. There are no documents to suggest that this transaction was not followed through to its conclusion, or that it was not approved by the Land Settlement Officer; however, the purchasers were not listed in the Schedule of Decisions, leading one to assume that the transaction failed.<sup>55</sup>

One interesting case, found in the village folder of land registry transactions, had taken place in 1929 and involved two sisters of the Al-‘Attar family, who filed a case against their brothers. The sisters had transferred 10 of the 20 shares they had inherited from their father to their two brothers, so that each would have five shares equally. As the land had been part of the *musha*’ system, it was common practice amongst the villagers to leave such land with the brothers. When parcellation took place in the 1920s, the shares of the sisters were left with their brothers and the heirs of the brothers. The case had been filed originally at the Civil Magistrate Court at Ramleh, where the sisters’ shares were separated. The brothers and their heirs then filed an action against the sisters at the Land Court at Jaffa, claiming that the transfer before the Great War had included all the shares. However, the court decided in favor of the sisters and dismissed the action. Finally the sisters requested that all transactions in the Land Registry Department to do with the disputed parcels should be stopped, as should anything that might change the status of the land.<sup>56</sup>

It would be difficult within the constraints of this section of the present chapter to describe the details of every transaction that took place in a village with over 10,000 dunums. However, the following conclusions can be made. For the Arab landowners, especially those from large families, the transactions were usually made in order to sort out issues of inheritance within a family, or at least to correct the number of shares within a parcel for the landowners. Nevertheless there was a common theme in that Arab

landowners were too financially pressed to be able to cultivate all their lands, and there was not a single case where an Arab landowner applied for approval of a mortgage from a bank or any other kind of institution. On the other hand there were many cases where Arab landowners sold some parcels, or in most cases shares of a parcel, to an individual Jewish purchaser. At the same time, there were many documents showing the government's approval of Jewish landowners mortgaging their land to receive loans from banks so that they would be able to cultivate their land. This shows that whereas Jewish landowners had options open to them for financial loans, Arab landowners did not, and had to resort to selling some of their land so that they could afford to cultivate the rest of it.

### **Parcels**

Several parcels, especially the larger ones, were registered under the names of more than one individual. In these parcels the area in dunums was divided into shares. However, the way these shares were determined was unclear to the researcher. For example, there would be some parcels where it was clearly distributed among three individuals, each receiving one out of the three shares. But other parcels within the same registration block might be divided amongst as many as eight individuals from the same family, with each of their names on the title deed; for the Mahmud family, for example, the shares would be distributed out of 2700, with three of them each having 451 shares, another three having 338 shares each, another having 218 shares, and another having 118.

Most of the time, though, the parcel was not shared by members of the same family, and in some cases the parcel would be divided between an individual and a Zionist organization. In Sarafand al-Kharab this was usually the case with The Palestine Jewish Colonization Association and with Jewish individuals.

If, however, the parcel was to be partitioned, there were three requirements. First, a written agreement from all the individuals wanting partition needed to be obtained, and then acknowledged and stamped by the Settlement Officer of the sub-district; for Sarafand al-Kharab this was the Ramleh Settlement Area. The agreement needed to declare the partition scheme and an illustration had to be filed showing the divisions of the land. The second requirement was the acquiring of a certificate from the Village Settlement Committee. If obtained, this certificate would establish that the "partition is just and fair and is not prejudicial to any of the interested persons."<sup>57</sup> The last requirement was for a land surveyor to go to the location of the parcel in order "to make the necessary alteration in the plan of the locality."<sup>58</sup>

In most of the land registry records of the villages, the parcellation scheme of a village was thoroughly documented. However, in the case of Sarafand al-Kharab, there was a folder entitled 'Partition of Parcels,' but there was very little information within it. This makes it difficult to determine whether Zionist

Jewish landowners of the village also acquired land through the division of the *musha'* land rather than only through transactions after the settlement had been completed.

## **Cases**

There were sixteen legal cases in the village, although the length and complexity of almost all of them suggested that many actually involved several intertwined cases. This was not unexpected in a village that first of all was quite large in terms of its number of dunums, and second was based in an almost entirely Arab sub-district and thought to have been mostly owned by Arabs. For these reasons it is necessary to identify the nature of the legal disputes that existed among the village landowners.

### ***Inheritance***

The inheritance of land can often become a land tenure dispute as it required a change in registration of title as well as the division of land amongst the inheritors. Much of the time the matter could be sorted out within the family, but in some instances the disputes required the involvement of the Land Court in order to be resolved.

#### *Case No. 1*

On 18 January 1929, Lawyer D. Moyal wrote a letter to the President of the District Court of Jaffa regarding the appointment of an administrator to the estate of the deceased H. Epstein. On behalf of his clients, the heirs of one I. Frank, Moyal applied to be the administrator appointed for the estate in which the clients were interested. A hearing for the case was fixed for 8 October 1929, at which time the "Honourable Court" adjourned the case until an authentic death certificate could be produced for H. Epstein. Attached to Moyal's letter of 18 January 1929 was an extract from the death registry at the "Marie" [sic] of Saint-Maurice, France, which was also certified by the British Consulate General in Paris.

On 5 November 1930, the Settlement Officer of the Ramleh Settlement Area wrote to the Acting President of the District Court in Jaffa requesting information or any files concerning H. Epstein. Apparently there were parcels of land registered in his name in Sarafand al-Kharab, but they had not been under his ownership for many years. The Settlement Officer had no information as to his whereabouts or if he was even still alive.

On 27 November 1930, the Jaffa District Court's File No. 81/29 (Ex 409/28), containing 12 documents concerning the estate of H. Epstein, was forwarded on loan to the Settlement Officer of the Ramleh Settlement Area. The accompanying letter stated that Advocate Moyal had abandoned his original

application by withdrawing all the significant documents.<sup>59</sup> Two days later, the Settlement Officer sent a letter confirming receipt of the file to the President of the District Court of Jaffa. On 17 December 1930, the Settlement Officer returned the file to the President of the District Court of Jaffa.

On 25 December 1930, Advocate M. Eliash wrote a four-page letter to the Land Settlement Officer in Jaffa, with reference to the land claim of a Mr Branitzky, and how the Land Ordinance of 1929 was meant for claimants such as Mr Branitzky, to award them ownership title and not just “possessory title.” The first point made by Advocate Eliash was that the intention of the legislation was to end the vagueness of land titles because possession of land was not equivalent to ownership title. Therefore if an owner did not take action against a possessor, the possessor’s title would never be questioned. According to Eliash, the purpose of the Land Ordinance of 1929 was to rectify this. However, he also claimed that by protecting the registered owner, even when he or she had been absent for fifty or more years, the possessor “is still not entitled under the Ordinance to an owner’s title [which] would frustrate the very purpose of the Ordinance, as it would perpetuate, without a possible remedy, the indefinite situation to which the Ordinance intended to put an end.”<sup>60</sup> In a second point, Advocate Eliash interpreted Section 2 of the Land Ordinance of 1929 as taking the expression ‘such conditions’ to refer to the actual physical condition, meaning that if the registered owner did not appear before the Land Settlement Officer to oppose the application of the possessor, the Officer had the right to make the possessor the registered owner.

Advocate Eliash went on to review the third section of the Ordinance, which recognized ‘possessory title’ as one with a certain limit of time which could not be considered to be indefinite. The review included the insertion of an “or” between the two sets of conditions, so that it read:

either when the owner is present but the possessor is in occupation in such physical circumstances as would create for him a good defence in a future action, or if the registered owner cannot be traced and there is a person in possession<sup>61</sup>

Hence, changing the word “and” between the two conditions to the word “or” would mean that “such a possessor can obtain on the lapse of a certain period of time an owner’s title,” therefore reaffirming the original objective of the 1929 Land Ordinance. Advocate Eliash went on to explain that, either way, in Section 6 of the Ordinance, the owner was protected because even after the land had been registered in the name of the possessor, the owner had the legal right to reopen the case even after the change in registration had been completed. For these reasons Advocate Eliash believed that the question of Mr Branitzky’s title should be solved by making him the land owner.<sup>62</sup>

On 10 January 1931, the Settlement Officer of the Ramleh Settlement Area wrote to ‘the Advocate Dr M. Eliash’ with regard to his letter of 25 December

1930, informing him of his decision to grant Mr Branitzky full title to the land he had claimed, but making due note that it was an administrative matter (so that it would not be used as a precedent for future disputes). The Settlement Officer also stated that he agreed with the arguments made by Dr Eliash, except for the idea that “the two Sub-sections of Section 3 of Ordinance No. 28 of 1929 are conjunctive and not disjunctive.”

Then, a four-page Power of Attorney document in French appeared, dated 5 November 1921, before Mr F. M. Rehous, the Notary in Genève, and witnessed by Madame O. Sloutzkin, widow of Mr I. Frank (American), residing in Genève at 11 John Grasset Street. Madame Sloutzkin was also the legal guardian and representative of her and Mr I. Frank’s two children, E. and D. Frank. Mademoiselle N. Frank, daughter of Isaac Frank, represented herself. Madame O. and Mademoiselle N. Frank had appointed Mr O. Lewin, a cultivator from Le-Zion near Jaffa, Palestine, to hold the power of attorney and be the administrator of all their property and businesses, both present and in the future, in Palestine. Mr Lewin would be responsible for all debts and profits, capital, interest, revenues, insurance, movable and immovable property, and “for all those things that exist now and may exist in the future,” and would sign for everything. However there was not a single address, name, or details of any of these properties. For example there were no references to parcels of land or buildings, but it was evident that the document was written in general terms to ensure that it would cover everything that might arise, and that Mr Lewin would have the legal right to deal with anything regarding their property. But what that property consisted of was unknown.<sup>63</sup>

A letter dated 17 October 1930 was then sent from the Settlement Officer of the Ramleh Settlement Area to “His Honour, the President of the Land Court” in Jaffa. It referred to the Land Settlement Ordinance of 1928, specifically Article 29(1)(a), and to an attached and certified copy of a Certificate of Decease for Mr Yitzhaq Frank (alluded to in other documents as Isaac instead of Yitzhaq) that was issued in “Tel-Aviv, Erez-Israel,” 20 Tamuz (around June or July 1928), 5688 A.M., to the Chief Rabbinate of the Jewish Community of Jaffa and Tel Aviv and signed by B. M. H. Uziel.

The certificate stated that Mr Frank resided in Detroit in the United States, and that he had passed away on 8 March 1928. The sentence stating the place of which he was a native had been left blank. Then the relatives he had were listed; his wife O., his sons E. and E., and his daughters N. and D. As could be seen, one of the sons was not mentioned in the prior Power of Attorney document. The letter also stated that there were other documents that proved Mr Frank had died in the USA on 9 March 1920, thus conflicting with the Certificate of Decease, which had stated the 8th January; it also mentioned that there was no verification of his nationality. The matter which the Settlement Officer was questioning was whether or not the Local Rabbinate had any jurisdiction over the status of Y. Frank at the time the certificate was

issued. According to the Settlement Officer it did not, thereby making the Certificate of Decease “null and void.” However the decision was left to be made by the President of the Land Court in Jaffa. If it was found that the Local Rabbinate did have the jurisdiction to do so, there was then “the problem of passing off what should be a Certificate of Succession with a Certificate of Decease.”<sup>64</sup>

As described by Advocate Moyal on 4 February 1930, there was a piece of land registered in the Land Registry under Mr H. Epstein. Sarafand al-Amar was to the north of this piece of land, the Jaffa Road was to the east, to the south was al-Bassa Road, and to the west was an unnamed road. On 16 November 1897, there was a sale by Mrs M. Linbin on behalf of Mr Epstein “showing the boundaries that the land sold was part of her client’s land. Since the date of the transaction, neither the purchaser nor his attorney” had come to Palestine and Mr Branitzky had been employed to supervise this land, and was now claiming ownership because he had been the possessor of it for over ten years. Advocate Moyal went on to say that he was ready to prove that Mr Epstein, since leaving for Europe and never coming back, had been absent from Palestine for over thirty years. Mr Epstein’s attorney, M. Linbin, had carried out a sale of the land to the ancestor of the heirs of Y. Frank. Therefore what Advocate Moyal was requesting was the preventing of ‘possession’ by the defendants of all the land, and the appointment of a guardian to manage the absent Mr H. Epstein’s estate, as well as “non-registration of any part of the land in question in the name of the defendant,” and the registration of the land claimed by the heirs of Y. Frank.

The case went to trial at Jaffa on 29 September 1930. Those present were Mr M. Branitzky and his Advocate Dr Eliash, and Advocate D. Moyal for the heirs of Y. Frank. The heirs of Y. Frank were the Plaintiffs, while M. Branitzky was the Defendant. Exhibit A was the Death Certificate of Y. Frank, Exhibit B was the Power of Attorney from his heirs, and Exhibit C was the Certificate of Decease from the court of Jaffa, dated 20 Tammuz (20 July). Dr Eliash called attention to the Death Certificate of Y. Frank, which stated his place of birth as having been Russia and showed that he had been a resident of Detroit, Michigan. The Certificate of Decease by the Rabbinate did not identify Y. Frank as either a citizen or a resident of Palestine. In the Power of Attorney document, the widow of the deceased was described as an American citizen. There were a few more paragraphs about the case that could not be deciphered, but the ruling was clear. The Settlement Officer decided that while the Power of Attorney of the Plaintiffs’ lawyer was valid, it was the validity of the Rabbinate’s Certificate that remained undecided.

Less than three months later, the Plaintiff’s lawyer withdrew the case and the claim against the Defendant. The Settlement Officer accepted this and the case was finally settled on 12 December 1930. After all the efforts made by the Plaintiffs, it was strange that the case was withdrawn; unfortunately the case file did not allude to any reasons for why this was done.

*Case No. 9*

This case involved a family dispute among the heirs of S. Nur al-Din over their inheritance. The problem was that while six members of the Nur al-Din family had sold their shares to A. Abu-Duhaila, 19 other Nur al-Din family members did not sell their land. There were many testimonies from the various individuals of the family, clarifying the matter of who had inherited what shares and who had sold their shares to the purchaser Abu-Duhaila. There was some confusion about this in the registry records, specifically in the Survey Department, but the case showed that the information regarding the shares was computed according to the correct amounts.<sup>65</sup>

*Case No. 13*

This case concerned another family dispute over ownership, but was unique in comparison with other family disputes in the village and could therefore be labeled as either a dispute over inheritance or a land transfer. The original Plaintiffs were a widow, S. bint M. Ibrahim, and her minor son, D. I. Al-'Abwaini. The Defendant was H. M. Al-Jundi, and the Third Party was the widow's brother-in-law, H. D. Al-'Abwaini. The dispute involved the ownership of an area of approximately one-quarter of a dunum of land, with a road and house that had two rooms and a yard. In a pleading letter to the Settlement Officer on 5 January 1929 (it is noted that it had been translated by someone named Sayegh), the widowed mother wrote:

As my son and I own one half of the whole house and yard ... and the other half is owned by my husband's brother, H. Ibn D. al-'Abouni, and because during the recording of houses by the Land Settlement Office one half in all the house and yard referred to was recorded in my name and that of my son and the other half in the name of the said H. Ibn D. al-'Abouni; and since I now understand that the said H. Ibn D. al-'Abouni definitely sold all the house and yard in question to H. Ibn M. al-Jundi [the Defendant] who attempted to put me out of the house without any right, and as I am a poor woman and have no supporter except God and yourself [the Settlement Officer], I beg to request for cancellation of the sale. I also beg to request that necessary steps be taken to prevent the aforementioned purchaser from entering my house.<sup>66</sup>

On 5 November 1930 – over a year later – when the case hearing was about to take place in the house of the village's first *mukhtar*, the Settlement Officer wrote to the District Superintendent of Police in Jaffa to ask for three policeman to be present at 9 am on 22 November. More than one case was to be heard that day; however, it seems that the police were there for the purpose of Case No. 13. The Settlement Officer noted that the case had engendered “an unusual amount of bad feeling and excitement amongst the parties,” and



that during the previous hearing of the case he had been “unable to take effective action for contempt of Court.”<sup>67</sup>

The case was heard and settled that day. The Plaintiff, represented by his mother as his legal guardian, was trying to “gain title and recover possession of a half interest in the house and land” that was in the Defendant’s name. The Defendant claimed that he had purchased everything from the Third Party, but this was considered unofficial because it had not been registered. As evidence of the sale, a document demonstrating that the Third Party had sold the land and house to the Defendant on 3 July 1927 was shown; it stated plainly “that H. D. al-‘Abwaini has sold *all* the house to H. M. al-Jundi for LE.30,” even though al-‘Abwaini had told the Settlement Officer in evidence “that only half the house belonged to himself and that the other half belonged to the Plaintiff and that he had not sold all the house.” The Settlement Officer nevertheless accepted the document. Furthermore he believed that the price of LE.30 corresponded to the price of the entire property value at the time of sale, and also stated that there was no evidence showing that half of the money from the sale had gone to the Plaintiff.<sup>68</sup>

The case became more complicated because the mother, S., had originally also been a Plaintiff, claiming for half of the house with her son; she then stated before the Settlement Officer that it belonged solely to her son and, in respect of her personal share, withdrew her original claim in the case (apparently “on the undertaking of the Defendant to pay her one pound”). This part of the case was somewhat unclear; however, the Settlement Officer obviously did not agree with her. In the end, the Settlement Officer decided that as the Plaintiff had not succeeded in making his case, the case was in favor of the Defendant under whose name the parcel would be registered.

#### *Case No. 14*

This was another case among some of the Arab families of the village concerning issues of ownership and inheritance; however, it seems to have been a rather simpler one compared with other cases in the village. The parties involved were members of the Al-Khatib family and the property in question was a plot of land with a house on it. The dispute was about who owned what, after certain members had sold some of their shares to others of the Hamdan and Mahmoud families. What was different in this case, though, was that the decision was not made solely by the Settlement Officer, but also by four arbitrators who were agreed on by the parties and the Settlement Officer. They clarified the confusion over the inheritance and sale of the land, and reached a decision on 15 October 1930.

#### *Case No. 16*

The Plaintiff for this case was I. A. M. ‘Attar, and the Defendants were A. M. ‘Attar and O. A. Hamdan and other members of the village of Sarafand al-Kharab. The Plaintiff inherited from his mother certain shares in three

varied parcels of land in the village, and “an exchange of houses” also took place between the Defendants, A. M. ‘Attar and O. A. Hamdan, each of them “having renounced his shares in the house under the possession of the other party in favour of that other party and this renunciation included the share of the Plaintiff.”<sup>69</sup> The problem was that the share that was inherited by the Plaintiff was the house which the Defendant Hamdan and partners were claiming.

The Plaintiff and the Defendants requested that the Settlement Officer of the Ramleh Settlement Area accept their nomination of “T. Ef. Nasr from Jaffa” as the arbitrator of the case. The Settlement Officer agreed to the nomination on 31 October 1930 and appointed Nasr as the sole arbitrator, giving him fifteen days to settle the case.<sup>70</sup> On 8 November, T. Ef. Nasr awarded the Plaintiff everything that he owned in one of the parcels, to be paid by O. A. Hamdan and partners (a sum of LP.2.400 *mils*), and also decreed that the Plaintiff would receive “financial consideration for his shares according to Shari law.”<sup>71</sup> The case was settled on 22 November 1930.

### *Division of Shares and Parcels*

#### *Case No. 2 and Case No. 10*

The Plaintiffs for this case were the Village Settlement Committee and the *mukhtars*. The Defendants were A. M. ‘Attar, M. M. ‘Attar, and AA. M. ‘Attar. The case was settled on 23 September 1930. A note was written on 10 October 1930, saying that it was preferable that the two parcels, one in block 5 and the other in block 12, should not be joined to form one parcel because the first one was owned by A. M. ‘Attar and his two brothers while the second parcel was exclusively A. M.’s. The joining of the two would mean a change in the co-ownership of the shares. The land mentioned in Case No. 2 is also referred to in Case No. 10. In this case, the Village Settlement Committee withdrew the claim on behalf of the public, and this decision therefore applied to both Case No. 2 and Case No. 10.

#### *Case No. 3*

Case No. 3 of Sarafand al-Kharab was settled on 7 October 1930. The Decision of the Settlement Officer of the Ramleh Settlement Area stated that the Plaintiff, D. M. Hamdan, was suing for a 13-meter-wide strip of land on the southern side of the parcel of the Defendant, M. K. Ibrahim, so that this strip would be taken from her parcel and added to his. His case was based on the following points. First, at the time of parcellation of the common parcel they owned, he had only received 642 shares out of the total of 742, but was actually entitled to 650 shares out of the 742. Second, an 8-meter-wide road had once run along the northern part of their common parcel, but this was later abandoned by the District authorities and the Defendant had added this

to her own parcel. The Plaintiff argued that he should have a proportional share of the land that had formerly been the road.<sup>72</sup>

The Defendant responded that, with regard to the first point, the division had occurred without any disagreement and both she and the Plaintiff had agreed to it; if she did have more than her share in terms of the amount of land, this was fair because of the poorer quality of her land. This point was acknowledged by everyone at the time of the partition of their common parcel. Regarding the second point, the Defendant confirmed that the land that was once the road was in fact a part of her land, but that all such differences had been settled by the *mukhtars* and S. M. M. Hamdan.

Three witnesses for each side were presented before the Settlement Officer, one of whom was actually named by both parties. Much of the information presented by the witnesses' testimonials was conflicting, and it appeared that the witnesses were reluctant to tell the whole truth. Therefore the Settlement Officer came to believe and accept the evidence of those witnesses who claimed that it had been a fair division of the common parcel, and that in fact both parties did agree to this division whereby the Defendant had taken a bit more than her share of the land because of "the less valuable land that had fallen to her." So on this aspect of the case, the Settlement Officer decided in favor of the Defendant, M. K. Ibrahim.<sup>73</sup>

Regarding the Plaintiff's second point, the Settlement Officer accepted the evidence that a road 8 meters wide had in fact existed and that it had become part of the land owned by the Defendant. In order to be fair, the Settlement Officer decided that the Plaintiff was entitled to his proportional share of the road or, instead, compensation for his share of it. As the land that had formerly been the road had been planted with citrus trees, it would not have been feasible to allocate part of it to the Plaintiff as a new parcel. So the Settlement Officer decided that the Defendant must pay compensation to the Plaintiff in respect of the proportion of his share. The road had an area of approximately 1140 square meters, and the share of the Plaintiff was 650 out of 742, making it almost one square metric dunum which the Settlement Officer felt was fair.

In describing the decision of the case, the Settlement Officer commented that the Plaintiff's witnesses had set too high a value on the land that was formerly the old road, whereas the Defendant's witnesses had set too low a value. So, having actually inspected the land, the Settlement Officer concluded that P£18 per dunum was a "fair and reasonable valuation for the land of the old road in its unimproved state." The Defendant therefore needed to pay the Plaintiff "Eighteen Palestinian Pounds as compensation for the one dunum of the old road," and the land itself would be registered under the Defendant's ownership. This compensation to the Plaintiff was made under the authority of the Land Settlement Ordinances of 1928–30 under Section 53(2).<sup>74</sup>

On 12 December 1930, the Judgment of the Land Court was that the appeal was to be dismissed and that the Settlement Officer's decision was confirmed. The decision of this case was final, and it was stated that no

further evidence would alter the decision, as witnesses were still being presented after the case had been concluded.

### *Transfers and Question of Title*

#### *Case No. 4*

This case was concerned with Article 47 of the Land Code and the issue of the boundaries of parcels, however there were many other issues of tenure such as those concerning inheritance and shares, or transfers and the question of title. There were two folders for this case in the archives, one of which was labeled “Temporary Jacket.” The case actually seems to have involved a number of interconnected cases between the same individuals, and was by far the largest and most complex case in terms of legal documents, statements, and applications. The second folder seems to have concentrated on the Plaintiffs’ appeal, the details of which are described below.

One of the exhibits in the case was a statement made by legal advocate R. A. al-Dajani, which contextualized the case and the length of time that passed in order to get some historical background. He explained that A. had first brought an action in the Land Court in 1926 against D. Hamdan only; however the Land Court dismissed the action in 1927 on the basis that the land being claimed was owned by different persons. She, A., began another action in 1928, this time against Db. Hamdan, I. al-Taji, T. Ghussein, and others, numbering 12 individuals in total. In 1929 the Land Court again dismissed the case, on the basis that the action was incorrect.

Al-Dajani’s client Db. Hamdan had also purchased land from different persons and wanted to mortgage it, so he applied to the Settlement Officer. The Settlement Officer duly published a notice:

to the effect that if any person has any objection to this mortgage [he] may object, but not a single objection was lodged, and so my client mortgaged his land to Mr Y. Y. Basrawi. Ha., Hu., and N., children of R. [Hamdan], mortgaged as well their land to the said Mr Basrawi, following the same way which Db. used for carrying out his mortgage.

The statement went on to say that the Plaintiffs had never said to whom the disputed lands were sold, and how “the persons being sued in this case are not the same persons sued in the Land Court case.” Advocate al-Dajani went through all these points in arguing that, “before cramming the Land Court case files and before correcting the case in the legal way,” the Plaintiff should make the necessary amendments because the action could not proceed “against two different persons in respect of the same issue.”

The same case became even more confusing with a letter dated 24 October 1929, written to the Land Settlement Court by A. Tcherkov (who seems to have been the legal representative of the Hamdan brothers), applying for a transfer of land to be recorded in the Land Registry. The amount of land in

dunums was not listed – only the number of shares, which seems to have been a small percentage of the parcels in question. The co-author of this letter, D. Khavkes from the colony of Ness-Ziona, claimed that he had purchased an area of land from Db., Ha., and Hu. Hamdan (sons of R. Hamdan), and that the change had not yet been registered in the Land Registry Office. Until this was done, Khavkes could not go ahead with mortgaging the land to Z. Zerkoff. A. Tcherkov stated that he was the “legal proxy” of the three Hamdan brothers, based on a Power of Attorney that had been “legalized by the Notary Public” in Jaffa on 1 April 1929, and that the brothers had given their permission for the property to be sold to D. Khavkes.

The Settlement Officer replied to this letter, stating that there would be no objection to the request, provided that “everything is found to be legally in order [by] the Land Registrar at Jaffa,” and that the Settlement Officer be “*very promptly* supplied by you [D. Khavkes] with a certified copy of any registered transaction that may be effected under the permission hereby given.” As requested, a Register of Deeds was supplied from the Land Registry Office in Jaffa.

In this case folder’s exhibit was another case dated 1930, which regarded the number of shares of various Arab individuals who were actually cousins. The Plaintiffs’ advocate was M. R. S. ‘Anabtawi, and his clients were four children of Y. ‘Abdul Fattah (all from Sarafand al-Kharab) who were the heirs of S., who had died in the lifetime of her father, M. H. Al-‘Abawayni. The Defendants were three children of R. M. H. Al-‘Abawayni, who was one of the heirs of his father, M. Hamdan. The dispute between these cousins was due to the Plaintiffs’ claim that the shares inherited had not been proportionally distributed. “D., Db., E., Ha., Hu., N., and M. Hamdan” applied for an appeal against the sisters “A., K., H. and S.,” daughters of Y. A. Al-‘Abawayni. The applicants claimed that the land was inherited from M. H. Al-‘Abawayni, and the decision was in their favor.

The translated version of this application for appeal (the original in Arabic is also available in the file) goes, point by point, into great detail (six pages) about the reasons why – on the basis of different individuals, what land was sold, and what land was inherited – this decision was eventually reached. What stood out, in one of these points, was the explanation that even though the three daughters, F., S., and A., of H. M. Hamdan “had sold all their rights inherited from their said father to their brothers named in the action ... Sheri Law does not entitle the son of the daughter to inherit in Mulk when there are children ... the son of the daughter in such case only inherits in Miri lands.” Since this information was not known, the applicants did not register the shares of Shamma in the names of her heirs until 25 years later, at which time they bought back their inherited rights.

In another translated document the same applicants (“A., S., H., and K.,” all daughters of Y. A. Al-‘Abawayni) confirmed that the judgment was in their favor “in their case against the Defendants for their shares in the lands of the village.” The judgment awarded the sisters the financial value of these shares, based on the registered dunums. However they then claimed that the

area registered was incorrect, "being of 4773 dunums whilst that made out at Settlement was of 9196 dunums 453 meters. Thus there is a deficiency in the shares adjudged [to them]." This, along with other shares that they claimed were excluded from the judgment, was the basis of the appeal lodged by the sisters. Five further points in the appeal application then looked in detail at the shares that had been left out, and in 1931 the document was signed by them and their attorney, M. R. al-Imam.

The Settlement Officer responded to their attorney as follows:

(Stamped by the Land Settlement Office in February of 1931)

464.

RAMLEH

Case 4/Kharab

P. O. BOX 2, JAFFA.  
4th February, 1931

M. R. E. al-Imam,  
Advocate, Jaffa.

Sir,

With reference to your application of 3rd February, 1931, for a revision of the areas and resultant charges in the amounts assessed as compensation in the decision in Case No. 4/Kharab, I have the honour to observe as follows:-

- (1) The claim of your client, A. Y. A. al-'Abwaini, was based on masha' shares and on their equivalents as worked out by you. You did not make any alternative claim based on defined boundaries and the point was at no time made during the proceedings.
- (2) Article 47 of the Land Code refers to land that has been sold with definite boundaries. In this case there was no sale and no argument or issue actually arose as to whether the boundaries were definitely fixed or not.
- (3) In other words, your case as presented and pleaded was successful and a reference to Article 47 of the Land Code, even if it were relevant and applicable, is inadmissible for the purpose of altering the decision in any manner after it has been given.

For these reasons your application for revision referred to above is hereby refused.

I have the honour to be, Sir,  
Your obedient servant,  
(sgn.)

SETTLEMENT OFFICER,  
RAMLEH SETTLEMENT AREA.

C/S.<sup>75</sup>

Al-Imam, the attorney for the sisters, then submitted another application, dated 3 February 1931, to the Settlement Officer, stating that the schedule of the area was “untrue,” since it was “based on the old Tabo records” (different spelling for *tabu*, meaning land registry or title), and restating the large difference in dunums (4773 versus 9196 dunums and 453 square meters). He asserted that the decision “was based on the old uncorrected area,” which was why he was applying “for correction of the figures of the area in conformity with the new, corrected one.”

Argument of R. A. al-Dajani also responded to the Settlement Officer in a short statement opposing the claim of Al-Imam’s clients, the handwritten translation of which was referred to as Exhibit R (also labeled as 158).

#### Argument of R. A. al-Dajani

I beg to state that Tabu Records were produced at the time of the partition of the land at the Magistrate Court Ramleh according to which the Defendants got their shares in the land in the presence of all the Plaintiffs who received their shares in inheritance from Y. ‘Abdul Fattah which constitutes a clear admission as to our true claim. We claim the land on ground of possession over ten years. All the commentators of the Land Law stated that where a person claims ownership over a Miri land on ground of purchase and possession such a person is not supposed to prove the purchase but it will suffice if he will prove his possession, in as much as the sale, which I have mentioned was between relatives. Settlement Officers are not bound by any law, they are only bound by the rules of evidence in so far as they are in accordance with equity. I apply therefore for the hearing of the witnesses.

The judgement in respect of the partition is a presumption which allows the hearing of evidence regarding the sale, in pursuance of Article 69 of the Civil Procedure Rules. When the fellahin partitioned their lands between them and the Jews at al-Qussaba and al-Huquf al-Gharbi in 1924, the Defendants received all the lands due to them and the Plaintiffs did not object to their kushans. The Plaintiffs received the lands due to them devolving upon them from Y. ‘Abdul Fattah when the partition of the lands with the Jews took place. The Plaintiffs did not raise any objection at the time the peasants partitioned among them the lands and planted citrus plantations in part of them. Generally speaking the fact of taking part in a partition is an admission of the right of ownership of the second party. Article 1659 of the Majalla prescribes that silence at the time of purchase is an implicit admission, further, all the commentators of this article stated that not only in a case of purchase is it also to be considered as an admission but also in case of a person disposing of a property by way of purchase or by other dispositions affecting the ownership of same in the presence of a relative while the latter kept silent, in such a case this is to be considered as an implicit admission on the part

of the relative. Further, they stated that it is not requisite that a relative should be present, but it is sufficient to consider his silence as an admission and even if he was merely aware of the disposition of his relative and kept silent. I request therefore that my previous claims be considered.<sup>76</sup>

Here the key argument made by attorney Al-Dajani was that as long as all the parties were present at the time of partition, the fact that they did not protest or speak up eliminated their future rights to get back that land. On the other hand, and as seen in earlier statements, al-Imam, the Plaintiffs' attorney, had described how the Plaintiffs did not have all the information to hand and did speak up as soon as they were made aware of all their rights; furthermore the amount of land that they were entitled to was much more than what was registered in the *tabu* records. While both lawyers made strong arguments based on other areas where legal disputes had surfaced on the issue of parcellation of *musha'* lands, there were many cases in which numbers of shares were claimed and the Settlement Officer had to make decisions or judgments even after the parcellation of all the village lands had been carried out by the landowners and the Village Settlement Committee. Even so, the Plaintiffs' application was not successful.

Before the Chief Justice, Mr Justice Frumkin, and Mr Justice Khaya, at the Supreme Court Sitting as a Court of Appeal, six individuals of the Hamdan family raised an appeal against four members of the 'Abd El Fattah family. The Appellants consisted of "D. M. Hamdan, Db. M. Hamdan, A. A. Hamdan, Ha. R. Hamdan, Hu. R. Hamdan, and N. R. Hamdan." The Respondents were "A. bint Y. 'Abd El Fattah, K. bint Y. 'Abd El Fattah, H. bint Y. 'Abd El Fattah, and S. Y. 'Abd el Fattah." The judgment in the case had been delivered at the Land Court of Jaffa on 30 May 1931, and the judgment of the appeal was given on 13 April 1932. The judgment of the appeal was that it was premature and the application was "dismissed with costs to include LP.4" in advocate's fees. The Chief Justice for the appeal was M. F. J. McDonnell. Even though the case was settled in January 1931, the Plaintiffs, along with seven Defendants, applied for an appeal just a few weeks later on 17 February 1931, and this was granted to them on 6 March.

The case file for the appeal, like the case itself, contained many papers showing that every aspect of the case was documented. These papers included the verbal testimonies given before the Ramleh Civil Magistrate, the declarations of some of the respondents, a contract of sale, statements before the Settlement Officer (the originals and their translations), the notes, decisions and letters by the Settlement Officer, the applications for the case along with their translations, and the same for the applications for the appeal, extracts from the *tabu*, Power of Attorney documents, inheritance certificates, and finally many Memorandums of Claims, Certificates of Registration, and Summons to Witnesses, all of which were dated between 1928 and 1930. Even so, the appeal of all six members of the Hamdan family versus the four members of the 'Abd el Fattah family was unsuccessful, based on the appeal



being premature and signed as such by the Chief Justice, M. F. J. McDonnell, on 13 April 1932.

*Case No. 7*

This case was between two individuals, the Plaintiff A. Radwan, and the Defendant K. M. M. Hamdan, and concerned the ownership of shares in a parcel of land in the village. Radwan claimed that three years before, he had purchased 97.5 shares from his mother (which represented one-quarter of the 370 shares she owned) “in the village of Sarafand al-Kharab in the locality of Sinnariya.” His claim was that since the purchase had been *barrani*, meaning ‘externally’ or ‘outside,’ and since his shares had been left out when the parcels of that locality were distributed, he was suing for his share of the land and for compensation. The Defendant stated that the locality had undergone parcellation four years previously, and that the mother of the Plaintiff had sold her land prior to that; however he did not know if she had or had not kept the 97.5 shares that the Plaintiff claimed were his. The Defendant did know that the Plaintiff had received the shares he was entitled to during the parcellation.

The Plaintiff and the Defendant both called A. S. al-Taji al-Faruqi as a witness; he “testified that in the Land Registry records the mother of the Plaintiff did not have a share recorded but that in a Certificate of Succession made after the parcellation she appeared as one of the heirs of her father, A. Hamdan.” The Plaintiff named another two witnesses, one of whom testified that he was unaware of what had happened to the 97.5 shares after “he had personally handed [them] over to the Plaintiff at the time of the parcellation.” The other witness for the Plaintiff thought that the shares were part of the division of parcels made by the Ramleh Civil Magistrate and that if they had been excluded, then every owner in the locality, including the witness along with the Defendant, “would have a very small portion of it” in each of their parcels.

The Settlement Officer called another witness in the case. Db. M. Hamdan was “the first Mukhtar” of Sarafand al-Kharab, and stated in his testimony that:

he did not know who now had the shares of the mother of the Plaintiff but thought they might be with the heirs of ‘Abdul Fattah Hamdan, as the heads of the families at the time of the parcellation would not have taken less than the total shares known to have belonged to A. Hamdan.<sup>77</sup>

One of the remaining two witnesses in the case was the Plaintiff’s mother, K. bint A. Hamdan, who testified that she had indeed sold a quarter of her shares to her son “three of four years before the parcellation was effected,” and the other was the “second Mukhtar of the village,” who testified “that if the ¼ share existed at the time of parcellation the Plaintiff himself must have then got it in his resultant parcel.”

The Settlement Officer concluded that the one-quarter (or 97.5) of shares that had belonged to the Plaintiff's mother must now be in one of three places: in the parcels of (a) all the owners in al-Sinnariya; or (b) the heirs of A. Hamdan; or (c) the Plaintiff. It was the decision of the Settlement Officer that the Plaintiff had failed to prove (a) and (b); therefore, based on the evidence, and "with very special reference to the evidence of the mother of the Plaintiff," the judgment on 7 October 1930 was in favor of the Defendant and the Plaintiff's claim was dismissed.

*Case No. 11*

The Plaintiffs in this case were 17 Arabs from the Hasanain, 'Abdul Jalil, Salih, Al-'Abwaini, and Al-Khatib families, and the Defendants were Db., Hu., and Ha. Hamdan and H. Matar. There were many parts to this case, including one where one of the Plaintiffs was trying to claim half the interest on some land, based on a sale; however this claim was dismissed. Another claim by the Plaintiffs involved another land sale where some shares of the parcel had been sold and the rest had not; for the land that had not been sold there were inheritance issues to be resolved. Two Plaintiffs actually withdrew their claim. In the end the Settlement Officer determined who had sold what of their inheritance, and dismissed the claims that the Plaintiffs were unable to prove.

The judgment in the case was appealed against, using Article 192 of the Civil Procedure, on the basis of one specific point; this was that "the exchange which took place between the parties on the land left to them by their testator including the plot in suit." However the applicants making the appeal had not informed the Land Settlement Officer and the Land Court of this exchange in the original case, using "new facts and fresh proofs, while what has been stated in the grounds of appeal as to the question of exchange is the nature of a new claim." Based on this, the Court decided it would not change the decision of the Land Settlement Officer and dismissed the appeal.<sup>78</sup>

*Case No. 12*

In this case, the Plaintiff, S. S. Abu-Daud, and the three Defendants, Db., Ha., and Hu. Hamdan, all claimed ownership of a parcel of land (the area of which was 8.516 dunums). Abu-Daud's claim was supported by

a document of purchase executed before the Notary Public at Ramleh on 13th May, 1925, in which the vendors (AA., A., M., and S., all four of them being the offspring of N. Hamdan) appointed M. M. Hamdan as their attorney and in which they admit having received LE.90 prior to the drawing up of the document; they also state therein that nothing is due from the Plaintiff.<sup>79</sup>

Their attorney, M. Hamdan, was supposed to complete the paperwork and formalities of the transfer in the Land Registry, but it seemed that while the land was delivered to the Plaintiff following the transaction, he was “illegally forced out of possession by the Defendants” in 1928. He proved this through the “tithe and werko receipts” (property tax) for the years 1924, 1925, 1927, and 1928. Although there was no receipt for the year 1926, there was a lease dated 1 November 1925 to a member of the village, K. Nimr. Based on this lease it was therefore suggested that Nimr had paid the tithe and *werko* for the year of 1926. Based on this evidence, along with that of other individuals of the Hamdan family and one other member of the village, the Settlement Officer decided that “the vendors did deliver Possession to the Plaintiff.”

The Defendants supported their claim of ownership using two documents: one of purchase and the other a Power of Attorney (dated 28 November 1928). The vendors named were the same individuals who had sold the land to the Plaintiff; they stated that they had received P£140 in payment from the Defendant, and that their attorney, A. M. Hamdan, was to carry out the formalities of the transaction. They claimed that:

the Plaintiff had never been in possession and that the sale to him had been cancelled by the withdrawal of the power of attorney on 27 November 1928, which had been given to M. M. Hamdan on 13 May 1925 by the vendors. In this cancellation of the former power of attorney the vendors alleged that there would be “*ghubn fahish*” [obscene injustice] if the formal transfer were to be effected, as originally intended. The vendors paid the equivalent of LE.90 to the Notary Public at Ramleh on 27th November, 1928, as a deposit in favour of the Plaintiff.<sup>80</sup>

The Defendants’ witness was one of the four vendors, S. N. Hamdan, who swore “that she had never sold to the Plaintiff and that he had never been in possession.” However, based on the documented evidence, the Settlement Officer could not believe her statement or the claim by the Defendants that the Plaintiff had not under any circumstances been in possession of the land, and concluded that not only was the Plaintiff in possession of the land, but that he had been “frightened or bluffed out of it by the action of the Defendants and the vendors.”<sup>81</sup>

The parties and the vendors in this case all agreed on one point, which was that the land had not been registered in any of their names, or even in the name of the father of the vendors. Based on all of this, the Settlement Officer decided on 22 November 1930 that the sale by the vendors to the Plaintiff would take precedence over that to the Defendants, “as it was prior to the latter and was made in good faith, accepted in good faith, and completed so far as then possible by delivery of possession.” Therefore, based on Article 5 (b) of the Registration of Land Ordinance of 1929, the land would be registered in the name of the Plaintiff (and he would pay the registration fees), with the Defendants paying for the hearing fees and costs. The Settlement

Officer also pointed out that the Defendants had not tried to obtain the approval of the Settlement Officer, even though the transfer of the land to the Defendants had occurred after the village Settlement operations had already begun, and that the Settlement Officer “would not have approved the second sale, and does not approve it now.”<sup>82</sup>

Other points mentioned in the Settlement Officer’s decision were that, with regard to the second sale, by the vendors to the Defendants, there was no claim of *ghubn fahish* (obscene injustice). It was noted also that the Plaintiff was “an Arab of the Sutairiya tribe and has no relations resident in the village itself.”<sup>83</sup>

### ***Land Classification and Rights***

Land tenure systems not only secure the landowner’s right to a specific area of land, but must also take into account rights of passage and other types of interaction that occur with neighboring agriculturalists and peasants. These were often defined in the Schedule of Rights or Decisions in the ‘Other Rights’ column (as mentioned earlier). If needed, such issues could be resolved in the form of a dispute, and the decision of the Land Settlement Officer was then added to the schedule. Furthermore, the classification of the land could alter the land rights, especially in relation to whether or not it could be used by other landowners for communal purposes.

#### *Case No. 5 and Case No. 6*

Case No. 5 had nothing to do with land tenure, but rather was concerned with a land right – the ‘right of passage.’ The Plaintiffs were Ah., Am., Ad., and A. ‘Anbar, and lastly T. Ibrahim. The Defendant was I. H. al-Taji al-Faruqi. The Settlement Officer heard the testimonies of three of the four witnesses who had been named; however his decision was that their testimonies did not provide evidence to verify the Plaintiffs’ claim for the right of passage for all of their parcels over the one parcel of Al-Faruqi. Having examined the parcels tied to the case, the Settlement Officer stated that while it was true that the passage was “unsuitable for motor or wheeled traffic,” the most viable passage was not that of the Defendant, but rather that of one of the Plaintiffs; this was the Settlement Officer’s decision on 27 September 1930.<sup>84</sup>

Case No. 6 was similar to that of No. 5 in the sense that it concerned the right to use another landowner’s parcel of land, but in this case the Plaintiff was the Village Settlement Committee and the *mukhtars* of Sarafand al-Kharab, while the Defendant was H. A. M. Al-Qrinawi. The case involved a road to which certain parcels needed access; however the road was within the Defendant’s land. Nevertheless the Settlement Officer examined the road and the affected parcels, and agreed that the road was “essential to provide access” to the Plaintiffs’ parcels.<sup>85</sup>

*Case No. 15*

This case seems to have been another where two cases were intertwined. In the main case there was only one Plaintiff, A. K. Ibrahim, and a total of 20 Defendants grouped among five different claims. Most of the Defendants were from the Hamdan family, with other members from the Al-‘Attar, Matar and ‘Abdul Fattah families.

The Plaintiff “claimed half a dunum of land or L.P.20 compensation from the Defendants on the ground that he should have a tenth part” of the Jidr al-Balad locality. He claimed that the land had been promised to him, on the basis of Exhibit A in the case, which was a document given to him by two individuals for half a dunum of land “in another locality, west of the village near the school”; but that this agreement, dated 17 April 1929, was neglected. The Settlement Officer did not find this claim to be substantial and dismissed it, since the Plaintiff had no other evidence and because it was “rather in the nature of a civil action for non-fulfilment of the agreement.”

With regard to the Defendants from the Hamdan family, they claimed that up until two years before, the “unbuilt-on parts” of their claimed parcels had been utilized for various purposes such as “an animal compound, a village well reservation, and a winter pond for the common purposes of the village” – hence the *matruka* classification of the land.<sup>86</sup> Though seven other defendants opposed this, the Settlement Officer did not believe them, based also on the contrasting evidence of witnesses K. Shuhaiyr and M. Darwish (a member of the Village Settlement Committee).

There were two important points to remember here concerning the classification and use of land. If the land was in fact being used by the Hamdan family for the communal needs described above, then the land would not have to be cultivated since it would be classified as *matruka*. However if the land was not *matruka* and was also uncultivated, they could lose their ownership rights to the land. The Settlement Officer decided with regard to the Defendants that the parts of the land that were not “built on” in 1928 were in fact *matruka*, based on the evidence mentioned above along with his personal inspection of the parcels on 29 October 1930. The remainder of the decision addressed each claim, the parcel number to which it referred, and in whose names each would be registered.

***Parcel Boundaries***

Land tenure can only be secure if the specific area is defined by land survey and recorded and labeled during registration. However, disputes over boundaries could occur between parcels of land within a village, but also in the boundary lines dividing localities or registration blocks, and between whole villages. These invisible lines of division relied on a secure land tenure system.

*Case No. 8*

Case No. 8 was concerned with the claim by the Plaintiff D. M. Hamdan against the Defendant S. A. Ibrahim about an encroachment on land. The Plaintiff claimed that the Defendant had moved the marks at two points on the ground, therefore encroaching upon a road.

In a statement from the Settlement Officer of the Ramleh Settlement Area to the Plaintiff and the Members of the Village Settlement Committee and the *mukhtars* of Sarafand al-Kharab, it was stated that in the course of the Settlement operations the boundaries of the land parcels had been established during the demarcation of the village; this had been done according to “Article 22 (II) (a) and (b) of the Land Settlement Ordinance of 1928.” On 7 October 1930 the Settlement Officer carried out a personal inspection of the road and its adjacent boundaries, matching them to “the boundaries with the plans of the Survey Department of the Government of Palestine,” and found that there was no encroachment, other than that of one parcel belonging to D. M. Hamdan (the Plaintiff). Apparently Hamdan “after demarcation and survey [had] planted a number of citrus trees on the area reserved for the said road.”<sup>87</sup>

It was decided by the Settlement Officer that it had been almost impossible to know the exact position of the road before demarcation, and taking into consideration “the benefits conferred on the owners of parcels abutting the said road”; therefore, based on Article 22 (2) of the 1928 Land Settlement Ordinance, no one would be compensated for these changes. And finally, since it was in fact the Plaintiff who had encroached on the road after demarcation had been completed but while Settlement operations were still taking place, he was ordered to distinguish the boundaries of his land correctly, within 30 days of the Settlement Officer’s decision on 16 October 1930, as per Section 9 of the Land Settlement Ordinances of 1928 and 1930.

All these village cases show that while Sarafand al-Kharab, in terms of landownership, is classified as a Jewish village, in terms of the village profile the solely Arab population stands out. Of all the 16 legal disputes that took place in the village, only one concerned a Jewish landowner, and did not involve any Arabs. The rest were all Arab landowners who dealt with issues of sales, inheritance, and registration, to name a few of the themes. This may not relate to the landownership statistics displaying Sarafand al-Kharab as a Jewish village, but it does relate to the population makeup of the village, since all the inhabitants were Arabs and members of families that had lived in the village for generations, as the evidence in these disputes clearly proved.

## **Conclusion**

For the purpose of this research, Sarafand al-Kharab was selected as the Arab case study village, based on the population of the sub-district of Ramleh being predominantly Arab, and the number of dunums of the village being principally Arab-owned. However, the results of the land registry records

proved the latter notion to be valid for only a few years. The land registry files were dated 1931, at which time the majority (59 percent) of the village land was Jewish-owned. By 1945, the entire village was almost double the size of what is listed in *Village Statistics 1945*, being a total of about 10,000 dunums rather than the previously-estimated 5,503 dunums due to the village partition for a Jewish settlement of approximately 5,000 dunums.

Even though not a single Jewish individual lived in the village, most of the village land, and most Jewish-owned land, was in fact owned by Jewish individuals and not Zionist land companies. Most of these individuals resided in neighboring settlements, or in Tel Aviv or Jerusalem. Nevertheless, there were quite a few whose registered addresses in the Schedule of Decisions showed them to be completely outside Mandate Palestine.

The profile of the typical Arab landowner was completely different. Almost all Arab landowners lived in the village, and were members of large families (as opposed to Jewish landowners who for the most part had no other land-owning family members). Therefore when calculating how much land each family owned, Arab landownership in comparison to Jewish was less per family, and even lower if looked at per individual. Another difference is seen in the type of land owned. Almost 5 percent of the village lands were *mulk* lands, which was actually not common in rural villages. All of the *mulk* land of Sarafand Al-Kharab was Arab-owned.

As mentioned earlier, there were quite a few large landowning Arab families in the village, among which the Hamdan family (with 650 dunums) owned the most. This is duly illustrated in the legal cases in the village that were based on the land registry records, as they were directly involved in six out of the 16 cases. With regard to the cases, there were some where the Plaintiffs and Defendants were a mix of Arabs and Jews. Indeed, even though the majority of the land was Jewish-owned, only the first of the 16 cases involved a Jewish landowner and was concerned with the issue of ownership through citizenship and inheritance. The other 15 cases all involved Arabs and covered issues of inheritance and sales, and clarification of who owned what after the British Government had surveyed and opened up registration of the land.

However while it is true that the legal disputes did not show any direct conflict between Arab and Jewish landownership, the land transactions documents did. It was evident that Arab landowners were in need of financial resources. As with most rural villages, the land owned was classified as *miri*, thereby stipulating that the land had to be cultivated in order to preserve their ownership. However, there were no financial institutions to provide Arab landowners with loans, thus eliminating the option of a mortgage (there were only a couple of parcels mortgaged by Arab landowners to Jewish individuals, as opposed to a financial institution). Instead, Arab landowners resorted to selling portions of their lands to Jewish landowners and land companies in order to be able to cultivate and keep the rest of their land. Jewish landownership, on the other hand, could access funding. Thus, 424 dunums of

Jewish-owned land were mortgaged to various banks and to land companies such as the Palestine Jewish Colonization Association.

So, while the land registry records may not show direct conflicts between Arab and Jewish landowners in Sarafand al-Kharab, they do not do away with the tense conditions. In terms of population, the village was presumed to be 100 percent Arab, but in terms of landownership it was 59 percent Jewish. Arab landowners for the most part belonged to large families that had histories and were involved in ongoing village developments, as indicated by the sizes of families and also by legal cases that tracked back to the village's parents and grandparents when issues of inheritance, registration, and sales were dealt with. It is difficult to assume any complications or tensions that Jewish landowners might have endured in the village, since, due to the lack of cases involving Jewish landowners, there was no historical or background information. From Case No. 1, it can be guessed that one complication for Jewish landowners living overseas was proving residency and nationality in Mandate Palestine in order to maintain and pass on the ownership of their land.

One of the main conclusions shown by this village is the difference between the land registry statistics and those of *Village Statistics 1945*. As mentioned, Sarafand al-Kharab was selected using these statistics to represent the implementation of the British Mandate land tenure system in an Arab village. Population-wise it was still Arab; however in terms of landownership it was the total opposite. But even more importantly, the difference between the recorded sizes of the village forces one to conclude that all the village records need to be examined in order to synthesize and update the partitions that took place. As it would seem that once enough land had been acquired by Zionist-Jews in the Arab village, that area would be broken off into a settlement of its own.

Finally, the land transfer documents demonstrated that there were indeed many transactions between Arabs and Jews; however the records also revealed the constraints and lack of choice that Arab landowners had to endure by showing that, contrary to belief, it was not just urban landowners who sold land to Jewish purchasers, but rather the *fellahin* themselves, who had no other choice if they wished to keep the rest of their land. Due to time constraints the researcher had to choose to exclude files on other cases from this study, while attempting to provide a full profile of the land tenure system through landownership statistics, parcels, land transfers, and legal disputes. Unfortunately there was no additional information on the *masha'* parcellation scheme or registration of title.

Sarafand al-Kharab was evidently a sizeable and dynamic rural village, but much of it was destroyed. According to Khalidi in *All that Remains*, many of the 206 houses still exist today, six of which "are occupied by Israeli families"; the school is used by Israeli students. Historian Benny Morris suggests that the inhabitants, fearing a Jewish attack, fled from the village on 20 April 1948. The *New York Times* wrote on 12 April 1948 that Jewish units "had struck deep into Arab territory and had blown up twelve houses on the



outskirts of al-Ramla and two neighboring villages,” and Khalidi suggests that one of these two villages might have been Sarafand al-Kharab. However, the village might not have been subjugated until the middle of May 1948, when Sarafand al-‘Amar and Bir Salim were also attacked. Today many of the buildings in the Zionist settlements of Nes Tziyyona (founded in 1882), and Yad Eli‘ezer (founded in the 1950s) are located on the land of what was once the village of Sarafand al-Kharab.

## Notes

- 1 Michael R. Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (New York: Columbia University Press, 2003), p. 232.
- 2 Within this quote Fischbach also describes British attempts at impartiality during the photographing of the registers: “Registers of writs and orders and the deeds book for Jerusalem were also to be photographed. The contractor hired to carry out the photography was Jewish, although most of the employees actually doing the work were Palestinians. To maintain impartiality, the British invited Jewish and Palestinian representatives from the land department to be present during the entire period of the photography process, although usually only the Jews attended.” See Fischbach, *Records of Dispossession*, pp. 232–33.
- 3 *Ibid.*, p. 233.
- 4 A brief history of the Palestine land registries and the photographing program is contained in a Memorandum by Sir John F Spry, former Assistant Director of Land Registration of Palestine, and is in CO 733/494/3.
- 5 The United Nations Conciliation Commission for Palestine (UNCCP) was established by the General Assembly Resolution 194 in December 1948.
- 6 FO 317/91744
- 7 Meeting on 17 July 2006 with Vladimir Goryayev, Executive Director of the Office of the United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory; at this time he was serving as Director for the Asia and Pacific Division in the Department of Political Affairs and as Secretary of the UNCCP in New York.
- 8 Appendix I of CO 733/494/3.
- 9 “Appendix II: Note on the custody of the records on the termination of the Mandate,” CO 733/494/3.
- 10 Sami Hadawi was the Palestine Government’s Official Land Valuer and Inspector of Urban Tax Assessments between 1935 and 1948.
- 11 *Jordan Times* Internet Edition, 26 July 2001; *Afaq ‘Iqariyya* (published by the Jordanian Department of Lands and Survey) 5 July 1999; “Interview with ‘Abd al-Mun‘im Samara al-Zubi (August 2001),” as cited in Michael R. Fischbach, “The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims,” paper presented at the *Stocktaking Conference on Palestinian Refugee Research* in Ottawa, Canada, 17–20 June 2003.
- 12 The term *tabu* (in Arabic; *tapu* in Turkish) means “title to land,” however it also refers to the “land registry book,” as it does here. Definition taken from Dov Gavish, *A Survey of Palestine under the British Mandate, 1920–1948* (London, New York and Palestine Exploration Fund: RoutledgeCurzon, 2005), p. 5.
- 13 Email communication with Michael Fishbach in June 2009.
- 14 Salman H. Abu Sitta, *Atlas of Palestine 1948*, London: Palestine Land Society, 2004, p. 13.
- 15 Sami Hadawi, *Village Statistics: A Classification of Land and Area Ownership in Palestine*, Beirut: Palestine Liberation Organization Research Centre, 1970, p. 7.

- 16 Definition of *mukhtar* taken from Roza I.M. El-Eini, *Mandated Landscape: British Imperial Rule in Palestine, 1929–1948*, London and New York: Routledge, 2006.
- 17 Roza I.M. El-Eini, *Mandated Landscape: British Imperial Rule in Palestine, 1929–1948*, p. 81.
- 18 See Salman H. Abu Sitta, *Atlas of Palestine 1948* (London: Palestine Land Society, 2004), p. 12.
- 19 Government of Palestine, Department of Land Settlement and Department of Statistics, *Village Statistics*, February 1938 (published by the GoP); Government of Palestine Department of Land Settlement and Department of Statistics, *Village Statistics*, March 1943 (published by the GoP), both from the Department of Lands and Survey, Amman, Jordan.
- 20 Hadawi, *Village Statistics*, op. cit. p. 12.
- 21 Abu Sitta, *Atlas of Palestine 1948*, op. cit.
- 22 Hadawi, *Village Statistics*, op. cit., p. 7.
- 23 Ibid., p. 7.
- 24 Fischbach, *Records of Dispossession*, p. 117.
- 25 From Berncastle's final report entitled "Valuation of Abandoned Arab Land in Israel," p. 4, as cited in Fischbach, *Records of Dispossession*, pp. 117–18. Fischbach notes that the report can be found in several locations: UNSA DAG 13–3, UNCCP, Subgroup: Refugee Office. Series: Land Specialist/Box 35/1951/ Reports: J.M. Berncastle; Document: MCP/3/51/9, "Valuation of Abandoned Arab Land in Israel" (14 August 1951); also the Central Zionist Archives CZA Z6/1995.
- 26 Abu Sitta, *Atlas of Palestine 1948*, p. 13.
- 27 Abu Sitta, *ibid.*, p. 13.
- 28 See in Introduction 'Map 1.1' by Sami Hadawi, "MAP H: Palestine: Classification of Soil," *Palestinian Rights and Losses in 1948: A Comprehensive Study* (London: Saqi Books, 1988), p. 200.
- 29 Salman H. Abu Sitta, *Atlas of Palestine 1948*, p. 23.
- 30 Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948*, Washington D.C.: Institute of Palestine Studies, 1992, p. 413.
- 31 Muhammad Muhammad Hasan Shurrab, *Mu'jam Buldān Filastīn* [Encyclopedia of Towns of Palestine], 2nd edn, Amman: Al-Ahliya lil-Nashr, 2000, p. 483.
- 32 Khalidi (ed.), *All That Remains*, pp. 412–13.
- 33 Ibid., p. 413; also Shurrab, *Mu'jam Buldān Filastīn*, p. 483.
- 34 Khalidi (ed.), *All That Remains*, p. 413.
- 35 Ibid.
- 36 Shurrab, *Mu'jam Buldān Filastīn*, p. 483.
- 37 Khalidi (ed.), *All That Remains*, p. 413.
- 38 Sami Hadawi, *Village Statistics 1945: A Classification of Land and Area Ownership in Palestine*, Beirut: Palestine Liberation Organization Research Centre, 1970, p. 68.
- 39 Khalidi (ed.), *All That Remains*, p. 413.
- 40 Ibid., pp. 412–13.
- 41 Hadawi, *Village Statistics ...*, op. cit., p. 68.
- 42 JDLS Sarafand al-Kharab files.
- 43 JDLS Sarafand al-Kharab / Schedule of Decisions.
- 44 JDLS Sarafand al-Kharab / Schedule of Decisions.
- 45 JDLS Sarafand al-Kharab / Schedule of Decisions.
- 46 P£ = Palestinian Pound = US \$4.03 in 1948 (from Salman H. Abu Sitta, *Atlas of Palestine 1948*, London: Palestine Land Society, 2004, p. 28).
- 47 JDLS Sarafand al-Kharab/16–3: Land Registry Transactions 1929.
- 48 Ibid.

- 49 Ibid.
- 50 Ibid.
- 51 Ibid.
- 52 JDLS Sarafand al-Kharab/16-3: Land Registry Transactions 1929.
- 53 JDLS Sarafand al-Kharab/16-3: Land Registry Transactions 1929.
- 54 JDLS Sarafand al-Kharab/Dib Maha'd Hamdan (Sale).
- 55 JDLS Sarafand al-Kharab/16-3: Land Registry Transactions 1929, op. cit.
- 56 Ibid.
- 57 JDLS, Ref. No. 11/9 dated 30 September 1929, JDLS Sarafand al-Kharab/16-19: General Claims.
- 58 Ibid.
- 59 JDLS Sarafand al-Kharab/Case 1/A.60/2260.
- 60 JDLS Sarafand al-Kharab/Case 1.
- 61 Ibid.
- 62 Ibid.
- 63 JDLS Sarafand al-Kharab/Case 1.
- 64 JDLS Sarafand al-Kharab/Case 1.
- 65 JDLS Sarafand al-Kharab/Case 9.
- 66 JDLS Sarafand al-Kharab/Case 13.
- 67 Ibid.
- 68 JDLS Sarafand al-Kharab/Case 13.
- 69 JDLS Sarafand al-Kharab/Case 16.
- 70 Ibid.
- 71 Ibid.
- 72 JDLS Sarafand al-Kharab/Case 3.
- 73 Ibid.
- 74 JDLS Sarafand al-Kharab/Case 3.
- 75 JDLS Sarafand al-Kharab/Case 4/170.
- 76 JDLS Sarafand al-Kharab/Case 4/158.
- 77 JDLS Sarafand al-Kharab/Case 7/Decision of Settlement Officer.
- 78 JDLS Sarafand al-Kharab/Case 11.
- 79 JDLS Sarafand al-Kharab/Case 12.
- 80 JDLS Sarafand al-Kharab/Case 12.
- 81 Ibid.
- 82 JDLS Sarafand al-Kharab/Case 12.
- 83 Ibid.
- 84 JDLS Sarafand al-Kharab/Case 5.
- 85 JDLS Sarafand al-Kharab/Case 6.
- 86 JDLS Sarafand al-Kharab/Case 15.
- 87 JDLS Sarafand al-Kharab/Case 8.

## 6 The Village of Al-Haram

### Location

Al-Haram was a village located 16 kilometers north of the city of Jaffa in the coastal plain sub-district of Jaffa. The village (PGR 131177) was built on a hill and looked out over the Mediterranean.<sup>1</sup>

### Origins and History

The village of Al-Haram was also known as Sayyiduna 'Ali (generally spelt as Sidna 'Ali), meaning 'our lord 'Ali,' because it was built around the shrine of a descendant of 'Umar ibn al-Khatab named al-Hasan ibn 'Ali, who died in AD 1081.<sup>2</sup> However another source claims that the name came from the fighter Abi Hasan 'Ali ibn 'Ulail, who was from the clan of 'Umar ibn al-Khatab, since Abi Hasan 'Ali ibn 'Ulail was known generally by the name of 'Ali ibn 'Alim.<sup>3</sup>

The study of this village was particularly interesting because the village lands today are part of the Israeli city of Herzliya, which was named after the Zionist Theodor Herzl. During the Mandate the village was a Zionist Jewish settlement.

Unlike the other villages studied within this book, some general information was available about Al-Haram village, more commonly referred to in non-archival sources as Sidna 'Ali. This includes statements made by old inhabitants and their descendants from the village, for example the following from an article by a Palestinian refugee currently residing in Gaza:

My family's name is Abu Ghali and my family comes from Bir Saba. We used to own 48,000sq. meters of cultivatable land. People used to cultivate their land in winter and move to another area called Sidna Ali, near Jaffa. There, they used to rent land lots and cultivate them. During the harvest season they would go back to Bir Saba. In 1933, the British came and expelled the Arabs from Sidna Ali in order to settle Jewish immigrants on their lands. They offered compensation to the land owners. The compensation was one camel, twelve cans of oils, and 20,000sq meters of

land with a house built on it in Moqibla area near Jenin. Most people accepted the offer, among them was Khalil Abu Ghali, my grandfather. Those who rejected the offer were expelled by force. A Jewish settlement called Kabus was built there.<sup>4</sup>

The parcellation of this village was not finalized until April 1934, and furthermore the Schedules of Rights for the eight registration blocks are all dated 1935. Therefore if the events described above took place in 1933, it would mean that many landowners, such as Khalil Abu Ghali, were forced off their land with no registered account of them ever having owned it. It is not surprising that there are no accounts of the compensation offered to the landowners in the land registry records.

Khalil Abu Ghali's grandson then recounts what happened in 1948:

The Nakba affected us very badly. We lost everything ... We were living on our own lands, growing our crops and breeding livestock. We used to depend on organic crops and livestock. We became homeless refugees, waiting for other nations to give us something to eat. We still tell our children about our land. They know their original land very well. It is inscribed in our hearts and minds.<sup>5</sup>

On the other hand, one can be optimistic and hope that since the village had both Arab and Jewish inhabitants some friendships, or at least positive interactions, occurred between the villagers. Issam Massarweh, born in Al-Haram, said that as a child he had "a special relationship with a Jewish family and children who lived with him in the same neighborhood in Rishpon, which was part of al-Haram."<sup>6</sup> Issam's daughter, Maram Massarweh, recounted how a Jewish villager had helped their family in 1948:

The humane Jewish hero in this story is Naftali, of whose history and actions I learned much from the little I was told. The same Naftali who told my grandfather, 'Abed, stay and don't leave, you have a gun and I have a gun, and the two of us will protect your house.' For two weeks during the events [of the war], Naftali and my grandfather defended the house (which was for some reason later called 'Ovadia's house,' after the name of my grandfather, Abed), until Jaffa fell. Two years later Naftali helped my grandfathers acquire identity cards, since they had been absent during the population count and stood to be expelled again, overnight, this time not from Sidna Ali but from Taibeh.<sup>7</sup>

Unfortunately village land archives do not reflect such events, especially when it comes to the interactions and individual relationships between Arab and Jewish inhabitants, such as the above-mentioned story in Al Haram. In fact, they suggest the opposite, i.e. that Arabs and Jews in the village were as separated as possible, whether in terms of location of their lands, dealings in the parcellation process, or legal cases.

Other files amongst the land records of the village included Decisions of the Settlement Officer (which discussed the rights of three land companies); Changes in Existing Registers; Certificates of Successions; Documents; a File for Sketches; various indexes and lists; Government Claims; *Waqf* Claims; Notices; Village Settlement Committee; and General Correspondence. The researcher cannot be certain that all files had been examined since, as the allotted research time at the Department of Lands and Survey expired while the village of Al-Haram was being studied, as will be explained later in this chapter. However, the following sections attempt to provide as comprehensive a review of the available information as possible and an analysis to link the various parts together. As this village is meant to represent a Jewish village (in regards to the population of the sub-district of Jaffa as well as the percentage of Jewish landownership in the village itself), it is expected that Zionist collaboration in the components of the land tenure system will be greater, and more direct, than what was found in the previous village of Sarafand al-Kharab.

### **Statistics of Jaffa and Al-Haram**

The average size of a Jewish village or expanded colony was 4,620 dunums. Of all the Jewish towns and villages, 32 percent were less than 2,000 dunums in size, and 43 percent were less than 3,000 dunums. According to Abu Sitta in the Atlas of Palestine 1948, “a Jewish colonization organization” removed the land areas for Jewish villages from Arab Palestinian village lands; when it had “acquired a piece of land in an Arab Palestinian village, it attempted to acquire a little more land, sufficient to convince the British Mandate to declare the colony a separate Jewish village, although it was much smaller in area and population.”<sup>8</sup>

In the whole of British Mandate Palestine, there was only one sub-district where the majority of the population in 1945 was Jewish. In Jaffa, 264,100 people (over 70 percent) were Jewish out of a total population of 373,800. The sub-district of Jaffa had 353,366 dunums, of which 177,354 were owned by Arabs, 129,439 were owned by Jews, and 28,573 were public lands. Even though Jews were the majority of Jaffa’s population, they only owned about 37 percent of the land. There were about 60 villages and towns in the sub-district, the smallest being the Jewish village of Qiryat Shaul, with only 90 people, and the largest being in the urban cities of Tel Aviv (166,000 people) and Jaffa (94,310 people). Of these 60, there were 25 that had only Jewish inhabitants, and 21 that only had Arabs; all the remaining towns and villages were mixed.<sup>9</sup>

The village of Al-Haram had 8,065 dunums of land, of which 4,745 dunums were owned by Jews, 2,681 dunums by Arabs, and 639 dunums were public lands, which is why this village was selected as a village where the majority of the land was registered as owned by Jews.<sup>10</sup> However even in this village, in a sub-district in which the majority of the population was Jewish,

the village population was not; only 360 of the 880 inhabitants were Jewish and the rest were Arab. Therefore, according to *Village Statistics 1945*, almost 59 percent of the land of Al-Haram was owned by 41 percent of the population.

As with the other two case studies, all the information about this village came from the British Mandate Palestine archives at Jordan's Department of Lands and Survey. There were 30 legal cases in the village; however the number of registration blocks that made up the village can only be estimated by the author based on the information described in the following section.

### **Landownership**

At the Jordanian Department of Lands and Survey, the abrupt termination of the allocated time for 'administrative reasons' meant the author could not examine all the documents in the two boxes of land records for Al-Haram. This study was thus not able to account for a quarter of the files; unfortunately some of these files might have referred to the Registration Blocks that contained the schedules, claims, and maps. The statistics in this section give a full account of the eight registration blocks examined by the researcher: however, evidence in the village's Masha' Parcellation folder suggests that another ten blocks remain unaccounted for. The researcher does not know whether or not there are files available at the Lands and Survey archives for the ten remaining registration blocks, since some of the final block maps for the unaccounted registration blocks were seen there by the researcher and may or may not have been separated from their registration block folders.

This of course affected the size and landownership calculations for the village. The village size according to Hadawi was 8,065 dunums, however the calculations based on the Schedules of Rights showed that (with the exception of the missing schedules of some of the registration blocks) the total size of Al-Haram was 5,150.105 dunums, thus accounting for only 64 percent of the village.<sup>11</sup> If *Village Statistics 1945* is in fact correct, that would mean the remaining nine or ten registration blocks accounted for only 36 percent. This may be accurate; or, as in the case of Sarafand al-Kharab (in Chapter Five), the village might in fact have been larger than estimated in *Village Statistics 1945*, given that only eight registration blocks made up the 5,150.105 dunums, and there were at least another nine blocks to account for.

A document dated 18 September 1933, from the Palestine Land Development Co. Ltd. (PDLDC) to the Settlement Officer (Major Camp), suggesting proposals for the division of the village's localities in the Masha' Parcellation folder, stated that:

According to the Cadastral survey made by the Survey Department, the 19 blocks of Al-Haram Village (not including certain small plots, the boundaries of which have not yet been finally fixed) consist of 11,698 dunams held in common ownership by Jews and Arabs. (This does not include parcels owned by Arabs only.)<sup>12</sup>

One sees immediately that even though this amount was calculated by the Survey Department *before* the boundaries of the village had been finalized (note the mention of 19 blocks rather than 18), the size of the village must have been larger than that estimated in *Village Statistics 1945*, since it did not include Arab-owned parcels; regarding these the PLDC suggested that:

The 425 dunams attributed to A. M. Abu Abaya, A. bint H. M. Ahmed, and H. bint H. M. Ahmed, and declared as Mafruz by you, is based on an error, and should be instead 258 dunams, approx., according to their rights [rights] in the Musha. If therefore, we deduct from the a/m total area this area of about 258 dunams, the Arab share in the Musha land is 2910.582 dunams = 30.15% and the Jewish share 6,742.760 dunams = 69.85%.<sup>13</sup>

So, assuming that the calculations and errors mentioned by the PLDC were correct, i.e. the 11,698 dunams minus the parcels owned by Arabs only, or the 9,653.342 dunams, being the sum of the Arab and Jewish shares mentioned above (neither of which included the village's public land), one concludes that in both cases the village size was indeed greater than 8,065 dunams, once again proving *Village Statistics 1945* to be inaccurate. Nevertheless, since all the PLDC's totals mentioned above were preliminary calculations, and perhaps even biased, it would be inappropriate to declare who owned what solely on the basis of these figures.

As Table 6.1 shows, access was available to registration block numbers 6664 and 6681 (block 6663 was referred to in various correspondence, including a document between the Assistant Land Settlement Officer to the Land Settlement Officer of Jaffa). If all the block numbers were in fact chronological, they gave a total of 19 registration blocks, with only one (number 6672) showing a minuscule difference of 0.1794 dunams between the Schedule of Rights and the Final Map. Therefore for the purpose of the percentage calculations for this section, the amount of 5,150.105 dunams was used as the full size of the village, since those were totally accounted for and known to be final in the village's official Schedule of Rights.

Based on the Schedule of Rights for the eight registration blocks, there were 16 Arab families, two of which listed their address as the city of Jaffa, and four individual Jewish landowners, all of whom listed their addresses as Tel Aviv. Of these four individuals, some, based on their names, were of Arab origin (such as Y. Yehuda Halabi); however because their address was given as Tel Aviv it was assumed that they were Zionist Jewish immigrants as opposed to Palestinian Arabs who were Jewish but could not be distinguished from other Palestinian Arabs.

Using 5,150.105 metric dunams as the size of Al-Haram, Jewish land-ownership of 3,348.334 of those dunams accounted for around 65 percent of the village land. Arabs owned 1,495.704 dunams, making up 29 percent of the village, and approximately 6 percent (306.067 dunams) were public lands.



Table 6.1 Registration blocks and land area for Al-Haram village

<i>Block #</i>	<i>Name of Registration Block</i>	<i>Area in Metric Dunums according to Al Haram Final Maps</i>	<i>Area in Metric Dunums according to Schedule of Rights</i>	<i>Village Statistics (1945)</i>
6663	–	Missing	Missing	–
6664	Khōr Abu Hamīda ash Sharqī	490.130	490.130	–
6665	Khōr Abu Hamīda al Gharbi	837.974	837.974	–
6666	–	Missing	Missing	–
6667	–	Missing	Missing	–
6668	–	Missing	Missing	–
6669	–	Missing	Missing	–
6670	–	Missing	Missing	–
6671	Al Hārisīya	378.226	378.226	–
6672	Al Bukhāriyāt & As Sallāqa	Missing	812.1754	–
6673	Abu Zeitūna & Birkat Mas'ūd ash Sharqī	781.192	781.0126	–
6674	Abu Zeitūna & Birkat Mas'ūd al Gharbi	589.386	589.386	–
6675	–	Missing	Missing	–
6676	–	Missing	Missing	–
6677	–	Missing	Missing	–
6678	Al Mafrūka & Al Habl	337.555	337.555	–
6679	–	Missing	Missing	–
6680	–	Missing	Missing	–
6681	–	Missing	923.646	–
	Total	3,414.463	5,150.105	8,065

Differently from Sarafand al-Kharab, where most Jewish ownership was by individuals, landownership in Al-Haram was mostly by companies. Thus the Palestine Land Development Co. Ltd owned 331.590 dunums; Keren Kayemeth Leisrael Ltd. owned 758.699 dunums; and the Eretz Israel (Palestine) Foundation Fund (Keren Hayesod Ltd.) owned a substantial 1,908.774 dunums. The total of their lands therefore made up about 58 percent of the village. Of the four individual Jewish landowners in the village (all of whom lived in Tel Aviv), B. Mani owned the largest amount of land, with 199.7984 dunums, followed by S. E. Belbūl with 74.736 dunums; Y. Y. Halabi and Y. S. Tūnya shared all their land parcels equally, which gave each 37.368 dunums. Although only four individuals owned land, the amounts involved were substantial.

The total amount of land owned by the 16 Arab families accounted for almost all the Arab-owned land in the village, with the exception of the 1.2 dunums of *waqf sahih* land registered in the name of The Supreme Moslem Shari'a Council as Administrators of the Sheikh al-Habbas trust in the village of al-Haram.

There were no lands classified as *mulk* in the village; however there were 84.741 dunums of *matruka* lands, with about 98 percent of the village classified as *miri* land. Unusually, however, around 16 dunums of the *miri* lands were registered in the name of the *mukhtars* of the village, and another 13 dunums were in the name of the High Commissioner, all of whom were usually registered as owning *matruka* land. The village's public lands were registered under the names of the High Commissioner (in trust or on behalf of the Government of Palestine) and the village Mukhtars, not only in the village of Al-Haram, but also the village of Kafr 'Abbush.

Regarding the Arab-owned lands, the smallest amount was 7.91 dunums, owned by the Az-Zaiyat family. The four largest landowning families were the Al-Qirm, with 469.884 dunums; the As-Subh, with 265.309 dunums; the Abu-'Ubeid, who had 208.777 dunums; and the Al-Masri, who owned 159.146 dunums.

The other Arab families included the Ash-Shaubaki, Ash-Shanti, Az-Za'balāwi, Zira, Al-'Ali, Abd-Al-Fattah, Al-Jabir, Al-Yusuf, Al-Qishawi, An-Namrubi, and Abu-Shuheita. It is important to remember that, given the ten unaccounted-for Schedules of Rights, the amounts of land each family owned in the village could have been quite different, and that this might have completely changed the largest landowning families from the four listed above. Indeed there could also have been many other Arab families and Jewish individuals who owned land in the village. An example can be seen in the earlier section on Origins and History, where refugees from the village claimed that they also owned land, although their families, Abu Ghali and Massarweh, were not listed at all in the available Schedule of Rights.

In the column on 'Other Rights Affecting Parcel' in the Schedule of Rights, there were the usual notes for trig points (for surveying), rights for encumbrance of passage, and notes on mortgaged land. Of the 20 Arab and Jewish families found in the available schedules, there were only two individuals whose land was mortgaged. One was an Arab, M. S. Ash-Shanti, and the other, B. Mani, was Jewish, and both had mortgaged all the land they owned in the village in the form of various parcels. As mentioned above, B. Mani, whose registered address was in Tel Aviv, owned the most land amongst the Jewish landowners, with a total of almost 200 dunums. All five parcels were mortgaged to the Palestine Land Development Company under one Land Registry Deed for a total of 750 Palestinian Pounds (P£), but since all five referred to one registry deed, it is not clear whether each parcel was mortgaged for P£750, making the total mortgage amount P£3,750, or if the total of P£750 was for all five parcels. It can be assumed that with the monetary values prevailing in 1935, the amount for all 200 dunums was a single

mortgage of P£750. M. S. Ash-Shanti, whose registered address appeared to have been the city of Jaffa, owned about 51 dunums of land shared between two parcels, both mortgaged to different suppliers. The larger (29.475 dunums) was mortgaged to an Arab, H. I. Abu Hajala, for P£165, while the other (21.056 dunums) was mortgaged to Y. Hershilkovitz for P£500. For the first time, it appeared that an Arab landowner had mortgaged a parcel of land to another Arab; however nothing was known about this individual, who did not appear, from the existing schedules, to be from Al-Haram.

The available schedules, along with the supporting documentation from the village files, show that the village of Al-Haram, like Sarafand al-Kharab, was apparently larger than estimated in *Village Statistics 1945*. However the results are consistent with *Village Statistics* in the sense that the village was still mostly owned by Jews, here in the form of three land companies: the Keren Kayemeth Leisrael Ltd., the Eretz Israel (Palestine) Foundation Fund (Keren Hayesod Ltd.), and the Palestine Land Development Company Ltd. The next section concerns the division of parcels in the village, and suggests that even though the PLDC owned the least land of the three companies, it played a significant role in the parcellation of the village.

## Parcels

Before starting the process of parcellation of the *musha'* lands in Al-Haram, many procedures needed to be completed, including the division of the localities, correspondence regarding the legal cases that had to be resolved prior to parcellation, the calculation of the number of shares per person and exchange of parcels so that Jewish lands could be grouped together (the same applied for the Arab lands), followed by the making of cadastral maps and finally the Schedule of Rights.

Zionist involvement in the land settlement process was very evident in this village. The earliest documentation in the parcellation file of Al-Haram was a one-page letter of enquiry on 8 November 1932 from Mr A. Ben Shemesh, known as the advocate of the Palestine Land Development Company in Tel Aviv.<sup>14</sup> In his letter to the Settlement Officer of Jaffa he also identified himself as the representative for the Keren Kayemeth Leisrael Ltd., Keren Hayessod, and Ahuza Eleh Inc., stating that they owned approximately two-thirds of the village lands in Al-Haram. He mentioned the judgments of the Tel Aviv Magistrates' Court concerning their lands, which had previously been registered in undivided or *musha'* parcels of land, and informed the Settlement Officer that he would send him the counterclaims in the judgments for the parcels, meaning the divided lands.<sup>15</sup>

The completion of the division of localities was announced in a public notice to the village which was presented in Arabic, Hebrew, and English; the English version has been copied on the following page:

(Stamp of the Land Settlement Office of Jaffa)

LAND SETTLEMENT OF PALESTINE.  
PUBLIC NOTICE.

In exercise of the powers vested in me by Section 50 (b) and 52 (1) of the Land Settlement Ordinances, 1928-32, I hereby give notice that I have approved the partition agreements submitted by the owners of more than two-thirds (approximately 97 %) of the shares in each of the sections and localities described hereunder in the village Masha' recorded in the Schedule of Rights, for the parcellation of the Masha' lands as described hereunder, in the village of Al Haram (Sidna 'Ali), registered in the Existing Land Registers as held in common and periodically distributed among the inhabitants of the village:-

THULTH YUSIF.	THULTH AL QIRM.	THULTH SABBAH.
Khor At Tabl	Khor at Tabl	Birkat Husein (A)
Al Manjaliq	Al Habl	Birkat Husein (B)
Al Mafruka	Al Mafruka	Al Bukhariya Al Gharbiya
An Nusraniya	An Nusraniya	Al Bukhariya Al Wasta
Marj Hammuda	Marj Hammuda	Al Bukhariya Al Sharqiya
Birkat Mas'ud	Abu Zeituna	Al Harsiya
Al Bukhariya Al Gharbiya	Al Bukhariya Al Gharbiya	Al Muntar
Al Bukhariya Al Wasta	Al Bukhariya Al Wasta	Marj Hammuda
Al Bukhariya Al Sharqiya	Al Bukhariya Al Sharqiya	An Nusraniya
Al Harsiya	Al Harsiya	Wadi Zeita
As Sallaqa	Al Bayara	Khor At Tabl.

Also the two localities known as:-

Arsuf Al Barrani.

AT JAFFA.  
12TH April, 1932.

(Signature)  
SETTLEMENT OFFICER,  
JAFFA SETTLEMENT AREA.

Based on these lists, it can be seen that the names in the three sections plus two others gave a combined total of 35 localities (even though a later document stated that there were 36, a third locality called Al Bayara having been added under Arsuf and Al Barrani<sup>16</sup>). It is important here to note the difference between localities and registration blocks because in this village they were not equivalent. Another document, from the Assistant Settlement Officer to the Settlement Officer, showed that there were in fact 19 registration blocks, and that the localities were not divided accordingly. For example, he stated that the Southern part of the Al Barrani locality was in blocks 6667 and 6668, whereas the Northern part of the locality was in block number 6669, in contrast to block number 6677 which included the localities of both An Nusraniya and Marj Hamuda.

The appointed Assistant Settlement Officer was Mr As'ad Salim. In a letter to Mr Salim from F. G. Lowick, Settlement Officer for the Jaffa Settlement Area, it was understood that Salim was responsible for the partition of the Al-Haram lands, along with the villages of Al Fajja, Arab Abu Kishk, and Arab es Swalima, all of which were in the sub-district of Jaffa. It appeared that until he had finished the partitioning, the cadastral survey could not begin.<sup>17</sup>

There was a sense of considerable urgency among many in Al-Haram for the partition of the *musha'* land and the survey of the village to be completed. In one document, three Arab landowners wished to know how many dunums they and their partners owned in three named localities, so they could begin cultivating their shares. In fact, Arab landowners were not the only ones anxious for the parcellation of the *musha'* lands to be completed, since the Palestine Land Development Company "and other Jewish owners" were waiting earnestly to bring "quarrels about land" to an end as well as to begin village "development." However the Settlement Officer explained that he was accelerating the cases in the Magistrates' Court and speeding the preparation of the Schedules of Rights as fast as possible in accordance with the demands of the other villages as well. This meant that, taking everything into consideration, the registration of the Al-Haram parcels would not occur for another six months. Dr Thon of the Palestine Land Development Company tried to propose a scheme that might help expedite the process, but the Settlement Officer wrote: "I made it clear to him that, since Jewish owners owned about 70% of the lands, it did not necessarily follow that I should approve a scheme agreed upon by two-thirds of the owners of shares."<sup>18</sup>

Apparently Dr Thon had also proposed another way of accelerating the process by changing the type of land survey to be carried out, but the Settlement Officer again made it clear that he could not make recommendations that would change the standard parcellation and registration procedures. He also summarized all these points to the Commissioner of Lands, in case Dr Thon made further attempts to advance the parcellation process.<sup>19</sup>

Six months later, on 18 September 1933, the PLDC sent a five-page document to the Settlement Officer of Jaffa, Major Camp, offering four different proposals on how the *musha'* land of Al-Haram might be divided.<sup>20</sup> A paragraph of this was quoted (see the section on Landownership, earlier in this chapter) with regard to the number of localities in the village; it also mentioned the amount of land owned by Jews and Arabs and the errors the PLDC claimed the government had made in their calculations. Concerning the land of the Arab landowners the PLDC had written: "The 425 dunams ... declared as Mafruz by you, is based on an error, and should be instead 258 dunams, approx., according to their rights [rights] in the Musha."<sup>21</sup>

Based on these "corrections" and calculations for what they had reckoned was the size of Al-Haram, the PLDC found that the Arab share of the *musha'* land was about 30 percent, and the Jewish 70 percent, leaving no room for what the public lands percentage would be. As noted earlier, based on the size

of the village according to the Schedule of Rights, the calculated percentages were 29 percent for Arab ownership, 65 percent for Jewish, and 6 percent for public land. Proportionally the ownership was almost the same, with the only difference being that the public land was subtracted from Arab and Jewish lands. The four PLDC proposals suggested various ways for dividing the land, and for those divisions where the soil fertility was found to be unfavorable, compensation according to fertility levels would be offered. For example, the third proposal offered the villagers (the majority of whom were Arabs) P£1 per dunum for 1000 dunums when the land was of inferior quality; alternatively the fourth proposal offered a maximum of 750 *mils* per dunum for 551 dunums. No compensation was officially offered for the first and second proposals.

In the concluding paragraph of the PLDC proposals document, the managing director of the PLDC gave the impression that there was tension between the Arab and Jewish landowners in the village on the matter of the division of *musha'* lands:

We are convinced that our proposals are fair and just. Since 1921 we have been working for the development of El-Haram under enormous difficulties and at great sacrifice. It cannot be denied that, owing to Jewish settlement in this district as a consequence of our efforts, the economic situation of the villagers after the division, will be improved to such an extent as would have been quite impossible under any normal course of events in these villages. The Arab villagers raise objections to a division only because they know that time is precious for us, and they are speculating on the fact that we shall finally be obliged to accept any terms in order to bring the matter to an end. We however, rely on you to protect us from pressure and exploitation, and trust that you will do your best to carry out the procedure of division in such a manner that, with the beginning of the agricultural season, each holder will be enabled to begin work on his own specially defined plot.<sup>22</sup>

It is unclear what 'difficulties and sacrifices' he was referring to here, since the earliest documentation in the 'Masha' Parcellation' folder was dated less than a year before, in 1932. Nevertheless, as with all Zionist perception it was Jewish efforts that modernized the land, even though the concept of private versus communal landownership had been introduced by the 1858 Ottoman Land Code. And just as that had not been implemented in the remaining years of the Ottoman Empire, the only areas where cadastral mapping, parcellation, and registration of *musha'* lands had occurred was in the areas under demand for purchase by Jews. Furthermore, as discussed earlier, the idea that land settlement did not aid land development or enhance the economic situation of the *fellah* was confirmed by Amos Nadan, who concluded in his research that the disadvantages of land settlement overshadowed the benefits of the *musha'* system.<sup>23</sup>

The Al-Haram *musha'* files show that Jewish lawyers made their clients' wishes for a rapid division of the village lands very clear to the Settlement Office in Jaffa. Given that the Settlement Officer had to explain that other villages within the sub-district were also undergoing the same process, it is not surprising that the government was unable to carry out the cadastral surveys and registration process in villages that were not in demand from the Zionists (these territories are currently part of the Palestinian West Bank), as discussed earlier in relation to survey and registration of title. However it was also found from the Al-Haram village files that even where the processes of cadastral surveying and registration of title had been completed, and while there were Arab landowners who were equally anxious for the parcellation to be completed in order to begin cultivating their land, there were also Arab landowners who suffered, due to the speed and assertiveness of the PLDC.

For example, a letter from the Acting Director of Surveys to the Jaffa Area Settlement Officer concerned a report received from a surveyor. Apparently A. M. Abu 'Ibai, one of the landowners, claimed that a parcel in a registration block that had been classified as *mafruz* for 23 years had been exchanged for another parcel without his consent during the *musha'* parcellation. The letter asked whether or not this would mean delaying or having to suspend the work on that registration block's final plans. A week later the Settlement Officer replied that to his knowledge the parcel had not been exchanged, and that the partition scheme agreement illustrated that, apart from a minor change to its boundaries with adjacent *musha'* land, the parcel would remain as it was, meaning there was no need to suspend preparation of the plans.<sup>24</sup>

Legal representatives of financial institutions also requested quicker settlement of the village lands. In a letter to the Commissioner of Lands of Jerusalem dated 12 December 1934, B. Joseph (a barrister in Jerusalem), representing the Palestine Mortgage & Credit Bank Ltd. in the case of Herzlia, requested "expedition of the settlement," especially concerning his clients in registration blocks 6675 and 6676 of Al-Haram.

I am instructed that settlement work which was near its completion has been held up owing to the preoccupation of the Settlement Officer. My clients have agreed to give loans on mortgage to a large number of settlers within that area who are to receive leases from the Jewish National Fund. It is not possible for these loans to be advanced until settlement is completed.<sup>25</sup>

Even after the maps and partition scheme had been dealt with, the Jewish landowners did not give up their attempts to accelerate the next step of the land tenure process. Lawyers of the Erez Israel (Palestine) Foundation Fund, Keren Hayesod Ltd., wrote to Mr Camp, the Land Settlement Officer, thanking him for his intervention regarding the settlement of the land, but asking for publication of the Schedule of Rights to be "expedited" because it was "holding up the parcellation between the different interests concerned in

the portion of the land that has been awarded to the Jewish bodies.”<sup>26</sup> Camp passed the request on to the Land Settlement Officer of Jaffa, who explained that the delay was due to an appeal “affecting the Survey Department.”<sup>27</sup> However, it became evident from other correspondence between Settlement Officers that this excuse was intended to stall Horowitz and his clients as to the true reason (see Appendix II). One of the Arab landowning families, the ‘Umri family, claimed to have been outside Palestine during the division of Al-Haram’s *musha’* lands; their shares were therefore excluded from the Schedules of Rights. They used the Land Settlement Ordinance, Section 58(b), to support their plea. For this reason L. T. O. Lees, the Settlement Officer, found it necessary to postpone publication of the Schedules of Partition, as well as to keep the Erez Israel (Palestine) Foundation Fund Keren Hayesod Ltd., along with the other Zionist land companies, from knowing that further amendments to the parcellation scheme and the redrawing of parcel boundaries might become necessary. Lees wrote that the family had been given the legal right to 30 days within which to submit an application for appeal, but had not done so; if they did apply later on he would not accept their application.<sup>28</sup>

In the report by the Assistant Land Settlement Officer, it appeared that there were still many unresolved disputes, though the earlier evidence had given the impression that until the disagreements over the number of shares and boundaries had been dealt with, the parcellation process could not begin. Nevertheless, the Assistant Settlement Officer explained in great detail that markings made by him on the village croquis maps (sketch drafts) were a sort of alphabetical key showing parcel boundaries that needed further investigation. For example, one of the many disputes areas referred to was marked with the letters “F” and “G.” “F” referred to land planted with four-year-old orange trees “included in the orange grove of Messrs. Litwinsky & Bros. within the lands of Kfar Jammal” (a village in the sub-district of Tulkarm). The area marked by letter “G” represented a dispute among the villagers of Miska, who claimed the land was part of their *musha’* land. The Assistant Settlement Officer wrote that a certain Al ‘Umari (not identified) had sold the disputed land to Jews “in order to adjust the Eastern boundary of Al Habl locality,” promising the villagers a payment of P£30. Since Al ‘Umari had not fulfilled his promise, the Miska villagers claimed the land was still theirs. The description of area “G” ended with the statement that “Thulth Al Qirm claim possession of this land over 10 years.” All this shows that the Assistant Settlement Officer made every effort to include all the issues, however big or small, that were factors in the parcellation process and the establishment of the village boundaries.<sup>29</sup>

In another report dated 27 February 1934, the Settlement Officer gave an update on the village’s various parcellation and boundary issues. One of his points gave the impression that acceptance of the parcellation scheme required the approval of only two-thirds of the landowners, and that this would be “easy to obtain ... as they are mainly various Jewish organizations,”



meaning that the parcellation of Al-Haram could be carried out without the approval of any Arab landowners. Obviously aware of the unfairness of this, the Settlement Officer also wrote that “as this might prejudice the Arab holders of one-third of the shares, I orally informed the representatives of the Jewish organizations” that impartiality to all landowners was crucial to whatever parcellation scheme used, no matter who proposed it. He referred to one of the Jewish individuals by name for being very cooperative over the partition of the village and financial compensation to the Arabs; this was Mr Lifshitz (of Tel Aviv), the Surveyor who had made the original plans of the village. The report also recommended the appointment of Mr Salim as Assistant Settlement Officer to prepare the parcellation scheme, since he had an exhaustive “knowledge of the land, the people, and the problems.”<sup>30</sup>

Another surveyor mentioned in other parcellation documents was Mr S. Torok, who, according to the American Zion Commonwealth Inc., was to carry out the inner parcellation (the parcel boundaries dividing Jewish shares of the land).<sup>31</sup> Mr Lees, the Jaffa Land Settlement Officer, had no objection to sharing this information with the American Zion Commonwealth as long as they or their surveyor did not interfere with the Final Maps.<sup>32</sup>

Meanwhile, the Settlement Officer gave high praise to Mr As’ad Salim (who had now finished the preliminary cadastral maps) for his patience and persistence in completing the difficult and complicated parcellation scheme for the village. He spoke very scornfully of the Arab inhabitants of Al-Haram, however, while also expressing his “appreciation of the Jews’ attitude” when it came to financial dealings with the Arabs. His description of the Arab villagers of Al-Haram was that their nature was “shifty, irresponsible, unreliable and grasping,” and that they were “truculent, disrespectful, and ready to go back on their agreement” if it meant they could squeeze more money “out of the Jews” (see Appendix III for a full copy of the report).

This report brought some interesting information to light. For example, it referred to the amount of dunums in the village – approximately 12,000 – again confirming that Al-Haram was larger than estimated in *Village Statistics 1945*. The Settlement Officer spoke very favourably of Salim, crediting him for his patience in dealing with all the issues involved with the partition of the *musha’* land, and for his perseverance in obtaining agreement from 97 percent of the landowners even though only two-thirds was required. The Settlement Officer noted that by doing so Salim had saved them from numerous future complications, and from complaints from the villagers of the sort still transpiring in relation to another village in the sub-district of Jaffa, Al Yahudiyya (more commonly known as Al-‘Abbasiyya).<sup>33</sup> The admiring tone of the Settlement Officer makes Salim’s efforts sound positively exceptional, compared with the work of others handling partition schemes.

This explains a significant point that could be perceived as highly problematic: that there were other villages – at least in the Jaffa sub-district – where not only was partition of the *musha’* land very complicated, but it had not

been carried out or handled to the satisfaction of the individual landowners, even a year after the partition and registration of the village lands. In villages similar to Al-Haram, where some if not most of the land was owned by companies rather than individuals, two-thirds approval could very well have excluded individual landowners completely, or at least overshadowed most of their objections. If there were so many objections to the Land Settlement Office's methods of division for *musha'* land, were steps taken to prevent further cases in other villages? Or was the time frame so important that it was simply assumed that it would all be dealt with afterwards? To answer such questions, further analysis of other villages in the sub-district of Jaffa would need to be undertaken.

In his own seven-page report, Assistant Settlement Officer Salim also wrote of the difficulties of getting all the Arab landowners to agree, and summarized the situation as follows: "At the beginning, it was a heavy task to get the people of Al Harem to agree to any scheme ... every section was aiming to take this partition as an opportunity to seek revenge."<sup>34</sup> Due to this antagonism Salim had no choice but to deal separately with each section or *thulth* (meaning each one-third section). By doing this, he was able to obtain more approvals from landowners. He noted that there were seven agreements in total, and that about 97 percent of the owners signed the first five, all owners signed the sixth, and 95 percent signed number seven. Salim eventually abandoned the minority who had only agreed to sign agreements three, four, five, and seven.

One individual who refused to sign the first two agreements was M. S. Ash Shanti (who was not among the large landowners in the village as he owned only 29 dunums); Salim stated that his reason for not signing was so that he would receive more money from the Jewish share-owners than he was entitled to by agreement. Salim describes him thus:

This man is not from the village of Al Haram, he is a broker and bought few shares in the Masha' land of Al Haram. He owns 29 dunums 475 metres out of 1582 dunums 649 metres in Thulth Sabbah, agreement No. 1, and 22 dunums 781 metres out of 1910 dunums 688 metres in Thulth Al Qirm, agreement No. 2. However I am given to understand by the Jewish share-owners that he will sign, as he is now working with them in purchasing land in Tulkarm Sub-District.<sup>35</sup>

This was the first instance where one of the Arab landowners was identified as a broker. Of course, the fact that he was not from Al-Haram but was still able to be part of the minority that refused to sign the *musha'* division agreements seemed very unfair. It also illustrates the significance of the one-hundred-percent approval of the landowners not being needed, but still does not change the consequences suffered by individual landowners when partition was carried out on the basis of the approval of only two-thirds of landowners.

The Schedule of Partition for Al-Haram was finally read to the village people on 8 January 1935, and was published two days later. As this section shows, the parcellation of the *musha'* in the village was very complicated. Not only was the division of shares amongst the Arab landowners difficult (not to mention the taxing negotiations on land type, the financial compensation from Zionist land companies, and even the cases and exchanges of parcels and cadastral surveys), but there was also a continuous sense of urgency on the part of Zionist land companies to get all these processes pushed through. This occurred to the extent that at times their representatives would simply offer the Arab landowners more money in order to move along to the next step; according to the British officials the Arab landowners recognized this and tried to take advantage of the situation.

Even so, according to the Settlement Office's internal correspondence, the Arab landowners were not the only ones being pushed along by these land companies, since with the advocates of the land companies, almost every step of the parcellation process, over a span of two years, seemed to be under pressure. Luckily, because of Assistant Settlement Officer Salim's patience and diligence, the demands of the Arab landowners were met as far as possible so that the partition of the *musha'* lands received far more than the required two-thirds approval, at somewhat over 90 percent. Evidence shows that this sense of urgency was felt in other villages in the Jaffa sub-district, and one can only speculate as to what the results of the partition might have been if the Settlement Office had succumbed to these external pressures. Nevertheless, the problems described in this section are different from those examined in section 6.6, where actual land tenure was disputed in the village cases.

## Cases

There were a total of thirty legal cases in the village of Al-Haram, all of which were extremely large in terms of documentation of claims, judgment transcripts, and testimonies, especially compared with those of Sarafand al-Kharab and Yaquq. The majority of the Al-Haram cases were ones where the Plaintiffs were Arabs and the Defendants were a mixture of Arabs and various Zionist land organizations. It would have been far too much to discuss all thirty cases in this chapter, as most could probably have been made into chapters of their own. For this reason the researcher chose to select ten cases representative of the various themes that surfaced in other cases from the village, and to examine those ten closely rather than make brief summaries of all 30 (of these 30, only 27 files were found by the researcher as some were linked to other cases and kept in the same file, such as Case No. 29, which was found in the file of Case No. 11). As described above, most of the cases concerned Arab Plaintiffs, and Defendants consisting of Arabs and Zionist land companies. Other cases included the land organizations as the Plaintiffs when it came to the partition of the *musha'* land, and some cases amongst Arabs involved issues of inheritance. The researcher tried to keep the

selection proportionally representative of all these different issues and found that, by doing so, the weight of Zionist landowners in the handling of these disputes was quite obvious.

### ***Transfers and Question of Title***

#### *Case No. 1*

From the start, this case was unclear in the sense that the claim itself was ambiguous, and who was actually involved in it was unclear. It began with eight Plaintiffs, six of whom were from the Al Qasim family and withdrew their claims on 7 December 1932. The remaining two Plaintiffs were A. M. abu 'Ubeiya and Ahmad A. A. al 'Ali. Of the six Defendants, three were land companies and three were individuals:

- 1 The Palestine Land Development Co.
- 2 Keren Kayemeth Leisrael Ltd.
- 3 The New York Ahuza Eleph Inc.<sup>36</sup>
- 4 A. S. esh Shaubaki
- 5 S. H. Y. al Masri
- 6 A. A. A. al 'Ali.

The first three Defendants were legally represented by Tel Aviv-based Advocate A. Ben Shemesh;<sup>37</sup> it is unclear who represented Defendants 4 and 6, but A. A. A. al 'Ali was represented by A. S. al-Shaubaki. The proceedings of the case stated that Plaintiffs and Defendants agreed that the first hearing for the case could begin on 19 December 1932 because Advocate Ben Shemesh had a pressing case at Tulkarm. It was then also stated by the first Plaintiff that the locality with which the case was concerned was not where his land was located, so he chose to withdraw from the case, leaving only the second Plaintiff, A. A. A. al 'Ali.

Other documentation in the case included letters from Advocate Ben Shemesh with regard to the first Plaintiff, in which he wrote that in his capacity "as attorney for all the Jewish share-owners" in the given locality, he opposed any change from the "general denominator" of shares, which was 432,000, to 396,000 because of the 36,000 shares belonging to A. M. abu 'Ubeiya. Ben Shemesh wrote in a letter (translated from Hebrew) to the Settlement Officer on 15 June 1933 that Abu 'Ubeiya was claiming a much greater area than he was entitled to, thus reducing the shares of the other landowners. Ben Shemesh wrote: "I request that the shares should be fixed as they were, and that an appropriate part out of the parcel be given to A. M. Abu 'Abaiya. Such a part should be fixed by evidence or other legal proofs."<sup>38</sup>

This document also shows that Ben Shemesh was the attorney for Dr B. Mani, along with the land companies mentioned before.

The note from the Settlement Officer in the case proceedings explained that the Plaintiff asserted that there were two roads in the locality, the eastern one of which had been placed further west, in what was called the “general” village lands, which were not registered. The Plaintiff requested for himself, and on behalf of the village, that the road be redirected to its original place. The handwritten response of Advocate Ben Shemesh was almost illegible, but appeared to state that the Plaintiff had no authority to claim anything, due to subsequent transactions that had taken place, and that he was not the village attorney and could only claim his shares based on registration. Ben Shemesh’s response about the Plaintiff’s claim was also difficult to decipher; however the last line in the proceedings says that Ben Shemesh remarked of the Plaintiff, “So now he claims against himself.” A reference was then made back to the first Plaintiff, Abu ‘Ubeiya, stating that the “area concerned is about 100 D” (meaning dunums), and another statement by the second Plaintiff stated that the law and the new registrations in the *Tabu* were all correct.<sup>39</sup> At this point it was obviously very unclear what the case was even about, and what the second Plaintiff was even claiming, and why the first Plaintiff, who had withdrawn from the case, was then noted as making another statement.

The next part of the document stated the decision of the Settlement Officer, though at this point it was not clear what the original claim was. Nevertheless the Settlement Officer decided that the second Plaintiff had “no authority to make a claim of this nature,” and indicated that if there was to be a further claim then the village should select an attorney to represent them. The decision also mentioned a plan signed by al ‘Ali, which might also have been what Advocate Ben Shemesh had been referring to. The Settlement Officer saw no merit in the Plaintiff’s claims, and the case seems to have ended on that note on 19 December 1932.

#### *Case No. 4*

Originally this case was meant to be a very large one with seven different parts. The first and main part had one Plaintiff, A. A. A. al ‘Ali, and 34 Defendants. Of these 34, most were individuals from the Al Qirm, Al Masri, Esh Shaubaki, and Al Yusuf families, along with some other Arab individuals. Jewish landowners included Dr Mani, as well as The Keren Hayesod Ltd., Keren Kayemeth Lesrael Ltd., The New York Ahooza Aleph Inc., and the Palestine Land Development Company. Parts 2–6 of Case No. 4 became other cases in the village, and Part 7 was withdrawn.

Even with only the one part, the case still decreased in terms of those involved, since at the formal proceedings of the case hearing on 8 December 1932, the Plaintiff withdrew his claim against all the Defendants except for one, S. H. Y. al-Masri. Based on the decision of the Settlement Officer, it seemed that the Plaintiff had attempted to rectify his action and reopen the cases against all the Defendants, or even to raise a “fresh action against them” on the same issues. The report on the decision of the Settlement Officer

also stated that the Plaintiff had attempted to incorporate the Defendant's position as the village *mukhtar* to substitute for the other Defendants. The Plaintiff had applied for this change on 19 January 1933, but the Settlement Officer did not grant him the application for three reasons: (i) once the withdrawal of an application had been accepted in the formal proceedings, the action was formally dismissed and could not be altered; (ii) there was no validity in the reopening of the action, nor was it supported by the Land Settlement Ordinances or any other regulations; and (iii) the 30-day time period allowed for appeals had expired.<sup>40</sup>

According to the Decision document of the Settlement Officer, the Plaintiff declared that the Defendant had claimed for himself an area planted with fig trees in one of the village localities. This area amounted to 70 dunums, equivalent to "one-half of one share out of a total of 28 shares of masha' land" in the locality. Based on an analysis of the village fields and claims, the Settlement Officer dismissed the Plaintiff's claim in this regard because "the Defendant has not claimed this area or this half-share either in respect of title or possession." The Settlement Officer determined that if the Plaintiff's claim about the fig trees was true, and that he had in fact planted them in the land in 1925 or 1926, this would mean that at least a year after "a plan had been made and accepted by the Land Registry at Jaffa which showed no mafruz land" in the given locality. Furthermore, the Settlement Officer noted that all the shares in the locality had been accounted for in the Land Registry records without the Plaintiff's claimed share, and the Plaintiff had not supported his claim with any evidence in the form of a tithe or Werko (a type of tax) receipts that would confirm the ownership of the half share or 70 dunums. The only evidence he appeared to have indicating that he owned this land was the Turkish registration, which was old "and has clearly been superseded by later registrations"; this allowed the Settlement Officer to conclude that the Plaintiff's claim over the 70 dunums was "spurious and fictitious."<sup>41</sup>

The Decision of the Settlement Officer also recorded that the Plaintiff had made a claim for another share in a different locality in the village, but like the previous one, the Settlement Officer found that the claim was not based on "up-to-date registrations in the Land Registry" because the Plaintiff once again was relying on old Turkish registers that had also been outdated; once again the Settlement Officer dismissed the claim in a decision made on 2 February 1933.

Other than the summary and judgment made by the Settlement Officer, other documents in the case file included a Power of Attorney, and a statement by Advocate M. F. Kanafani on behalf of his client, the Plaintiff A. al 'Ali. The Power of Attorney gave Kanafani the right to act in place of al'Ali against the Defendant, S. H. Y. al Masri, in all courts and departments in Palestine. The statement was written in Arabic, but unlike other cases where there were also Hebrew and Arabic letters of correspondence and statements from lawyers, this had not been translated. It was initially assumed by the researcher that the translation had been misplaced amongst the archives;

however on the last page of the statement, under the signature and date of advocate Kanafani (on 25 January 1933), there was a handwritten note in English by the Settlement Officer, dated months later on 18 November 1933, with the following: "Office, What is this? Why not translated?"<sup>42</sup>

Considering the case decision was taken by the Settlement Officer on 2 February, it would appear that the statement of the lawyer on behalf of his client had never been seen by the Settlement Officer before he decided to dismiss the case.

Regarding the content of this four-and-a-half page statement, eleven points were made in support of the Plaintiff's claim, the first being the reason why the Plaintiff had changed the case from being against 34 defendants to just one. The Plaintiff had planted half the share of land in one of the localities with more than 700 fig trees, within the land area of approximately 70 dunums. It had been his father's land, which he had inherited upon his death and on which he had eventually planted the fig trees. The Plaintiff made it very clear that, regardless of when he had planted them, no one had objected to any of this. At the beginning of the land settlement process in the village by the British Mandate Government, al 'Ali had gone to register half the mentioned share before the Deputy Manager Ass'ad Effendi, who informed the Plaintiff that the 28 shares of the locality had already been registered by their owners, and there were no remaining shares left. The Deputy Manager then informed al 'Ali that if he was going to register half a share in his name, as requested, then the number of shares would increase to 28 and a half which, he claimed, was against regulations. He therefore advised the Plaintiff to take his case to court, thereby initiating a case against all the registered landowners of the 28 shares. However, according al 'Ali, he came to learn during the case discussions that his share was registered in the name of the village *mukhtar*, which is why he had withdrawn his claim against the other 33 defendants and restricted his claim to the *mukhtar* only. When he discovered later that his claim had to be against all the registered landowners of the 28 shares and not the *mukhtar* on his own, he had attempted to renew his case against all of them.

The second point was that his father had owned the half share he was claiming, and that he, the Plaintiff, had owned it for over 30 years since his father's death; furthermore he had been planting large numbers of trees on it since 1924 with no objections from the other landowners in the locality. He stated that he was ready to support this with the backing not only of the villagers of Al-Haram, but also of people from a neighbouring village, and also by having an estimate made of the age of the trees. All this he claimed would assist his case.

Third, he defended his actions, describing it as his legal right to make this case. He had been following the instructions of the Deputy Manager regarding his half share of the 28 shares in the locality; therefore the withdrawal of his case from the other defendants to just one individual did not deny his right to renew the case, since he had made the correction while the

case was still open. He claimed that the settlement law did not discuss such issues in detail, hence he had not lost his right to renew his claim; furthermore since the settlement law did not elaborate on this matter, Ottoman law and its amendments supported his actions. Using Ottoman law, he illustrated how his actions could not be regarded as him having withdrawn or renounced his claim. The fifth point in his statement reverted to the issue of his withdrawal of the case against all except one of the Defendants. He established that even if it was considered that he did not have the right to renew his objection against all the landowners, the presence of the village *mukhtar* in the case as one of the owners of the land in question made it a case against all the landowners because of *mukhtar*'s representative status in the village.

The fourth point was that the land was still classified as *musha'* at that point in time; therefore it was still his right to claim his share, as the legal time period to make an objection about ownership had not expired. This connected with the sixth point, which was that the Land Settlement Office had not yet divided the land of the locality amongst the 28 owners and the parcel boundaries had not been yet set. This led to points seven to ten, which were that claims to land in the village were still open, since the Schedule of Rights had not been published; they were supported by different sections (which he listed) of the Land Settlement Ordinance; the claims had to be investigated prior to the publication of the schedule; and it was his legal right to make his claim and for it to be heard, especially as the land had been under his control for over 30 years. The final point in the statement requested that the details of the shares, such as the percentages per owner to number of dunums, be made available so that his share could be incorporated into the calculations.

There was no evidence in the case that challenged the Plaintiff's claims. It appeared to have been a simple matter of redistributing the shares amongst the land owners, as often needed to be done during or even after the parcelation of *musha'* lands. After having examined so many cases concerned with the division of *musha'* lands within villages, it was strange to see a case such as this one dismissed so easily, even if it was based on technicalities.

#### Case No. 6

Case No. 6 began as an intricate one with four different parts. However the second part became Case No. 20, the third part became Case No. 16, and the fourth part became Case No. 9. This left only the first part, in which the Plaintiffs consisted of three Arabs: A. A. A. al 'Ali, S. H. A. abu Khatir, and S. H. A. abu Khatir. There were 16 Defendants listed, including three Zionist land companies and Tel Aviv landowner B. Mani; the rest were Arab individuals except for one Defendant listed as the "Heirs of A. H. Y. al Masri." However during the case proceedings before the Settlement Officer, the list of Defendants was reduced to the three land companies (The Palestine Land Development Company, The New York Ahooza Aleph Inc., and The Keren



Hayesod Ltd.) and B. Mani (all of whom were represented by Advocate Ben Shemesh), and two Arab landowners (‘Ad. A. al ‘Ali and F. M. A. al Yusuf).

The first Plaintiff, A. A. A. al ‘Ali, stated before the Settlement Officer that he was requesting one thirtieth of “Thulth Yusuf” lands that he had inherited from his father, the registered owner, supported by documentation in the file extract from the Tabu. Al ‘Ali stated that while the land was in his possession, “S. H. Y. al-Masri has claimed it, as the Jews claimed shares bought from the [illegible] family,” but he was the one cultivating it. The second Plaintiff, S. H. A. abu Khatir, was representing herself and her brother (S., the third Plaintiff), who was absent. She stated that their claim was in accordance with their counterclaim (of 17 August 1932), and that while the records of the Land Registry showed that one-quarter of the 7 and a half shares actually belonged to A. Abu Khatir, the register was actually missing. Ben Shemesh stated that there was no proof that his clients had the land in question, and if there *was* proof, on the basis of the statement made by the Plaintiffs the heirs had sold the land to another individual, and everyone who purchased the land from that person was a *bona fide* purchaser. The other two Defendants did not seem to have any beneficial information to contribute to the case. Therefore the Settlement Officer dismissed the decision of the Plaintiffs because they had not defined their claims “in respect of the Defendants and offer no proof as to which of the Defendants, and in what proportions, hold the land.”<sup>43</sup> The Settlement Officer also said within his decision that even if there had been evidence to support the Plaintiffs’ claim, the Defendants were registered owners, who purchased the land from other registered owners “in good faith.”

#### *Case No. 8*

Case No. 8 consisted of two parts, which both had all Arab Plaintiffs. In Part One there were six Plaintiffs, four of whom were members of the al Qasim family, and two of whom were from the Kheirallah and al‘Abdallah families; however in the actual proceedings for the case only the first Plaintiff was mentioned. Amongst the 24 Defendants, the first three were land companies represented by Ben Shemesh; of the rest, almost all were from the al Qirm family. However, once again only two of them were referred to in the case proceedings – T. A. A. al Qirm and M. A. A. al Qurm. The Settlement Officer dismissed the claims of the first Plaintiff, Qasim Muhammed al Qasim, who had left Al-Haram and was no longer living in the village; his claims, according to the Settlement Officer, were ambiguous. There was no supporting evidence to match the claims of the first Plaintiff and the Settlement Officer explained in his decision that he had been unable to understand “exactly what they are claiming and on what grounds.”<sup>44</sup> Moreover, the Plaintiff admitted in the case proceedings that he had not been in possession of the land for at least twenty, or even thirty, years. The last reason mentioned in his decision by the Settlement Officer was that the Plaintiffs were not

co-heirs with any of the mentioned Defendants, which eliminated any chance that they might have received the land through inheritance. Unlike other cases, this part of this case showed absolutely no link between the Plaintiff and the land, either by written or oral evidence, since there were no witnesses to support the Plaintiff's claims. There were far more valid claims from other landowners in the village to be addressed.

The second part of this case was nothing like the first in terms of the parties involved or the issue at hand; the only link between them was that the same locality, that of Abu Zeituna, was involved. There were nine Plaintiffs, all of whom belonged to the Al Qirm family, and three Defendants, The New York Ahuza Aleph Inc., The Keren Hayesod Ltd., and Keren Keyemth Leisral Ltd. The Plaintiffs' case was that the localities of Abu Zeituna and Mughr al 'Ababsha, both in the village of Al-Haram, had been in the possession of themselves and their testator "from time immemorial." However the Settlement Officer found that there was no documentary evidence to support this, and that the only evidence provided was the testimony of most of the Plaintiffs for themselves, along with oral testimonies from witnesses they named. One Plaintiff gave a strange reason, saying that he was not willing to give evidence on behalf of himself, but would provide evidence after consulting an advocate. However the Settlement Officer stated that he would not delay the case for him as the Plaintiff had had ample opportunity to do this. Nothing more was written on this matter.

The Settlement Officer also refused to hear the oral evidence of the witnesses for the Plaintiffs, which, he stated, "was presented only the 3rd December, 1932, and which seems to contradict their original claims to Abu Zeituna made before the Assistant Settlement Officer some months ago."<sup>45</sup> In addition to this, the Defendants' claim was backed by a plan signed by some of the Plaintiffs; in other words, unlike the Plaintiffs the Defendants did have documentary evidence. For all these reasons, the Settlement Officer decided on 7 December 1932 to dismiss the claims of the Plaintiffs.

#### *Case No. 9*

This case involved one individual, Plaintiff K. S. as Subh, and the organization of The New York Ahooza Aleph, Inc. was the Defendant. The Plaintiff had sued the Defendant for the title and recovery of all shares inherited by her from H. A. Hammuda in eight localities in the village of Al-Haram. The shares had previously been registered at the Jaffa Land Registry in 1929. Other than the judgment of the Settlement Officer, the documents of this case included a copy of the Defendant's Memorandum of Claim, Summons to Parties, and Witness Summons for those individuals involved in the previous land sales, such as A. Klein and A. esh Shaubaki, amongst other papers.<sup>46</sup> This case had originally been the fourth part of Case No. 6 of Al-Haram, however that specific part of the case was written as undecided by the Settlement Officer on 8 December 1932, at which time it was appealed by the

Plaintiff's lawyer, A. Salah (office based in Nablus), and it became Case No. 9 of Al-Haram.

Other than the decision of the Settlement Officer, the main document in this case would have been the written statement of the Plaintiff's lawyer, Salah, on behalf of his client, which had been translated and placed alongside the original Arabic statement in the case file. Salah explained that several transactions had been made "in order to disguise this simple and naïve woman of her properties," which he called an organized conspiracy through the transactions of M. Pinhasovitch, A. Klein, and The Keren Kayemeth Leisrael Ltd. through S. esh Shanti and A. esh Shaubaki. Salah even remarked that, according to Articles 44 and 47 of Notary Public Law, it was required that witnesses must know the signatories very well; those who had witnessed the Plaintiff's Power of Attorney had admitted that they did not know her well and that they had needed to be told who she was.<sup>47</sup>

This might have been perceived as a weak point, and was perhaps seen this way by the Settlement Officer, since it was not mentioned in the judgment and summary of the case (as will be explained below). The next point made by the Plaintiff's Advocate was also excluded even, however, though it seemed to be quite significant; the Plaintiff had not been taken to a Notary Public in Jaffa, but rather to a Notary Public in Tel Aviv who did not speak the Plaintiff's language, which was Arabic. Salah claimed however that this was not the most important point to be made in the Plaintiff's case. Rather, the evidence showed that esh Shanti and esh Shaubaki had sold a maximum of 52 dunums in the Plaintiff's name, and that Pinhasovitch and Klein had also admitted before the Investigating Officer and the District Courts that they had purchased a total of 40 and 50 dunums respectively, but that it had just been discovered that the Defendant's "hold with regard to this transaction [was] more than 200 dunums."<sup>48</sup> It was pointed out that:

As long as the vendor sold a definite quantity and the purchaser admits that, there is no doubt that the transfer includes only this. What would be left of the 200 dunums after that, both parties admitted of the quantity they have transacted should belong to us. Because no one has the right to take the property of others without paying for it. I am ready to prove this point and beg to have the purchase wakils [agents]. The 1st and the 2nd as witnesses.<sup>49</sup>

Salah's final point discussed Power of Attorney and the transaction it performed. He claimed that if the oral testimonies of those involved in the transfer contract were heard along with the documentation from the Land Registrar that stated "the value of the sold shares to be L.P. £1,343.330 mils" (as opposed to the P£165 received by the Plaintiff), then the sale must be cancelled (according to Articles 357 and 165 of the *Majalla*, the Ottoman Civil Code). According to the Plaintiff, "Pinhasovitch was convincing

Khatima all the time that she is profiting from such a sale.” Salah concludes that the combination of a misleading sale performed by a void Power of Attorney made the case “a special circumstance” that called for “equity and justice” in accordance with Article 20 of the Land Settlement Ordinance.<sup>50</sup>

However the summary and judgment of the court gave a different picture, and did not seem to have taken much from the statement by Salah. It began by describing how the Plaintiff claimed that there was “ghabn and taghrir” (meaning deception and cheating) in the transfer of her shares of land to M. Pinhasovitch. She claimed to have been deceived by her lawyers, named in a Power of Attorney (dated 13 February 1930) carried out before a Notary Public in Tel Aviv. She claimed that she had agreed that they would represent her in a transaction to sell her shares, which had been explained to her as being a quarter of the amount they really were. These attorneys had told her the value of the shares was P£165, whereas their true value, based on their actual size, was P£1000. The summary of points by the Settlement Officer went on to say that the Plaintiff claimed that there had been “a series of collusive transfers in the Land Registry whereby the Defendant in this case had obtained title and possession” of her shares.<sup>51</sup> The last point mentioned was that the Plaintiff could prove the deception and the Defendant’s possession of the shares with oral evidence as well as with evidence filed at the District Court of Jaffa.

In the same summary by the Settlement Officer, the main points made by the Defendant were also stated, the first being that the Settlement Officer was not “the competent judicial authority to hear the allegations” in the Plaintiff’s evidence, whether oral or at the District Court. The second point was that the Defendant was “a purchaser in good faith” and that the transaction had not been made with the Plaintiff or with Mr Pinhasovitch, since there had been transactions in between if it could even be proved that the land in possession had belonged to the Plaintiff; the Defendant’s third point was that there was no proof of this. The final point was that “in view of the clear terms of the Power of Attorney given by the Plaintiff to her attorneys for the sale to Mr. Pinhasovitch, there was no necessity for the hearing of oral evidence by the Settlement Officer.”<sup>52</sup>

Considering that the Plaintiff’s first point was that the Power of Attorney, the attorneys themselves, and the Notary Public were all named as part of the action that she felt had deceived her, it is strange that the Defendant was using this as a point in their own case. Nevertheless, the Settlement Officer’s decision supported all four points made by the Defendant. The Settlement Officer decided he would not even hear the oral evidence, and would use only the Power of Attorney document from 13 February 1930 and the case file at the District Court, since these were sufficient for him to make his decision:

the only apparent purpose of hearing oral evidence by him would be to support a further criminal charge by the Plaintiff against her attorneys or

perhaps a civil action and that it is not within the province of the Settlement Officer to make a special effort for these purposes.<sup>53</sup>

Settlement Officer Camp therefore dismissed the claim of the Plaintiff and found the case to be in favour of the Defendant on 28 March 1933.

#### *Case No. 18*

This was a small case in terms of the number of parties involved and the available documentation. The Plaintiffs were S. A. abu Simri and A. abu Simri, versus the Defendant, Keren Kayemeth Leisrael Ltd., and the case was heard before the Settlement Officer in Al-Haram. It was noted that the first Plaintiff, S. A. abu Simri, was a minor, “about 14” years old, and appeared to be the son of the second Plaintiff. As with almost all the cases involving land companies, the advocate for the Defendant was A. Ben Shemesh. The Plaintiff had submitted a counterclaim on 16 September 1932 for a Court decision that had been taken earlier, on 11 August 1932. This concerned land that had been inherited through H. bint Y. A. al-Masri, the mother of the first Plaintiff and wife of the second Plaintiff; H. had died 13 years before the case was heard, when her son S. was about two months old.

The Plaintiffs claimed that the land in the possession of the Defendant had in fact been inherited by the first Plaintiff through his mother. However Ben Shemesh claimed that the land had been purchased from an individual named S. Dällāl, who had bought it from Y. and H. A. al-Masri, and the transaction had been recorded in the Tabu. Ben Shemesh also stated that there were co-sharers to the land in question; that there was no way of proving that the land claimed by the Plaintiffs was in the possession of the Defendant; and furthermore that his clients had purchased the land from Dällāl as *bona fide* purchasers, as seen in the judgment of the Supreme Court Land Appeal Case No. 96/27. The Settlement Officer dismissed the Plaintiffs’ case, since even if their land was under the possession of the Defendant (Keren Kayemeth Leisrael Ltd.), the Defendant had been “purchasers in good faith,” since previous to their purchase there had apparently been other transactions involving the land.<sup>54</sup>

#### *Case No. 21*

Strangely, the first document in this case folder was the decision of the Settlement Officer for Case No. 9 of Al-Haram. As already mentioned, the case had originally been the fourth part of Case No. 6, and then became a case of its own in Case No. 9, where the Settlement Officer decided that the Plaintiff, K., had no legal claim against the Defendants because they were purchasers “in good faith.” A note had been made on the decision document that the case originally formed part of Case No. 6, but in moving on to the documents of Case No. 21 no connection appeared to exist between the decision and either Case No. 6 or Case No. 9. The only link found by the researcher was that one of the three Defendants in this case had also been

the Defendant in Case No. 9, i.e. The New York Ahuza Aleph, Inc. The Plaintiffs and Defendants of Case No. 21 were the following:

Plaintiffs:

- 1 T. A. al Qurm
- 2 A. A. al Qurm
- 3 S. A. al Qurm.

Defendants:

- 1 The New York Ahooza Aleph Inc.
- 2 H. M. K. al Gharabli
- 3 Y. M. A. al Yusuf.

There does not seem to have been any supporting evidence in this case for either the Plaintiffs or the Defendants; rather there was a Memorandum of Claim for K. S. es Subh's Memorandum of Claim for her own case. In addition to the decision of the Settlement Officer, the only other document was entitled "Evidence from the Settlement Officer to the first Plaintiff."

The decision of the Settlement Officer was to dismiss the Plaintiffs' claim for three reasons. The first reason was that the "parties are co-partners and the land is still undivided between them"; second, since the Defendants were registered landowners and there was no "documentary evidence to justify setting aside the registration in their favour," the Supreme Court found that oral evidence was unworthy to support the Plaintiffs' claim.<sup>55</sup> Finally, because the Plaintiffs had not defined their claims in the number of shares per Defendant, i.e. because it was a group of shares being claimed from all three Defendants, the Settlement Officer dismissed their case. It would seem that, apart the first Defendant, this was the only other similarity with Case No. 9 of Al-Haram, but the researcher finds it strange that this was the reason the cases were linked, since the Settlement Officer seemed to have dismissed several cases on the same grounds – lack of written evidence. This was decided on 19 December 1932, and an appeal was made by the Plaintiffs on 17 January 1933 but failed.

### ***Division of Shares and Parcels***

#### *Case No. 10*

This case was rather complex in the sense that within it were four smaller cases tried at the Magistrates' court of Tel Aviv, rather than before the Court of the Settlement Officer, as all other cases had been until this point. The listed Plaintiff for the main case at the Court of the Settlement Officer was Keren Hayessod Ltd., along with a total of 35 Defendants consisting of three Zionist land companies – The New York Ahuza Aleph Inc., Keren Kayemeth Leisrael Ltd., and The Palestine Land Development Co. – and one Jewish landowner, Dr B. Mani; the rest were individual Arab landowners mainly from the families of es Sbh, al Qirm, and some others. The proceedings at

the Court of the Settlement Officer concerned the division or parcellation of *musha'* lands in the various localities of Al-Haram, including Birkat Husein A, Birkat Husein B, Al Muntar, Al Habl, and Al Mafruka (all of which had been listed in the Parcellation section under the Public Notice).

The judgments for all of these were briefly summarized in the Court of the Settlement Officer, but since the actual proceedings and decisions were reached in the Magistrates' court, it is these that will be looked at individually below. Beside the cases at the Magistrates' court, there were also other documents, such as translated letters by the Advocates, correspondence between the Settlement Officer and other officials such as the Land Registrar or Survey Department, as well as the final summary of the Decision of the Settlement Officer. As can be seen from the various parts that made up this case, it is not surprising that the documents dated from as early as June 1931 until January 1933.

One of the secondary cases that made up Case No. 10 was File No. 4463 of the Magistrates' court of Tel Aviv. The Plaintiffs were three companies, The Palestine Land Development Co., Ltd., The Erez Israel (Palestine) Foundation Fund Keren Hayesod Ltd., and the New York Achooza Aleph Inc. (note that spellings sometimes vary from case to case but they are still the same companies); the fourth Plaintiff was Y. Hankin, and Advocate A. Ben Shemesh of Tel Aviv represented all four Plaintiffs. The Defendants were eleven Arabs, all from landowning families in the village of Al-Haram except for M. S. esh Shanti, who was noted as a "Jaffa inhabitant." The land in question was in the locality of Birkat Husein. The total number of shares owned by all the Plaintiffs was 4,662,000 out of 7,290,000 shares (about 64 percent). The Magistrate had reviewed two plans about how to divide the parcels under joint ownership between the Plaintiffs and the Defendants. It was decided that the partnership would be removed and that the judgment, "given in default of the Defendants, publicly" on 30 July 1931, would be sent to the Land Registry of Jaffa.<sup>56</sup>

In the next case before the Magistrates' court, File No. 4464, the Plaintiffs and the Defendants were the same as for File No. 4463. The boundaries of the Plaintiffs' parcels were decided in accordance with the Law of Partition of Immovable Property in proportion to the number of owned shares, and the same was decided for the Defendant. Again "this judgment was given in absence of the Defendants, publicly" on 20 July 1931. Below this judgment was a statement concerning the Opposition Judgment, which said that both the opposing parties and the respondent had not appeared in the Magistrates' court: "In accordance with Section 8 of the Magistrate's Courts Rules of Court, 1928, it was decided to reject the opposition." This decision was made public on 11 October 1931.

File No. 4465 of the Magistrates' Court of Tel Aviv consisted of the same Plaintiffs and Defendants, but was in the locality of Al Muntar. The Judgment explained how the engineer's report claimed that the land of the Plaintiffs and the Defendants could not be divided; however the

Magistrate had decided to annul all joint-ownership between them. Again this decision was made in the absence of the Defendants, and was notified on 30 July 1931. The Opposition Judgment to this case was made by A. al 'Abd Zira' (one of the Defendants in all of the Magistrate's Court cases). The opposition judgment wrote:

A. al 'Abd Zira,' who now appeared, did not sign his application of opposition in accordance with Article 8 of the Code of Civil Procedure, dated 8th Rabi' al-Akhar, 1329; and whereas his appearance to-day without signing the application or opposition is after the period prescribed by Section 4 of the Magistrate's Courts Rules of Court, 1928. It was, therefore, decided to reject his entering in opposition because the opposition is after the said prescribed period.<sup>57</sup>

In another section of the judgment, it was stated that the reason provided by the Defendant for his absence at the first hearing was due to the summons delivery at his residence on 9 June 1931, when the case was set for 24 June 1931, but the Magistrate saw this as an unacceptable reason.

There was a second opposing party for this case: T., known also as 'A. M. es Subh (also one of the Defendants in all of the Magistrates Court cases). He had received a notice for the first hearing on 24 June 1931, but the Magistrate stated that since T. had only that day stated the reason for his absence at the first hearing, it was decided, based on Section 4(b) of the Magistrate's Courts Rules of Court, that his opposition would also be rejected. As for the remaining opposition parties, since they were absent and had not signed the application of opposition "it was decided to reject their opposition also" on 11 October 1931, in accordance with Section S of the Addendum of the Code of Civil Procedure and Section 6 of the Magistrate's Courts Rules of Court, 1928.

In the final Magistrate's Court Case in Tel Aviv, File No. 3753, the Plaintiffs were the PLDC, the Erez Israel (Palestine) Foundation fund Keren Hayesod Ltd., and Dr B. Mani, all of whom were represented by Advocate A. Ben Shemesh. There were 26 Defendants, the first of which was the company New York Achooza Aleph Inc., represented by B. Ostrovosky of Ra'anana (note that this was the first time that Ben Shemesh was not representing a Jewish landowner, since he was the Plaintiffs' representative in the same case). The other individuals were all Arab landowners in the village, and of the esh Shaubaki and al Qirm families; most of them were listed as coming from al-Haram, though some were from Qalqiliya and others from Jaffa. The decision of the Magistrate was to divide the land according to the description on a map used in the case. The Plaintiffs, along with the first Defendant, New York Achooza Aleph Inc. (another variant spelling), would receive one parcel, and the remaining Defendants another. Once again the Magistrate decided to annul the joint ownership between Plaintiffs and Defendants, and



the judgment was again made in the absence of the Defendants, and publicly notified on 14 June 1931.

It would seem in this case that the Defendants, the Arab landowners, were not familiar with the formalities and technicalities in opposing the judgments, and even though most of them were represented by lawyers, they still missed the opportunity to make their claims. However it was also very strange that the case was being heard in the Magistrate's Court in Tel Aviv, since it was entirely concerned with the parcellation, boundaries, and ownership of lands in the Al-Haram localities. The opposing party was notified of the rejection of their opposition on 11 October 1931 after they did not appear at the Magistrate's Court.

In all of the above cases there was a translated statement from S. Esh Shanti, who had been a Defendant. He stated that the attorney Ben Shemesh had raised an action against him and his partners at the Jaffa Settlement Court, asking for execution of the judgments made at the Magistrate Court in Tel Aviv regarding the parcellation of the localities in Al-Haram. Esh Shanti's statement (dated 15 December 1932) requested that Ben Shemesh's action be dismissed for seven reasons that are quoted and/or summarized below; however point number five was omitted from the translated version, probably by accident, so the author used the original Arabic version and included it with the others.

- 1 The Plaintiff could not use judgments that "were never executed in any legal departments. He waived his right by the written claims that he and his client signed under oath to register his clients' shares as *musha'*."
- 2 The Plaintiffs had made an agreement with the Defendants to "waive all judgments of the Magistrate when settlement started in al Haram and registered their shares as *musha'*." Furthermore, the Plaintiffs had asked the Settlement Officer to carry out the parcellation process in the five localities (mentioned at the beginning of Case No. 10); therefore, by making this request, which they had signed and agreed under oath, they had "revoked" the judgments made in the Magistrates' Court.
- 3 The Plaintiff claimed in an oral statement that the Assistant Settlement Officer had made clerical errors in the registration of their lands; however this was not true as it was not a "mistake on the registration of less or more shares." Esh Shanti gave evidence that this was not the case, especially with regard to the registration, means of acquisition, and request for parcellation by the Settlement Court.
- 4 Ben Shemesh had contradicted himself when he requested the implementation of the Magistrate's decisions while simultaneously having accepted the general plan for parcellation. This was proved by the parcellation agreement located in the Land Registry Files between the Plaintiffs and partners.
- 6 Their right to request the execution of the Magistrate's judgments had been revoked because the lands had been recorded in the Land Registry as *musha'* land.

- 7 “I have objected the proceedings of these cases before giving the decision and considering the ownership case which was brought against us by others. Now it could be possible to appeal the judgment which is given today within the legal period while the other case might take about a year at least.”

As the fifth point was missing from the translation, the original (in Arabic) was referred to where the fifth point was available. Perhaps the translator had missed it, but having examined the original document and because the numbering of the points skipped the fifth point, it would seem that the translator was unable to read it since it was very difficult to decipher. What could however be understood was that Ben Shemesh, the Plaintiff’s lawyer, was contradicting what he had agreed to earlier by asking for the implementation of the judgments made in the Magistrate Court, and that he, as the Defendant, had no objection to the division of the land except for that it had to be done fairly, and in a way that would protect the rights of both the Defendants and the Plaintiffs and their partners. The rest of the point was unreadable, but later, when comparing the original and the available translation of the other points, it appeared that details had been omitted by the translator, though whether intentionally or otherwise is unknown. For example the second point was much clearer in the original, stating that the Plaintiffs had at one point actually agreed with the Defendants to cancel the decisions of the Magistrate Court, and attend the Settlement Court for Al-Haram, where they could settle the agreement and register their shares with reference to the Ottoman Civil Code or *Majalla* (which upholds the principle that once something has been legally dropped, it cannot be reinstated).

Returning to the original Case No. 10, beneath which these smaller Magistrate’s Court cases found themselves, all the details of the judgment and orders were copied and sent to the Land Registry at Jaffa. It was stated in the Decision of the Settlement Officer on 19 January 1933 that certain Defendants had opposed these cases, but that none seriously disputed “the statement that, if Settlement operations had not begun at al-Haram, the division based on judgments, orders, and plans would have been carried out by registration in the Land Registry and some of the Defendants freely admitted this.” Those Defendants were not named, nor was esh Shanti’s statement mentioned. In fact the Decision of the Settlement Officer supported actions by the Plaintiffs, such as their selection of “specified areas” for their land within the parcellation procedure as long as it was the “equivalent of their shares” and the “original claims were not decided in a final manner.”

In the end, the real decision to be made by the Settlement Officer was whether or not to accept the partial parcellations involved in this case in the Magistrate’s Court. There was no further reference to ‘opposition,’ such as the opposition judgments attempted by at least two of the Defendants in the Magistrate’s Court case mentioned above. Using Section 23 of the 1928 Land Settlement Ordinance, which gave the Settlement Officer “full and

discretionary powers,” he came to agree and accepted the Plaintiffs’ parcellations, but with two provisions:

1. That this approval and acceptance are without prejudice to the further parcellation of lands amongst individuals under the terms and provisions of the Land Settlement Ordinances [and]
2. That the parcellation hereby approved and accepted may be set aside in any scheme of general parcellation agreed upon by the owners of not less than two-thirds of the shares and approved by the Settlement Officer.

After the case was over, there was a letter from Advocate Ben Shemesh to the Settlement Officer dated 27 February 1933, requesting that “the S.O. instruct the Surveys Department to fix [demarcate]” the shares in the localities of Al Mafruqa, Al Muntar, Al Sidra, Al Habl, and Birkat Husain (A and B) so that the land could be allotted accordingly to the Plaintiffs (Jews) and to the Defendants (the Arabs).

#### *Case No. 11*

This was another case that was initially carried out in the Magistrate’s Court of Tel Aviv, then moved to the Settlement Court. This time there were differences between the two with regard to the Defendants involved in the case.

The Magistrate’s Court case had one Plaintiff, The Palestine Land Development Co. Ltd., represented by Ben Shemesh. There were five Defendants, one of which was also a land company, the New York Ahuza Aleph Society. Since Ben Shemesh was the representative of the Plaintiff, he was not the representative of this Defendant, as he had been in previous cases; instead the legal representative for the Defendant was B. Ostovsky, Ra’anana. The other Defendants in the case were the *mukhtar* of al-Haram, S. S. A. al-Yusuf, and A. A. Juha, Ad. A. Juha, A. S. esh-Shobaki, and A. M. A. Sanini, all of whom were described as being from the village of Al-Haram.<sup>58</sup>

The subject of the case was the partition of a plot of land known as Marj es-Sidra in Al-Haram. According to the four Certificates of Registration, the Plaintiff owned a total of 7,506 out of 8,640 shares (approximately 87 percent) of the plot. Of the Defendants, the New York Ahuza Aleph Inc. owned another 205 shares. The remaining Defendants had been summoned to court but had not appeared at the hearing; therefore the action was heard without them. Ben Shemesh asked for the shares of the Plaintiff and that of the New York Ahuza Aleph Inc. to be grouped into one parcel, and the shares of the Defendants to be grouped separately. The requested grouping of the New York Ahuza Aleph Inc.’s shares with those of the PLDC was not unusual, given that they were both Zionist land companies; but it was surprising that one was a Plaintiff while the other was simultaneously a Defendant in a single case, since they had been grouped together in other cases and

Ben Shemesh had represented them all. The shares of the Arab Defendants were listed as follows:

1	S. H. Yusuf	576 shares out of 8640
2	Ad. A. Juha	288 “ “ “ 8640
3	A. S. esh Shaubaki	56 “ “ “ 8640
4	A. M. A. Sanini	9 “ “ “ 8640.

“The total shares of the said four Defendants being 922/8640”<sup>59</sup>

However it was found that the calculations stated at the Magistrate’s Court were incorrect, since the sum of 576 + 288 + 56 is 929 and not 922. Furthermore, those seven miscalculated shares had been added to those of the Plaintiff with the New York Ahuza Aleph Inc., who were listed as having 7,506 and 205 shares respectively, making theirs a total of 7,711. This would be correct, as the 7,711 along with the 929 shares of the Arab Defendants equalled the 8,640 shares that made up the total plot of land (based on the calculations of the Magistrate Court, 7,506 + 205 + 922 would have amounted to only 8,633 shares). These seven shares may have seemed insignificant when thousands were being dealt with, but it must be remembered that the Plaintiff and New York Ahuza Aleph Inc. were big companies, while the Arab Defendants were simply individual landowners; for many in the village even half a share made a difference and was worth making a case for, as Case No. 4 for Al-Haram showed. Even though this had not been corrected in the calculations made above, because the shares of each Defendant were calculated separately by the engineer (as explained below), each Arab Defendant fortunately received the correct shares in dunums.

Ben Shemesh had requested that, based on Article 5 of the Law of Immovable Property no. 1332, Mr Lifshitz should be appointed as the engineer who would survey the land and prepare the partition plan, with one parcel to be for the Plaintiff and the New York Ahuza Inc., and the remaining parcels according to the shares of the remaining Defendants. At the second hearing Engineer Lifshitz produced a copy of a letter in Arabic, which had been sent to the four Arab Defendants requesting their presence at a certain date and time for the measuring and preparation of the parcellation. However, according to his report only two of the Defendants, S. S. H. al Yusuf (a variant spelling but nevertheless the same individual listed above) and A. S. esh Shaubaki (the researcher noted that the spelling of the first and middle names was different from that in other documents in the case, but assumes that this was meant to be) were the only ones present. In Court, Lifshitz also produced two plans for the partition of the land. Based on the separate shares to dunums that were listed by Lifshitz, the researcher found that the total area of Marj es-Sidra was 503 dunums and 883 square meters, with the Arab Defendants having their shares on the eastern side of the plot.

It was reiterated that all the Defendants had been legally summoned to the Court, and the Summons to Parties in the case file shows this as well, but

because none of them had appeared and there was no evidence to show their opposition to the proposed partition by the Plaintiff, the Magistrate's Court in Tel Aviv decided to go ahead with the partition of the land and this decision was published on 11 March 1931. One of the Defendants had opposed this; however the Magistrate's Judgment stated that "Whereas the opposing party did not appear though he was summoned therefore in accordance with Section 8 of the Rules of Magistrate's Courts it was decided to reject its opposition and it was publicly notified this day 26.11.31. [Magistrate's signature]."60

Therefore, while again it was shown that there was indeed opposition to the case, the opposition was dismissed once again due to lack of attendance. Finally all of this was sent back to the Settlement Court, where the case Plaintiff – the PLDC – was the same as that of the Magistrate's Court case. However, the list of Defendants was slightly different because of the inclusion of another Zionist land company, the Keren Kaymeh Leisrael Ltd. (as well as The New York Ahuza Aleph Inc.), while the only Arab Defendants listed were esh Shaubaki, al Masri, and al 'Ali. Both al Masri and al 'Ali appeared in the Court before the Settlement Officer and there their testimonies were recorded in the case proceedings, along with those of two witnesses on their behalf. However it appeared that the final judgment of Camp, the Settlement Officer, accorded with that of the Tel Aviv judgement.

### *Village Boundaries*

#### *Case No. 29*

Case No. 29 is unusual compared with the other cases of from Al-Haram as it was less between landowners and more between villages, and linked to the survey and registration components of the land tenure system. There were twenty Plaintiffs, most of whom were from the al Qirm family, with others from the ash Shaubaki, ash Shanti, and al Zaiyat families. The Defendants, however, were the members of the Village Settlement Committee of the village of Miska. The case concerned a parcel in Registration Block No. 6681 in Al-Haram, which formed part of the boundary between Al-Haram and Miska. The Plaintiffs supported their claim using the Land Registry Tabu from 1925, which not only showed the land to be a part of Al-Haram but also that the parcel was registered in their names. However the case proceedings also noted that one of the Plaintiffs had admitted possession by the Defendants for a period of about twenty years. The Defendants claimed that the disputed land had always been part of Miska lands, and that although their former *mukhtar*, after having received P£36 for the agreement, had been the one to assent to the boundary now claimed by the Plaintiffs, the village itself had not agreed to this. From their description it appeared that the *mukhtar* had died. The Settlement Officer decided on 11 October 1933 that the disputed land had been in the possession of the villagers of Miska, and

furthermore that the former *mukhtar* had not had the authority to have made such an agreement.

As mentioned at the beginning of this section, not all the village's cases were covered in this chapter, since a further twenty remained among the records at the Jordanian Department of Lands and Survey. Nevertheless, by selecting a variety of cases to illustrate the various subjects that were disputed, along with the various parties and problems involved, a close examination of ten of the cases was thought to be more useful than a brief summary of all thirty, since a lot of cases involved partition of *musha'* lands, other case decisions were made due to lack of evidence, and so on. Overall, it can be concluded that the legal disputes that took place in the Jewish village of Al-Haram were more intricate and difficult to deal with than those of the previous village, Sarafand al Kharab, since most of the cases involved a mixture of Arab landowners and Zionist land organizations.

## Conclusion

Al-Haram was a village located on the coast of Jaffa, the only sub-district in Mandate Palestine where the majority of the population was Jewish. This study of the village through analysis of its records from the Lands and Survey Department in Jordan showed that once again the total size of the village, in terms of dunums of land, was larger than estimated by *Village Statistics 1945*. The village had been estimated at 8,065 dunums, and 5,150.105 dunums were fully accounted for, parcel by parcel, in the registration blocks accessible to the researcher. However, based on the available information, it was apparent that there were another nine registration blocks that had not been examined. Whether or not the cadastral maps and Schedules of Rights exist for those blocks is not known to the researcher, but based on the correspondence between the Palestine Land Development Company and the Land Settlement Office, it can be verified that the village could not have been less than a minimum area of 9,653.342 dunums, and might even have been up to 11,698 dunums.

Unlike Sarafand al-Kharab, what did not change in relation to *Village Statistics 1945* was that Al-Haram was a village where most of the ownership was Jewish. According to the section on parcellation of the *musha'* lands, it was confirmed that at least two-thirds of the village was owed by Jews. *Village Statistics 1945* showed this to be 59 percent, and from the land registry records evaluated and calculated, Jewish ownership was 65 percent; hence, no major changes. Different from Sarafand al-Kharab was the fact that while Jewish landownership was the majority, it was not by individual Jewish landowners but by Zionist land organizations, who owned 58 percent of the village of Al-Haram, leaving only 7 percent to be owned by a few individual Jews. The companies that appeared to own the most land in the Schedule of Rights were The Palestine Land Development Co. Ltd., Keren Kayemeth Leisrael Ltd., and the Eretz Israel (Palestine) Foundation Fund (Keren

Hayesod Ltd.). One other company that appeared repeatedly in the village cases but not once in the Schedule of Rights was the New York Ahuza Aleph Inc. All these land organizations played an important role in the land settlement process of the village, as shown by their correspondence with the Land Settlement Officers and Department of Surveys on whom they made great demands for the village land settlement process to be speeded up to enable them to proceed with their own plans for Jewish settlers and colonization.

Perhaps all this added to the frustration reflected by the Settlement Officers, since the Arab landowners, though the minority in amounts of landownership, were the majority in terms of population. Whether through the claims in the cases, or even as the surviving descendants of Arab villagers, the Arab landowners felt the threat of losing their land, either prior to land settlement (as described by Abu Ghali's grandson), or in the legal cases during registration (where the Arabs could only provide oral evidence and their own testimonies). However from another perspective, as described by Settlement Officer Lees to the Commissioner of Lands, the Arabs were attempting to delay the parcellation process for the Jews, and trying in the meantime to "squeeze" as much money as possible out of them. The Settlement Officer's feelings of frustration towards the Arabs are clearly stated here. There was a different opinion of Jewish land organizations as being financially generous in order to compromise with the Arabs, although this view was not reflected in the legal disputes.

Overall, the cases of this village, possibly because of the rush to complete the parcellation process, showed that there was carelessness with regard to calculations and a lack of interest in following-up investigations, let alone trying to organize all the parties to be available during hearings on the partition of *musha'* lands. Because of the patience and persistence of Assistant Settlement Officer Salim, the problems arising were to an extent reduced, but he was just one individual within the entire land settlement process. However, the cases examined also showed that the Defendants who were summoned to the Magistrate's Court in Tel Aviv hardly ever appeared, either during the hearing for the case or afterwards, to register their opposition to the judgments, thereby losing the opportunity even to attempt to change the outcome of the cases. And in other cases, such as the first part of Case No. 8, the claims of the Arab Plaintiffs were so undefined that it was unclear what the case was even about, let alone what land they were claiming was under possession, if that was their aim.

But in many of the cases it seemed strange that the Settlement Officer did not question the claims further, such as those in Case No. 9 made by Plaintiff K. S. as Subh. Even if he felt that it was outside his jurisdiction, he did not question many of the points raised by the Plaintiff's Advocate, A. Salah, such as the validity of the Power of Attorney or the Transactions. Knowing that there was pressure to expedite the land settlement process, and that these cases, based on the date of the decisions, had taken place before the parcellation of the *musha'* lands, the Settlement Officer perhaps also knew that there was not enough time to question the claims of the Plaintiff. Or perhaps the

perception of Settlement Officer Lees, that the Arabs were trying to get as much money as they could and to delay the land settlement as much as possible, was also shared by Settlement Officer Camp?

Also, in Case No. 10 Ben Shemesh and the Plaintiffs he represented mistakenly thought the Assistant Settlement Officer, As'ad Salim, had made clerical errors in the parcellation scheme – although this proved to be a misunderstanding. However, in that case also it would seem that the parcellation process was appropriated by the Zionist land companies and moved to the Magistrate's Court. And Arab landowners, whether because of their mistakes in dealing with administrative technicalities, or due to the fact that the cases were being heard in the Magistrate's Court in Tel Aviv rather than the Settlement Court in Jaffa, ended up being excluded from the process. As seen from the judgments of the Magistrate, the decisions were made entirely in their absence.

Furthermore, when the decisions in these cases reached the Settlement Officer in Jaffa, the entire case would be wrapped up by all the decisions being agreed to, along with some additional provisions. However what is unclear to the researcher is why the cases were heard in the Magistrate's Court in Tel Aviv in the first place, especially with regard to parcellation, when all the other cases were not. When it was known that the Jewish landowners were anxious for the parcellation scheme to be completed, would it not have been faster to carry them out directly in the Land Settlement Office in Jaffa, where all the decisions were being made?

Also it was repeatedly mentioned in Case No. 10 that the Plaintiffs had agreed to the parcellation agreement even after the decisions made at the Magistrate's Court for the *musha'* land; they then went back on their word and followed through with the judgments of the Magistrate's Court. Reference was made to the Ottoman Civil Code to show the illegality of this, but when the Plaintiff, Al Masri, attempted to withdraw his action in Case No. 9 (when, rather than several he chose only one Defendant who was also the village Mukhtar), the Settlement Officer stated that this was not possible since the action had already been accepted by the Court. Therefore, why was the division of the *musha'* lands that had originally been agreed upon in Case No. 10 not followed through? And why were the Plaintiffs allowed to go back on their agreement? In both cases, these decisions altered the landownership of the parties involved.

By 15 May 1948, Zionist forces had complete control over the coastal lands from Haifa to Tel Aviv, and since Al-Haram was located between them, it can be assumed that the village was taken over as well. All that remains today are the Sidna 'Ali Shrine, the cemetery surrounding it, and some houses. The cemetery is currently used as a parking lot for Israeli tourists.<sup>61</sup>

## Notes

- 1 Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington D.C.: Institute of Palestine Studies, 1992), p. 240.



- 2 Ibid., p. 241.
- 3 Muhammad Muhammad Hasan Shurrab, *Mu'jam Buldān Filastīn* [Encyclopedia of Towns of Palestine], 2nd edn, (Amman: Al-Ahliya lil-Nashr, 2000), p. 292.
- 4 Rafat Abu Ghali, "The Darker it is, the Closer We are to the Break of Dawn" in a Special Features for Portraits of Palestinian Refugees in *Al-Majdal: A Quarterly Magazine of BADIL Resource Center for Palestinian Residency and Refugee Rights* (Nakba-60 special issue no. 36–37, Winter 2007 – Spring 2008) available online at [www.badil.org/al-majdal/2008/winter-spring/articles09.htm](http://www.badil.org/al-majdal/2008/winter-spring/articles09.htm) (accessed 12 September 2009).
- 5 Rafat Abu Ghali, "The Darker it is, the Closer We are to the Break of Dawn" in a Special Features for Portraits of Palestinian Refugees in *Al-Majdal: A Quarterly Magazine of BADIL Resource Center for Palestinian Residency and Refugee Rights* (Nakba-60 special issue no. 36–37, Winter 2007 – Spring 2008) available online at <http://www.badil.org/al-majdal/2008/winter-spring/articles09.htm> (accessed 12 September 2009).
- 6 "Tour of al-Haram/Sidna Ali" found in the Tours section of the Zochrot website: [www.nakbainhebrew.org/index.php?id=265](http://www.nakbainhebrew.org/index.php?id=265) (accessed 23 September 2009).
- 7 Maram Massarweh, a descendant of al-Haram (Sidna Ali), and second generation to the Nakba, recounted during Zochrot's tour of the village on 11 November 2005; "Maram Massarweh, al-Haram/Sidna Ali," found in the Testimonies section of the Zochrot website: [www.nakbainhebrew.org/index.php?id=384](http://www.nakbainhebrew.org/index.php?id=384) (accessed 23 September 2009).
- 8 Salman H. Abu Sitta, *Atlas of Palestine 1948* (London: Palestine Land Society, 2004), p. 15.
- 9 Sami Hadawi, *Village Statistics: A Classification of Land and Area Ownership in Palestine* (Beirut, Lebanon: Palestine Liberation Organization Research Center), 1970, pp. 52–53.
- 10 Ibid., pp. 52–53.
- 11 JDLS Al Haram/Schedules of Rights.
- 12 JDLS Al Haram/J-10-12/Masha' Parcellation.
- 13 JDLS, Proposal from PLDC for the division of *musha'* lands, JDLS Al Haram/J-10-12/Masha' Parcellation.
- 14 Later, A. Ben Shemesh, with S. D. Goitein, wrote a textbook for law students in Hebrew entitled *Muslim Law in Israel: An introduction to Muslim Law*. Ben Shemesh wrote the three chapters on civil laws, personal status laws, and Muslim religious courts, along with "paragraphs taken from modern text-books of Hanafi law and from Ottoman laws and their amendments by mandatory Palestinian and Israeli legislation." This information is from a review by S.M. Stern, "Review: 'Muslim Law in Israel' by S.D. Goitein: A. Ben Shemesh," *Bulletin of the School of Oriental and African Studies*, University of London, vol. 22, no. 1/3 (1959), p. 149.
- 15 JDLS, this document was found in its original form in Hebrew, in JDLS Al Haram/ J-10-12:/Masha' Parcellation, and the English translation of it was in JDLS Al Haram/ J-10/Settlement of Al Haram Village.
- 16 JDLS, report by the Assistant Settlement Officer, dated 10 September 1933, on the Settlement Operations in Al Haram Village, JDLS Al Haram/J-10-12/Masha' Parcellation.
- 17 JDLS Al Haram/J-10-12/Masha' Parcellation.
- 18 JDLS, letter to the Commissioner of Lands on 10 February 1933 in JDLS Al Haram/J-10-12/ Masha' Parcellation.
- 19 Ibid.
- 20 Cf. Landownership Section for full quotation. It was clearly stated in point 3 of the PLDC proposal that all calculations and proposed divisions were for *musha'* lands only, meaning that others, such as *mafruz*, had not yet been taken into

- consideration. See Proposal from PLDC for the division of *musha'* lands, JDLS Al Haram/J-10-12/ Masha' Parcellation.
- 21 JDLS, Proposal from PLDC for the division of *musha'* lands, JDLS/Al Haram/J-10-12/Masha' Parcellation.
  - 22 JDLS, Proposal from PLDC for the division of *musha'* lands, JDLS/Al Haram/J-10-12/Masha' Parcellation.
  - 23 Amos Nadan, *The Palestinian Peasant Economy Under the Mandate: A Story of Colonial Bungling* (Harvard University Center for Middle Eastern Studies, Cambridge, MA: Harvard University Press, 2006), pp. 289–90.
  - 24 JDLS, correspondence between the Acting Director of Surveys and the Settlement Officer on Al Haram Block 667, dated 21 and 28 August 1934 in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 25 JDLS, Joseph to the Jerusalem Commissioner of Lands on 12 December 1934 in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 26 JDLS, S. Horowitz to Land Settlement Officer Camp on 3 December 1934, concerning publication of the Schedule of Rights in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 27 JDLS, Settlement Officer to S. Horowitz, 12 December 1934 in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 28 JDLS, Settlement Officer Lees to Camp, 21 December 1934 in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 29 JDLS, report by the Assistant Settlement Officer, dated 10 September 1933, on the Settlement Operations in Al Haram Village in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 30 JDLS, report by the Land Settlement Officer on 27 February 1934 on the Parcellation of al-Haram Lands in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 31 JDLS, M. de Shalit of the American Zion Commonwealth, Inc. to The Land Settlement Officer of the Zones Jaffa and Ramleh on 13 July 1934, in J in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 32 JDLS, Settlement Officer Lees to the Director of Surveys, Jaffa on 14 July 1934 in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 33 JDLS, report by the Settlement Officer, 18 May 1934 on the Parcellation of al-Haram Lands in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 34 JDLS, report by the Assistant Settlement Officer on 25 May 1934 on the Partition of Al Haram Masha' Lands in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 35 JDLS, report by the Assistant Settlement Officer on 25 May 1934 on the Partition of Al Haram Masha' Lands in JDLS Al Haram/J-10-12/Masha' Parcellation.
  - 36 The word *ahuza*, on which the company name is based, is defined as “small plantation colonies developed by paid labourers in preparation for the absentee owners’ immigration to Palestine.” Definition taken from Derek Jonathan Penslar, *Zionism and Technocracy: The Engineering of Jewish Settlement in Palestine 1870–1918*, (Bloomington: Indiana University Press), 1991, p. xiii. As indicated by the name of the company in this case, the New York Ahoosa Aleph, Inc. was a company made up of land purchasers from New York. In such companies, “American Jews invested in lands without any inkling of the location, acreage, or quality of the land.” An agent would show them maps, and purchasers would think that they were receiving the details of the land being purchased. In reality, however, these member payments were going towards “a share in some future colony whose site was not yet determined. Only after the representatives of these organizations actually purchased land did their constituents know the location of the possessions.” Information was taken from Joseph B. Glass, *From New Zion to Old Zion: American Jewish Immigration and Settlement in Palestine* (Detroit, MI: Wayne State University Press), 2002, p. 138. In other cases the same company is called The New York Ahoosa Ltd.

- 37 A. Ben Shemesh had two types of letterhead for his documents, one for his private practice and the other in care of The Palestine Land Development Com., with both addresses in Tel Aviv. In this case he used both, in other cases only one or other of them.
- 38 JDLS Al Haram/Case 1.
- 39 Ibid.
- 40 JDLS Al Haram/Case 4.
- 41 JDLS Al Haram/Case 4.
- 42 JDLS Al Haram/Case 4.
- 43 JDLS Al Haram/Case 6.
- 44 JDLS Al Haram/Case 8.
- 45 JDLS Al Haram/Case 8.
- 46 At one point the Plaintiff's lawyer, A. Salah (whose office was based in Nablus), was ill and asked for the case be adjourned to the following day. This request also included a note from his physician, Dr N. A. Hamzah of the National Hospital in Nablus, who stated that he had diagnosed Salah with influenza and that he needed to remain in bed for a period of three days. All this documentation was amongst the case files, JDLS Al Haram/Case 8.
- 47 JDLS Al Haram/Case 9.
- 48 Ibid.
- 49 JDLS Al Haram/Case 9.
- 50 Ibid.
- 51 Ibid.
- 52 JDLS Al Haram/Case 9.
- 53 Ibid.
- 54 JDLS Al Haram/Case 18.
- 55 JDLS Al Haram/Case 21.
- 56 JDLS Al Haram/Case 10.
- 57 JDLS Al Haram/Case 10.
- 58 JDLS Al Haram/Case 11.
- 59 JDLS Al Haram/Case 11.
- 60 JDLS Al Haram/Case 11.
- 61 Walid Khalidi (editor), *All That Remains*, p. 241.

# 7 The Village of Yaquq

## Location

Yaquq was a village in the northern sub-district of Tiberias (PRG195254). It overlooked Lake Tiberias and was 12.5 kilometers away from the city of Tiberias. Yaquq was located in the mountains of eastern-lower Galilee, on an uneven hill, and was linked by a dirt road to the village of al-Shuna (the closest village), as well as by a dirt path to the road that passed between al-Maghar and Tiberias.<sup>1</sup>

## Origins and History

In Shurrab's *Mu'jam Buldan Falastin* and Khalidi's *All That Remains*, the village of Yaquq is described as having been built over the ruins of the Canaanite city of Huquq, or Hukkok, which in Cananite means 'hole.'<sup>2</sup>

The village is referred to in the Old Testament (Joshua 19: 34), and during the Roman Age was known as Hucuca. Khalidi describes the remains of columns and tombs of rock that date to the first and second centuries AD.<sup>3</sup> By 1596, the village had a total population of 396 and was "in the *nahiya* of Jira (*liwa'* of Safad)"; the villagers were taxed on a variety of crops such as wheat, barley, and olives, along with goats, beehives, and olive or grape presses.<sup>4</sup> By 1875, Yaquq was a village comprising twenty stone houses at the foot of a hill, with a population of only 200.<sup>5</sup>

## Statistics of Tiberias and Yaquq

Hadawi's *Village Statistics 1945* shows that the population of the sub-district of Tiberias was 39,200 (the only other sub-district with fewer people was Beisan); of these, 26,100 were Arab and 13,100 were Jews. In terms of land area, Tiberias consisted of 440,969 dunums, and was therefore larger than Beisan, as well as the sub-district of Jaffa. Of the 440,969 dunums, 231,761 was land owned by Arabs, 167,406 was Jewish-owned land, and 41,802 was public land. There were 45 villages and towns listed in Tiberias, the smallest (in terms of population size) having just 90 people, whereas the largest, urban

Tiberias, had a population of 11,310. Of the 45 villages listed, 18 were solely Jewish-inhabited and 22 were exclusively Arab.<sup>6</sup>

Of all the villages in Tiberias, Yaquq had the closest to a 50:50 ratio of landownership between Arabs and Jews. The village consisted of 8,507 dunums, of which only three dunums were public lands; 4,229 (49.71 percent) was Arab-owned and 4,275 (50.25 percent) was Jewish-owned.<sup>7</sup> In terms of agriculture 1,040 dunums of Yaquq were for cereals, and 24 dunums were used for irrigation and orchards. Concerning the population, in 1931 there were 153 inhabitants, which had increased to 210 by 1944/45, all of whom were Arabs.<sup>8</sup> Similar to Sarafand al-Kharab in terms of population, Yaquq was exclusively an Arab village, but according to the statistics approximately half of the village lands were owned by Jews.

The study of this village relied entirely upon the archives of the British Mandate in Palestine, located at the Department of Lands and Survey in Amman, Jordan. Amongst the archives there were nine registration blocks for the village of Yaquq, however it can be assumed (as will be explained) that there were more. Within each registration block the number of parcels ranged from only three to over 60, and each of these parcels had anything from a single owner to as many as eighteen. Other files for the village included those dealing with parcellation of the *musha'* system, maps, schedules and memorandums of claims, renunciations, and twenty legal cases.

### **Landownership**

Based on *Village Statistics 1945*, the size of the village of Yaquq was 8,507 metric dunums. According to the land registry archives in Amman, the total area of the village was 7,232.15 metric dunums. As with the villages of Sarafand al-Kharab and al-Haram, this figure is based on the information from the Schedule of Decisions. However it can be seen from the registration block numbers of the Schedule of Decisions that some of the schedules are missing. This leads one to assume that the village was actually larger, but it is difficult to tell by how much; therefore it is not possible to determine whether or not the village was the same size as was recorded in *Village Statistics 1945*, or if in fact it was larger. On the basis of *Village Statistics* and the 7,232.15 dunums calculated, 85 percent of the village was accounted for through the Schedule of Decisions. However, for this analysis the percentages below were calculated based on 100 percent equaling 7,232.15 dunums.

The data in the Schedule of Decisions was recorded on 27 May 1943 for all the registration blocks; however all of them were also marked with the stamp of the Land Settlement Office, dated 14 November 1945. There were eight schedules that could be accounted for this way, but it also appeared that there were at least five schedules missing. The first registration block number that could be accounted for was 15523 and the last was 15535. Of these, numbers 15524, 15525, 15528, 15531, and 1533 were missing. Block number 15528 had some Memorandums of Claims that showed the parcel number and the

names of the registered owners, but it did not mention the size of the parcel, therefore preventing the researcher from including it in the calculations of ownership in the village. These owners are mentioned separately at the end of this section.

As with the previous two villages (and as was done by Sami Hadawi in *Village Statistics 1945*), these totals were reached by categorizing the land for Yaquq in the following ways: public land was the land that was registered under the name of the High Commissioner “for the time being,” on behalf of the village of Yaquq or the Government of Palestine. Arab land consisted of land owned by Arab individuals as well as land registered in the name of the *Mudir al-Awqaf el-Islamiya el-Am*. Jewish land was the land owned by Jewish individuals and in Yaquq by the companies of Keren Kayemeth Leisrael Ltd and The Eretz Israel (Palestine) Foundation Fund (Keren Hayesod) based in Jerusalem. Finally there were around 35 dunums of land for which the records in the Schedule of Decisions were illegible and which were categorized on their own as ‘Unknown.’

*Village Statistics 1945* stated that the village had only three dunums of public land, although the Land Registry records for the village showed that there were actually 1,759.15 dunums of public land, a significant difference that made such land about 24 percent of the 7,232 dunums. Most of the public land was registered under the name of “The High Commissioner for the time being in trust for the Government of Palestine,” with only some in the name of the High Commissioner in trust for the village of Yaquq. In the records 1,164.166 dunums of the 1,759 dunums of public land were described as ‘waste’ lands; 476 dunums of the public land was arable (cultivable) land; and the rest was mostly roads, although one parcel (only 0.041 dunums in size) was described as ‘land with a spring.’

In terms of who owned what, *Village Statistics* showed that Arabs owned 4,229 dunums and Jews 4,275 dunums, whereas the Schedule of Decisions of the village added the figures up to Arabs owning 2,654.824 dunums, and Jews owning 2,783.385 dunums. By number of dunums, this is clearly much less; however, as noted above, it was evident from the numbered labels of the registration blocks that not all the Schedules of Decisions for the village had been found. When comparing these figures with the total number of dunums in the village, the percentages were also different. According to *Village Statistics*, Jewish ownership of the Yaquq land amounted to 50.25 percent and Arab ownership was 49.71 percent, whereas in the village’s Land Registry records Jewish-owned land added up to 38.49 percent and 36.71 percent was Arab-owned land. Whereas Jewish and Arab ownership was still almost the same, the difference in the percentages was due to the greater percentage of public land – 24.32 percent rather than the 0.035 percent listed in *Village Statistics*. Notwithstanding, the closeness of the figures for the amount of land owned by Jews and Arabs still keeps Yaquq as a mixed village.

Of the nearly 3,000 dunums owned by Jews in Yaquq, only three dunums were owned by an individual, Mr Yosef Nahmani (who played a significant

role in Zionist land acquisition, as is explained later in the chapter), while all the other Jewish-owned land was registered under the names of the Zionist land-purchasing companies mentioned above. Of this land, 91.165 dunums were registered under the name of the Eretz Israel Foundation Fund, and the majority, 2,688.871 dunums, was in the name of the Keren Kayemeth Leisrael LTD.

On the other hand, all the Arab-owned land in the village of Yaquq was held by Arab individuals, and only two parcels, those of the Muslim Cemetery, did not belong to any individual or family but were in the hands of the *Mudir al-Awqaf el-Islamiya el-Am*. There were 15 Arab families/surnames accounted for in the village of Yaquq.

Of these, the family that owned the most land was that of Esh-Shihada (also spelled as Ash-Shihada by some in the Schedule of Decisions). The Esh-Shihada family (made up of about 25 individuals) owned 11 percent of the village, or over 800 dunums of land. The Arab family owning the second largest amount of land in Yaquq, a total of 579.423 dunums, was the Esh-Shawahin family (consisting of around 20 family members). The two smallest amounts of land in the village that were owned by Arabs were held by two individuals rather than by families, which was demonstrated by the fact that no one else in the village carried the same surname.<sup>9</sup>

As already remarked, it was evident that there were more registration blocks for which Schedules of Decisions could not be found. However, before a landowner's name was registered to the corresponding parcel in the Schedule of Decisions, a form called the Memorandum of Claim had to be filled out (even though the details on these forms were not final), to provide information about parcel number, size or boundaries of the parcel, the type of

*Table 7.1 Arab landowners in Yaquq<sup>1</sup>*

<i>Surname</i>	<i>Land in Metric Dunums</i>	<i>Percentage of Village</i>
Esh-Shihada	802.073	11.09%
Esh-Shawahin	579.423	8.01%
El-Batatkha	340.914	4.71%
El-'Aleimi	223.654	3.09%
Abu-Suweid	181.522	2.51%
Abu-Hamda	178.081	2.46%
El-Faris	163.192	2.26%
Eth-Thalja	43.488	0.60%
Mi'jil	38.580	0.53%
El-'Isa	38.549	0.53%
Es-Sa'd	32.156	0.44%
El-Mawasi	11.569	0.16%
El-Bajam	7.164	0.10%
El-Muhammad	1.043	0.01%
Ash-Shakush	0.738	0.01%

<sup>1</sup>JDLS Yaquq/Schedules of Decisions.

land, and any other changes that might be observed between the Claim and the Schedule of Decisions. Thus, Memorandums of Claims did exist for the missing registration blocks although, for reasons of consistency, it was not possible to use them as substitutes for the blocks that had been accounted for through the Schedule of Decisions.

But it is important to note that, from the Memorandum of Claims for registration block number 15528, it was evident that more land was owned by the following: the Esh-Shawahin family, the El-Batatkha family, the Esh-Shihada family, The High Commissioner for the time being in trust for the Government of Palestine (public land), and the Administrator for the Islamic Waqfs, meaning that there was also more land under the *miri* and *matruka* classifications, as well as, possibly, of *waqf* land classification. As already mentioned, there were only two types of land to be found in the village based on the Schedule of Decisions – *miri* and *matruka* – but something that was strange was the fact that the Muslim cemetery, which was registered under the name of the Administrators of the Islamic *waqfs*, was classified as *miri* land as opposed to *waqf*. There was no land registered as either *waqf* or *mulk* in the entire village, which had only two types of land, 99.07 percent of which was *miri* land, and less than one percent (about 67 dunums) of which was *matruka*.

It can be concluded from these registry records that whereas the village was indeed a mixed village in terms of ownership by Arabs and Jews, not a single inhabitant in the village was a Zionist Jewish immigrant (Nahmani lived in the city of Tiberias). Furthermore, the amount of public land in the village was much greater than estimated in *Village Statistics 1945*.

## Parcels

The parcellation of Yaquq's *musha'* land was well-documented in the land registry records. As explained in Chapter Two, individual private ownership was crucial for the centralization of government power, but as discussed in Chapter Three, it was also a problem for the villagers. As described in Chapter Five, in order for parcels to be partitioned, three steps had to take place: obtaining the written consent of all individuals with the acknowledgement of the Settlement Officer; the obligatory issue of a certificate by the Village Settlement Committee, stating that the division was fair to all the parties involved; and finally the necessary recording and illustrating of the changes on the village plans and maps by the land surveyor. The archives for the village of Yaquq included a folder (T/109/12) dedicated solely to the parcellation of the village, amongst various other folders that also contained documents pertaining to this process. The first document was a statement from a landowner concerning the registration of land that he was claiming, along with a Progress Notice, a Notice of Investigation of Claims, and lastly a notice for the Reading of the Schedule of Rights, all of which were necessary steps after the written consent of the villagers and the Settlement Officer had been obtained.<sup>10</sup>



In a folder labeled "Miscellaneous (Field File)," there were several documents with statements by landowners in the village, but more importantly there were the rough drafts and final documents for the parcellation of the village. The Document of Demarcation (parcellation) for Yaquq stated that the people who had agreed to the exchange of parcels or re-grouping of the land also agreed that it had to be done by a Settlement Officer, since this was the only method they trusted for ensuring that the exchange of land areas would be precisely carried out.<sup>11</sup>

The village lands of Yaquq were made up of "fourteen localities," which included:

- 1 Sheiks
- 2 Julani
- 3 Sullam
- 4 Mumasiya
- 5 Umm-Heidar
- 6 Abu Habla
- 7 Marj Rumman
- 8 Jifta
- 9 El-Hawakir
- 10 En-Naqqar
- 11 Hallan Quteish
- 12 Es-Saddar
- 13 Jabal Habaqquq
- 14 El-Qita'.

Of these the first nine were registered localities, while the remaining five were unregistered because they were *wa'r* (or wasteland). Each of the nine registered localities was divided into twelve shares; some of the individual landowners sold their shares to Yosef Nahmani (all of which was recorded in the Land Registry Office), leaving only the partition between the fellahin and Mr Nahmani to be determined by the Settlement Officer (Nahmani did not own any land in the unregistered localities). The Demarcation Document then focused on each of the localities and listed the division of the twelve shares. In each locality (except El-Hawakir), about eight to ten shares were allocated to Nahmani, while the remaining shares were distributed to others in the village. Even though the El-Hawakir locality was one of the nine localities that was registered (certain shares were also sold to Nahmani) there existed an "Award of Arbitration between the fellahin and Mr. Nahmani," making all but one parcel with a building on it for Mr Nahmani and the remaining parcels for the *fellahin*.

The registered localities were therefore agreed upon by all the owners and the boundaries were drawn for all the parcels. The heirs of two individuals, "M. Abu Suweeid and A. Et Tu'ma," decided to group their parcels together, "and by agreement with Mr. Joseph Nahmani they were allotted one parcel

each near the village.” All the shareowners of the registered localities agreed to group their parcels and take a parcel each near the village, except for one individual who preferred to have his share in each locality in the *mafrūz* parcels he had previously been allocated. The Document of Demarcation was read to seven landowners who were also members of the Village Settlement Committee, along with another landowner in the village and the Demarcator on 15 December 1942, and was signed by the Assistant Settlement Officer of the Tiberias Settlement Area.<sup>12</sup>

According to Nadan, “peasants moved to change *mushāʿ* lands into *mafrūz* (permanent partition of plots) only when there was a need to ensure continuity of property rights and access to the means of production.”<sup>13</sup> Under the *mushāʿ* system these were not issues to be concerned about.

The first document in folder T/109/12 was a signed statement dated 9 April 1943, made by I. A. El-ʿIsa (from the village of Yaquq) to the Settlement Officer of the Tiberias Area, asking for his claim for a piece of land be registered as such, and for it to be classified as *mafrūz* land. In the statement, El-ʿIsa affirmed that he owned four shares in four different localities – Julani, Sullam, Umm-Heidar, and Marj Rumman – and that he had the Ottoman *Tapus* to prove this. El-ʿIsa also declared that when the Lands and Survey Officer visited Yaquq to survey land for the purpose of ownership and registration, the officer had asked him to discuss the matter of his land in the presence of Yosef Nahmani. Nahmani claimed that the land was in fact *mushāʿ* land, even though El-ʿIsa supported his claim with evidence of the *tabu* and a map of Nahmani’s showing that he had purchased the land from the late Agha Al-Kurdi (the land had been divided according to the Kushan). El-ʿIsa went on to declare in his statement that when he asked the Parcelation Officer for the parcels to be partitioned, his request was declined because he did not have the necessary permission for this to be done. After the land had been surveyed, the Registration Officer came to the village where El-ʿIsa had again requested that his land be partitioned and registered, but this was again denied since El-ʿIsa did not have permission. In the end, it seemed that El-ʿIsa, still refusing to admit the land was *mushāʿ*, went ahead and registered the land, though it is unclear how he eventually managed it. He did, however, submit a formal request to the Village Settlement Committee requesting the partition of the land in his name, due to the time and effort he had spent working on the land and making it suitable for farming and cultivation.<sup>14</sup>

In one of the statements in the Miscellaneous folder, members of the Abu-Suweid family requested the registration of their land, situated in four localities of the village. The statement described how the land was inherited and shared amongst the members of the families, how the land had been registered in their names in 1935 (the document itself was dated 6 January 1943), and that all taxes upon it had been paid. The statement then recounted how approximately thirteen years previously, *al-Khawaja*<sup>15</sup> Yosef Nahmani had purchased parts of these lands, and concluded by declaring that the land had been in the possession of these landowners for forty years, which was why

they were asking for the land to be registered in their names. Finally they pleaded with the British Government to not cause the weaker or poor (the word in Arabic could mean both) people any loss of their rights, and to accept this witnessed request. The odd thing was that a few weeks later, on 28 January 1943, one of the applicants requested that the entire statement should be cancelled and that no attention be given to it.<sup>16</sup>

On the basis of these statements, the eventual outcome was not always clear. Such accounts were obviously filled with a wealth of information regarding registration and ownership of the village lands, although it should be noted that in terms of individual land owners, the applicants in such documents did not always match the Schedule of Decisions but tended to be members of the same family in which others were the registered landowners. However, apart from the governing bodies – the Land Settlement Officers and the Village Settlement Committee – it was obvious that the one individual who figured prominently in the parcellation and registration process of the village was Yosef Nahmani.

Finally this transition from the *musha'* system to individual ownership may appear to have been simple, based on the documents described above. However, when this process occurred the entire image of the village changed, as individual landowners wanted to secure their tenure rights with the government and also with the other villagers. The next section examines types of land disputes, based on the legal cases that occurred in the village of Yaquq.

## Cases

There were twenty legal cases in the village, two of which were dismissed. Unlike the cases in Sarafand al-Kharab and Al-Haram, these cases seem to have been smaller, due to the lack of documentation. There were no witness testimonies recorded, and some cases did not even have a written decision by the Land Settlement Officer. But this does not alter their significance, and by showing the problems that existed in the village as well as how they were dealt with and resolved by the government, these legal cases can shed light on the various disputes that arose from the land tenure system in the mixed village of Yaquq in British Mandate Palestine.

### *Land Classification and Village Boundaries*

#### *Case No. 1*

The case was opened on 11 February 1943 with regard to two disputed parcels in one of Yaquq's land blocks. There was a total of fifteen plaintiffs: five from the Abu-Suweid family, four of the Esh-Shawahin family, and six of the El-Faris family. The Defendant was the Government of Palestine. The Plaintiffs wanted the land to be classified as *mafrūz* because they had the largest share of the land. However on 17 March 1943, the decision of the Settlement

Officer of the Tiberias Settlement Area was that the land should be registered as a *matruka* threshing floor.<sup>17</sup>

*Case No. 5*

In this case there were 189 Plaintiffs, all of whom were individual Arab owners from the various families in the village (Shihada, Suweid, Shawahin, El-'Uleimi, Al-Bajam, El-Faris, and Nahamani), versus the Government of Palestine. There were also two groups of Third Parties listed, all of them Arabs. The decision of the Settlement Officer discussed the registration and boundaries of parcels in five of the registration blocks of the village and, for example, referred to the croquis map, which lands were considered to be part of the village, and which ones were to undergo parcellation. References were made to Case Numbers 7, 10, and 13. One of the parcels in one of the blocks was described as rocky land; the Settlement Officer therefore decided that the land should be classified as *matruka* and registered it under the name of the Government. This case appeared to be more concerned with handling administrative rather than legal matters since there were no Summons of Witnesses, and no documents apart from two Memorandums of Claims. However, a handwritten note on the case folder advised that the decision could be found by referring to Case No. 7.<sup>18</sup>

*Case No. 6*

This case was concerned with determining the allocation of parcels between the villages of Yaquq and El-Mughar. As mentioned earlier, the village of El-Mughar was connected by road to Yaquq. In Case No. 6, there were 68 Defendants, while the Plaintiffs were the Mukhtar and Village Settlement Committee on behalf of the village of El-Mughar. Based on the evidence given by the PICA agent and the fellahin of Yaquq, the Settlement Officer decided that the disputed parcels belonged to Yaquq. It was noted, however, that even though they were the Plaintiffs, not a single representative from the village of El-Mughar had attended the hearing. From the Summons to Parties document in the case file it was clear that they had been summoned and that they had also acknowledged the summons; the Settlement Officer stated this as well in his decision.

*Case No. 7 and Case No. 10*

For some reason these two cases were documented together almost as one. Case No. 7 disputed four different parcels and Case No. 10 disputed two. For Case No. 7 the Plaintiffs were eight members of the El-Kharanba family, and the 88 Defendants were almost all from the Esh-Shihada, Abu-Suweid, Esh-Shawahin, El-'Aleimi, and El-Faris families, with the addition of Yosef

Nahmani. The listed third parties in the case were the “Mukhtar and Elders of ‘Arab el Kharanba on behalf of persons entitled to right.” The Plaintiff in Case No. 10 was the “Mukhtar es Samayira on behalf of persons entitled to right,” the 53 Defendants were from the Esh-Shihada, Esh-Shawahin, El-‘Aleimi, and Abu-Suweid families, and the third parties were Yosef Nahmani and Diab and Deeb Shihada. There was one decision by the Settlement Officer of the Tiberias Settlement Area for both cases; it concerned the village boundary dispute between the villages of Yaquq and Ghuweir Abu-Shusha, and was based on the registration of the *Tabu*, and the maps and Land Registers of the Palestine Jewish Colonisation Association for the village of Ghuweir Abu-Shusha. One of the testimonies that played a big part in the decision for these cases was that of Mr Gershoni, a “PICA agent [who] knows everything about land and boundaries in this area.”<sup>19</sup> The Settlement Officer’s decision was that the area claimed did not belong to Ghuweir Abu Shusha but to the village of Yaquq.

#### *Case No. 12*

The Plaintiff in this case was Mahmud Salih Muhammad El-Batatkha, and there were 33 Defendants, one of whom was Yosef Nahmani while the rest were from the Esh-Shihada, Esh-Shawahin, Abu-Suweid, and El-‘Uleimi families. The decision over the disputed parcel, rather than being stated in full, was referenced to that of the decision of Case No. 6, which was that the parcels belonged to the village of Yaquq, thus making it another case over village boundaries.

#### *Cases No. 13, No. 18 and No. 19*

There were seven disputed parcels in Case No. 13, and one defendant, the Government of Palestine. The six Plaintiffs were members of the Qaddura, Esh-Shihada, and Esh-Shawahin families, and the third parties were three members of the El-‘Uleimi family. This case concerned a dispute as to whether or not these parcels were part of the villages of Yaquq or Esh-Shuna, as well as the land classification of certain parcels. Based on the kushans and croquis maps, it was decided by the Settlement Officer on 2 April 1943 that the lands would be registered “in the name of the High Commissioner in trust for the Government of Palestine, as miri.”

In Case No. 18 there were six parcels in dispute and twelve Plaintiffs, five of whom were from the Esh-Shawahin family and the rest were from the Esh-Shihada family. There were 40 Defendants, the first of whom was Yosef Nahmani, and the remainder were individuals from the Esh-Shihada and Esh-Shawahin families; as with many of the cases the third parties were D. and Db. Esh-Shihada. There was no decision from the Settlement Officer, but rather a reference to Case No. 13. Because it was clear that these parcels

were registered in their owners' names and not the High Commissioner's, it was assumed that the reference was to part of Case No. 13 and the decision that the land would be registered under the *miri* classification.

Case No. 19 did not note the decision of the Settlement Officer either, but did refer to Case No. 13. There were ten parcels being disputed by ten Plaintiffs, all of whom were from the families of Esh-Shawahin, Esh-Shihada, El-Faris, and Abu-Suweid. For this case, there were two lists of Defendants, each referring to specific parcels, and the name heading both lists was that of Yosef Nahmani. The first list had a total of 40 individuals and the second 68, all of whom were from the same families as the Plaintiffs, and once more the third parties were D. and Db. Esh-Shihada. Again, since the land was registered in the names of the different landowners, it was assumed that in reference to Case No. 13 it was intended that the land classification was to be registered as *miri*.

### ***Dismissed***

#### *Case No. 3 and Case No. 4*

These cases appeared insignificant, being very simple ones that were concerned with roads or decisions by the Settlement Officer stating there was no case so it had been dismissed.

### ***Transfers and Question of Title***

#### *Case No. 2*

The second case was also opened on 11 February 1943 and referred to two disputed parcels in different blocks. The Plaintiffs were S. Qaddura and three members of the El-'Alimi family, while the Defendants were seven members of the Batatkha family, three of the Abu-Hamda, and two of Esh-Shawahin. The Settlement Officer dismissed the Plaintiffs' case on 17 March 1943, noting that: "I am convinced from the evidence that he was a major when he signed Exhibit A. He admits a previous sale there and states his willingness to go to Tabu to transfer lands." The Settlement Officer also wrote that he believed the evidence of the Mukhtar (a handwritten agreement signed and stamped by the Mukhtar) and the Defendants, so the parcels were to be registered as claimed by the Defendants.<sup>20</sup>

#### *Case No. 8*

This case was between two individuals, the plaintiff, A. D. A. 'Uleimi (also spelled 'Aleimi in the Schedule of Decisions), and the defendant Yusef Mendel Nahmani (also spelled Yosef or Josef Nahmani). This case was very strange because there was no evidence of a result, and the only documentation for the case file was the Memorandum of Claim form of Yosef Nahmani

and a Summons to Parties sent to H. 'Uleimi. There were 30 parcels being disputed but the Settlement Officer had written only one sentence, on 17 March 1943, to the effect that the Plaintiff and Defendant could settle the case between themselves and later inform him of the result. But what was decided between 'Uleimi and Nahmani was unknown.

*Case No. 9*

In Case No. 9 there were 37 parcels being disputed by 24 members of the Esh-Shawahin family and one Defendant, Yosef Nahmani. There was one Memorandum of Claim and three Certificates of Registration in the file in Nahmani's name. On 17 March 1943, the Settlement Officer of the Tiberias Settlement Area decided that 10/35 shares of each of the disputed parcels would be registered under the name of Nahmani.

*Case No. 11, and Case Nos. 14–20*

Under the umbrella of Case No. 20 were Case Nos 11 and 14 to 20. The Plaintiffs, Defendants, and third parties listed for Case No. 20 were the same for all these others. In each separate case, the decision of the Settlement Officer made a reference to Case No. 20.

Case No. 11 was a family dispute between the Plaintiffs, D. and Db. Shihada, and the Defendant F. Shihada over what appeared to be their shares in 23 parcels. There was not much evidence other than a Memorandum of Claim. The decision, made by the Tiberias Settlement Officer on 17 March 1943, was in favour of the Defendant.

The Plaintiffs of Case No. 14, which concerned a dispute over five parcels in Yaquq, were M. H. D. El-'Uleimi "and others," the Defendant was H. D. A. El-'Uleimi, and the third parties were Yosef Nahmani "and others." There was only one Memorandum of Claim but it did not state the name of any one individual, and there was no decision by the Settlement Officer; thus the outcome of the case was not known. On the back of the Memorandum of Claim, however, there was a note stating that H. El-'Uleimi had died and that those listed on the form as making the claim were his sons.

In Case No. 15, over one disputed parcel, the Plaintiffs were S. H. Y. Shihada and two others from his family; the Defendants were Yosef Nahmani and 27 Arabs from different families in Yaquq, and the third parties were D. and Db. Esh-Shihada. There was no statement by the Land Settlement Officer as to the decision for the case. Supporting documents included a Memorandum of Claim as well as the receipts for Summons to Parties for the case. Based on the Memorandum of Claim and the Schedule of Decisions it seemed that the parcel (22.008 metric dunums) was registered under the names of four members of the Esh-Shawahin family, each receiving one fifth of the shares.

There were twelve plaintiffs in Case No. 16, all from the Esh-Shihada family. The Defendants included Yosef Nahmani, and 38 others, all of whom

were from the Esh-Shihada, El-Batatkha, and El-Faris families of Yaquq. The third parties involved were D. and Db. Esh-Shihada. The size of the one parcel in dispute, according to the Schedule of Decisions, was about 15 dunums. Although there was no decision written in this case file, there was a note to refer to the decision of Case No. 13, which was that the land would be registered as *miri*, as could be confirmed by the Schedule of Decisions, and that the land would be registered under the name of the High Commissioner. However the Schedule of Decisions shows this same parcel to have been registered under the names of I., A., and S. Esh-Shihada. In the case folder there was a Memorandum of Claim for the parcel that listed more names; it also noted that the land was 60 percent cultivable and that the land appeared to have been “part of the unregistered wa’ar which was revived sometime ago” (wa’ar, also spelled *wa’r* earlier, means wasteland).

The three Plaintiffs for Case No. 17 were I., Y., and D. Esh-Shawahin, while the Defendants were Yosef Nahmani, D. El-Faris, and 26 others from the Esh-Shawahin and Esh-Shihada families. As in the two previous cases, the third parties were D. and Db. Esh-Shihada. There was only one disputed parcel and the decision for this case was based on the decision of Case No. 20.

Case No. 20 was perhaps the largest case in terms of documentation, parties involved, and references to other cases. The Plaintiffs for Case No. 20 were 27 persons from the Abu-Suweid, Esh-Shawahin, Esh-Shihada, and El-Faris families, while the defendants were Yosef Nahmani and 58 others from the Esh-Shawahin, El-Faris, and Esh-Shihada families. The Third Parties were D., W., and N. El-‘Uleimi. The list of all these Plaintiffs, Defendants, and third parties for all eight cases were followed by one decision of the Settlement Officer of the Tiberias Settlement area.

The decision began with an explanation that several of the *fellahin* of Yaquq had claimed that their land was *mafrūz* land “without reference to the registration of the village nor to their partnership with defendants,” as was the situation in Case No. 20. The decision then went on to say that:

The Tabu records of Yaquq show registration in *mafruz* for 12 parcels in each of 9 localities. I have examined the boundaries of this group of registrations and come to the conclusions about them which are included in my decisions in other Yaquq cases: ... The northern boundary of the registration is well defined, and there is no serious dispute about it. A dispute did arise between Mr. Nahmani and some of the *fellahin* of Yaquq, and it was referred to the registration arbitration of a single person appointed by both parties in 1932 ... but the award was never formally confirmed because it was said by the *fellahin* that, all parties agreeing to it, it would be a waste of money to have it confirmed. None of the parties now denies the award, and the main claims are confined to definition of registered boundary and of registered localities and to the position of a certain area which the award states should be added to the



Arabs' shares. This last is guaranteed by Mr. Nahmani and will be taken fully into account in the registration. The parties agreed in the arbitration to cancel the former Mafruz holdings ... It is quite true, as Mr. Nahmani points out, that if the plaintiffs here acknowledge the arbitration award, they now have no case.<sup>21</sup>

The decision was read on 2 April 1943. The exhibits supporting the case included many agreements in Arabic from the villagers, such as the arbitration judgment mentioned in the decision above, and a detailed list of the claims made by the villagers for the land parcels. There were also receipts for Summons to Parties, Memorandum of Claims forms, and a copy of the village's demarcation and settlement document, which gave the judgment of how the shares were to be divided and which ones were to be received by Nahmani. Interestingly enough, while all these documents were stamped and dated, there was one small note without a date or signature, stating that:

Mr. Nahmani did not produce kushans but he is willing to do so if and when required. His shares are registered in his name in Mafruz parcels. He promised to produce an extract of registration giving the number of the Mortgager to the officer [unknown if there was an additional word here].<sup>22</sup>

According to *Village Statistics 1945*, there were 210 Arabs living in Yaquq, but not a single Jewish inhabitant in the village. Yet in these cases the one name that kept appearing at the top of almost every list of defendants was of Mr Joseph (also spelled Yosef and Yusef) Mandel Nahmani. For someone who only owned about three dunums in the village, he clearly worked closely with both the government and the villagers in the land processes of parcellation and handling of legal disputes in the village. The following section tries to establish just how much of an influence he may have been.

### **Yosef Mandel Nahmani**

After close analysis of the land records for the village of Yaquq, it became evident that the individual named Yosef or Joseph Nahmani played a significant and direct role within the land settlement of the village. It was noticed that no other individual using the same surname owned land in Yaquq, and that no one else carrying the name Nahmani was part of Yaquq's parcellation scheme or involved in any of the legal disputes. Also, unlike in the other two villages, there were no individual Jewish landowners in Yaquq; all the other individual landowners in the village had at least one if not many other members from the same Arab family in the same village. In addition, as indicated in the earlier section on parcellation, the division of the land was between the *fellahin* inhabitants of Yaquq and Mr Nahmani, showing that he played an

important part in village affairs. For this reason it was necessary to investigate the background of the individual further so as to create a profile of Yosef Nahmani and his position in Yaquq. It soon became clear that his role extended well beyond the boundaries of the village: "Nahmani, like most Zionists, always viewed the success of the whole enterprise in terms of two categories, land and people or demography."<sup>23</sup> As this section shows, he played an important part in both.

Between 1936 and 1939, the Jewish National Fund (JNF) expanded its methods for land purchases as opposed to purchasing land only through the Palestine Land Development Company.<sup>24</sup> These land purchasing methods included linking the JNF to "other bodies – private individuals and companies alike," one of whom was Yosef Nahmani.<sup>25</sup>

Yosef Nahmani was born Yosef Agronovsky in 1891 in the town of Aleksandriya, in southern Ukraine. He and his brother, Moshe, had emigrated to Ottoman Palestine in 1907 or 1908, and by 1911 Yosef had moved to Galilee, which was his home for the rest of his life. He married in 1914 and in 1921 settled with his family in Tiberias. He became a member of HaShomer, "the semi-clandestine organization which guarded the new Jewish settlements that had begun to spring up in the middle of the clusters of Arab villages." Like other members of the organization, Nahmani became fluent in Arabic and learned Arab customs; he was also skilled in maintaining good relations with local Bedouin sheikhs, "a diplomacy which involved adapting to the local customs of lavish entertainments and gifts."<sup>26</sup> The HaShomer nicknamed Nahmani "Yusuf *awantaji*" (meaning 'Yosef the sly one'); this was "a trait that was to serve him well in the often complex bargaining and wheeling-dealing that land-purchasing from Arabs entailed."<sup>27</sup>

Nahmani was an ardent supporter of Zionist land purchases, but was critical of the Zionists' treatment of Arabs. For example, when the Arab Revolt began in June 1936, Nahmani wrote in a letter to Y. Ben-Zvi on 26 June that:

Those who stand at the head of our [Zionist] movement do not know Arabic and [Arab] culture is alien to them, and they are afraid ... to hand over responsibility for [Jewish–Arab relations] to the Jews of this country who know Arabic<sup>28</sup>

He expressed a similar view, and perhaps even guilt, when it came to the Zionist handling of the Arabs in 1948, as discussed below. However, even with his empathy towards the Arabs, Nahmani's goals for land purchases still aroused opposition from the Arabs, especially towards the end of the Mandate, when land purchase was happening over the whole of Palestine. The Arab National Chest<sup>29</sup> had been putting pressure on the British Government during the mid-1940s, and during one of these occasions had denied Nahmani a visa to travel to Syria and Lebanon since he intended "to conduct negotiations with Arab landowners."<sup>30</sup>

In 1920, under the British Mandate in Palestine, and after the HaShomer organization had been officially broken up, Nahmani joined the Palestine Police; at the same time and covertly he became a local organizer, weapons-purchaser, and fundraiser for the Haganah. From 1922 to 1935 he served as a 'land-purchaser' for the Palestine Jewish Colonisation Association, "utilizing his good contacts with Arab villagers and landowners,"<sup>31</sup> and during 1927–50 was a member of the Tiberias City Council.<sup>32</sup> In 1935 Nahmani shifted to the Jewish National Fund as the director of their office in Galilee and this was where he worked for thirty years.<sup>33</sup>

Based on this information, one has to think that it was Nahmani who had purchased the land in Yaquq for the PICA, since the Schedule of Decisions was dated 1942 and 1943. He was clearly involved in the village's land issues but did not seem to own much land as a private title-holder. It would therefore make sense if he was the representative purchaser for the Keren Kayemeth Leisrael Ltd. or The Eretz Israel (Palestine) Foundation Fund, since the PICA was not registered as the owner of any parcels in the Schedule of Decisions of Yaquq. For a decade after 1937 Yaquq purchased around 90,000 dunums in eastern Upper Galilee.<sup>34</sup> Morris wrote that he "served on the municipal council of this (until 1948) mixed Jewish-Arab town [Tiberias] from 1927 until October 1950."<sup>35</sup>

For most of his life, Nahmani was engrossed in what he and other Zionists referred to as *ge'ulat karka* or *ge'ulat ha'aretz* ('the Redemption of the Land'),<sup>36</sup> and truly believed that achieving a Jewish National Home was "dependent on the amount of land" that the Jewish people 'redeemed.'<sup>37</sup> As tensions grew between Palestinian Arabs and Zionist Jews towards the end of the Mandate, Zionist agencies encountered more obstacles in purchasing land. Morris notes that Nahmani even went as far as thinking that the Zionist enterprise leaders in Jerusalem were "insufficiently aware of the importance of the land-acquisition campaign."<sup>38</sup>

Nevertheless the JNF was still very pleased with his performance, stating that:

Now that we have completed with you all the matters regarding this sale of the lands in Madar and Ulam we feel compelled to express our satisfaction and appreciation regarding the way your representatives Merssrs. Weitz and Nahmani handled the negotiations.<sup>39</sup>

This letter of appreciation from the Yavneh Company was sent to the JNF in 1943. Whereas Weitz is mentioned later in the letter specifically with regard to the negotiations, one can nevertheless assume that Nahmani again played a similar role in the village of Yaquq on behalf of other land-purchasing companies.

In 1946 Nahmani realized that the failure of his office to achieve the previous year's estimates for land purchases was due to the fact that, although land for purchase was available and Arab landowners were in financial need and willing to sell, Arabs were being threatened and terrorized by Palestinian

Arab nationalists, as well as by the governments of Syria and Lebanon, to not sell land to Jews.<sup>40</sup> Even after 1948, Nahmani believed that Zionist objectives for purchasing land from Arabs and controlling the demography were far from over within the new state of Israel.

Morris describes how, after Nahmani's death in 1965, Yosef Weitz (Nahmani was known as one of Weitz's subordinates)<sup>41</sup> went through the papers of his friend and "edited and published a commemorative volume entitled *Yosef Nahmani, Ish Hagalil* [Yosef Nahmani, Man of Galilee]."<sup>42</sup> Morris describes the original diary as containing a wealth of information, specifically the entries in 1948 about the war in Tiberias and Eastern Galilee; but Weitz's volume does not include these: "Weitz completely omitted entries of major importance and abridged other entries in a manner clearly guided by political and propagandistic intent. The result is a laundered 'document'."<sup>43</sup> A good example of this is the following excerpt from Nahmani's diary, as quoted by Morris:

In Safsaf, after ... the inhabitants had raised a white flag, the [soldiers] collected and separated the men and women, tied the hands of fifty–sixty *fellahin* [peasants] and shot and killed them and buried them in a pit. Also, they raped several women. ... At Eilaboun and Farradiya the soldiers had been greeted with white flags and rich food, and afterwards had ordered the villagers to leave, with their women and children. When the [villagers] had begun to argue ... [the soldiers] had opened fire and after some thirty people were killed, had begun to lead the rest [towards Lebanon] ... In Saliha, where a white flag had been raised ... they had killed about sixty–seventy men and women. Where did they come by such a measure of cruelty, like Nazis? ... Is there no more humane way of expelling the inhabitants than by such methods ... ?<sup>44</sup>

This excerpt from his diary shows that even though Nahmani was a supporter of and active participant in the Zionist project and its schemes for land purchases before and after 1948, he recognized the atrocities being committed against the Arabs. Another diary excerpt, also quoted by Morris, describes the tension felt by the inhabitants of the Arab village of Majdal<sup>45</sup> (also in the sub-district of Tiberias and less than 10 kilometers from Yaquq) in March 1948, three weeks before they eventually had to flee:

The Arabs [in the area] are beginning to become deeply afraid. The[ir] faith in the Jews' goodwill is being undermined. The Arabs in the area are weak and traditionally there prevailed good relations between them and the Jews. Now, after undisciplined actions by Jews that, without cause, put their lives and property in danger, they see and fear that they will not be able in future to live among the Jews as the aggressiveness of the Jews proves that whenever they want to, [the Jews] will be able to destroy them.<sup>46</sup>

These Arab villagers had come to Nahmani for help, and he attempted to assist them by talking to the Haganah commanders of Tiberias, but to no avail. He even wrote that he was “fighting for the village’s [continued] existence,” but in the end the villagers fled, followed by the people of the neighboring village of Ghuweir Abu Shusha.<sup>47</sup>

In the months before the establishment of the state of Israel, the JNF’s leaders debated how this change would affect their objectives and methods. Abraham Granovsky and Yosef Weitz took the same view, which was that “the idea of development” would be used as the reason for continuing to purchase land from Arabs. However, Nahmani disagreed with this, believing that the JNF needed to continue its purchasing methods as it had done during the Mandate, and that it had to do so at “a more intensified pace and in adjustment to the new conditions” that would be borne by the Jewish State.<sup>48</sup>

Nahmani also recognized the demographic problem the Arabs posed to the new state of Israel. In 1953 he wrote a memo to Ben-Gurion about the presence of an Arab minority in Galilee as a continuous security threat for Israel – hence his justification for the Judaization programme.<sup>49</sup> Nahmani played a big role in the new state of Israel after 1948, coordinating the transfer of Arabs from the Galilee and Lebanon to North and South America, and specifically Argentina. Nur Masalha writes that Nahmani was amongst the JNF executives who lead the plans for getting back land in Galilee from the Arabs who had remained there after 1948. Nahmani was concerned that “the Arabs had remained in significant numbers in the Galilee after the establishment of Israel” and that the JNF had not been able to “redeem” the land prior to 1948.<sup>50</sup> Masalha quotes a memorandum by Nahmani to the Israeli prime minister and defence minister on 11 January 1953:

Western Galilee has been occupied, but it has not been freed of its Arab population, as happened in other parts of the country. 51 unabandoned villages and the town of Nazareth remain in it. In all its Arab inhabitants are 84,002 (not counting Acre) controlling 929,549 dunums of land ... Its Arab population, mostly agricultural, makes up approximately 45 per cent of the Arab minority in our state, and is concentrated in a homogenous continuous area, bordering Arab Lebanon. This concentrated Arab minority presents a continual threat to the security and integrity of the state.<sup>51</sup>

Based on Nahmani’s diary, Masalha has researched Nahmani’s role in Operation Yohanan and believes that his perspective on the Palestinian Arab population was not something new, having in fact been established before 1948. During the British Mandate in Palestine, and during the Jewish Agency Executive discussions of July 1938, as well as the discussions of the Jewish Agency Transfer Committees from December 1937 to 1942, Nahmani supported the removal of Palestinian Arabs from the area. After 1948, he

continued to participate actively in the transfer of the Palestinian Arabs of Galilee in Operation Yohanan, which had been hoped to reduce “the Arab minority in general, and the Christian Arab citizens in the Galilee in particular.”<sup>52</sup>

Described by Morris as a “legendary figure in the 1910s,”<sup>53</sup> Nahmani clearly played a considerable part in the colonial settler movement and the spread of Zionist land purchases in the northern region of Palestine, and continued to do so even after 1948 in Israel. However it can also be concluded that, on a personal level, Nahmani was in a state of liminality on the ethical treatment of the Arabs during the Mandate, and the inhumane actions of which they were victims in 1948 and afterwards. He strongly supported the Zionist objective of land purchasing, recognizing its importance for the Jewish state and, within that, the significance of demography. He was critical when it came to the aggressive approach and even condemned the violence he witnessed towards Arabs by anti-Zionist Arabs but even more so that by Zionists; however this never deflected his opinions or his colonial-settler goals for Zionist-Jewish land purchases or transfer of the Palestinian Arab populations.

## Conclusion

Whereas most of the records for this village were accounted for through the legal cases and parcellation documents, on the basis of the size of al-Yaquq in *Village Statistics 1945* it would seem that the Schedules of Decisions and Final Maps were only available for 85 percent of the village if, in fact, the village was not actually even larger than that. Nevertheless, the Schedule of Decisions in the land registry records verified that it was in fact a mixed village in terms of Arab and Jewish landownership. However the records also show that the amount of public land in *Village Statistics 1945* was underestimated. In terms of population the village was very small, with 210 individuals, so it was no surprise that most of the land belonged to a few families, namely those of Esh-Shihada, Esh-Shawahin, El-Faris, El-Batatkha, and Abu-Suweid. Also there were no Jewish inhabitants in the village, and of all the land that was considered to be Jewish-owned, only one individual, Yosef Mandel Nahmani, was named; the rest of the land was in the hands of land companies.

Even though Nahmani’s name kept appearing the various records, especially in the cases and parcellation documents, his role in the village could not be determined just on the basis of the land registry records in Amman. However, through the use of secondary sources and Nahmani’s diary, it became very obvious that Nahmani’s position on the Tiberias city council and as the JNF representative of Galilee had an effect on his importance in the village of Yaquq. The fact that Yaquq came to be considered a mixed village through landownership was due to the fact that Nahmani negotiated the purchases for what became Jewish-owned land. Nahmani’s role in the

parcellation process of the village from the *musha'* system was also significant. "*Mushā'*, in conjunction with the institution of the *waqf* ... hindered the sale of lands to Jews."<sup>54</sup> Thus it was not a matter of simply dividing the land for the purpose of private ownership for the Mandate government, but having Nahmani involved in the process gave him direct access to purchasing land that would have otherwise not been available for sale. Therefore even though Zionist collaboration may not have been evident in the text within the land registry records, the level of involvement of a Zionist such as Nahmani in the parcellation process shows otherwise.

There were twenty legal cases in the mixed village of Yaquq, and the issues they covered ranged from boundary disputes, ownership (title), transfers (purchases and sales), demarcation (parcellation), and classification of land. Two cases were dismissed completely, and based on their file could not properly be considered a case or dispute as they concerned village roads. Case No. 2 seemed the only one specifically about a land transfer between parties. The two most frequent themes in these cases were both linked to the parcellation of the village, the first theme being the setting of Yaquq's boundaries with the surrounding villages, and determining to which village the disputed parcels belonged; and the second being the change of classification of the land from the *musha'* system. Surprisingly, even though the village was a mixed village in terms of landownership, there were no cases that involved the transfer of land between the Arab villagers of Yaquq and the Jewish land companies, which owned just as much land. In the last case, however, the small note referring to Nahmani and the kushans offered a brief glimpse into Nahmani's influence in the village, since his word alone was taken as sufficient evidence.

### *Yaquq Today*

Khalidi suggests that in late April and early May of 1948, the village underwent the same events as had occurred at a nearby village only a few kilometers to the south-east of Yaquq, the village of Ghuwayr Abu Shusha, which had been assaulted by the Palmach forces. He thinks that the "villagers of Yaquq were either deliberately expelled during this period, or came under pressure to leave because of the campaigns being waged to the north and south."<sup>55</sup> Shurrab also mentions that the village was destroyed in 1948, and that a Zionist settlement called Hukuk was established in the south-western area of the land.<sup>56</sup> Khalidi does not mention this, but speaks of another settlement named Chuquq. Founded in 1943, it was located two kilometers to the south-east of the Arab village and a few of the settlement's buildings were erected on the village land.

The rest of the site is now covered in stone rubble, with one palm tree in the centre and an olive grove on the side. A canal for the Israeli National Water Carrier takes water from Lake Tiberias to the central coastal plains of Israel. Part of the land surrounding the site of Yaquq has been cultivated by Israelis, and the rest is used as a grazing area only.<sup>57</sup>

## Notes

- 1 Walid Khalidi (ed.), *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington D.C.: Institute of Palestine Studies, 1992), p. 546.
- 2 Muhammad Muhammad Hasan Shurrah, *Muʿjam Buldān Filastīn* [Encyclopedia of Towns of Palestine], 2nd edn (Amman: Al-Ahliya lil-Nashr, 2000), p. 728; and Khalidi, *All That Remains*, p. 546.
- 3 Khalidi, *All That Remains*, pp. 545–46.
- 4 Wolf-Deiter Hütteroth and Kamal Abdulfattah, *Historical Geography of Palestine, Transjordan and Southern Syria in the Late 16th Century*, Erlanger Geographische Arbeiten, Sonderband 5, (Erlangen, Germany: Vorstand der Fränkischen Geographischen Gesellschaft, 1977), p. 177, as cited in Khalidi, *All That Remains*, p. 546.
- 5 Khalidi, *All That Remains*, p. 547.
- 6 Sami Hadawi, *Village Statistics: A Classification of Land and Area Ownership in Palestine* (Beirut, Lebanon: Palestine Liberation Organization Research Centre, 1970), pp. 37, 72–73.
- 7 *Ibid.*, p. 73.
- 8 Khalidi, *All That Remains*, p. 546.
- 9 JDLS Yaquq/Schedules of Decisions.
- 10 T/109/12: Yaquq Parcellation, Yaquq, Archives from the Jordanian Department of Lands and Survey.
- 11 Miscellaneous, Yaquq, Archives from the Jordanian Department of Lands and Survey.
- 12 JDLS Yaquq/Miscellaneous.
- 13 Amos Nadan, *The Palestinian Peasant Economy Under the Mandate: A Story of Colonial Bungling* (Harvard University Center for Middle Eastern Studies, Cambridge, MA: Harvard University Press, 2006), p. 264.
- 14 JDLS Yaquq/T-109-12/Yaquq Parcellation.
- 15 Term used in some Arab countries in reference to foreigners. Originates from the Persian word for Master.
- 16 JDLS Yaquq/Miscellaneous.
- 17 JDLS Yaquq/Case 1.
- 18 JDLS Yaquq/Case 5.
- 19 JDLS Yaquq/Case 10.
- 20 JDLS Yaquq/Case 2.
- 21 JDLS Yaquq/Case 20.
- 22 *Ibid.*
- 23 Benny Morris, “Yosef Nahmani and the Arab Question in 1948,” *1948 and After: Israel and the Palestinian* (Oxford: Clarendon Press, 1994), p. 163.
- 24 Yossi Katz, *The Battle for the Land: The History of the Jewish National Fund (KKL) Before the Establishment of the State of Israel* (Jerusalem: The Hebrew University Magnes Press, 2005), p. 49.
- 25 *Ibid.*, p. 50.
- 26 CZA S25/10295, as cited in Neil Caplan, “Arab–Jewish Contacts in Palestine after the First World War,” *Journal of Contemporary History*, vol. 12, no. 4, October 1977, p. 639.
- 27 Benny Morris, “Yosef Nahmani and the Arab Question in 1948,” pp. 159–60.
- 28 Letter from Nahmani to Ben-Zvi, 26 June 1936, in Yosef Weitz, *Yosef Nahmani: Ish Hagalil* [Yosef Nahmani: a Man of Galilee] (Ramat Gan: Massada, 1969), pp. 85, 88, as quoted by Benny Morris in “Yosef Nahmani and the Arab Question in 1948,” p. 161.
- 29 The Arab National Chest is more commonly known as the Arab National Fund, or *Sunduq al-Ummah*. It was created in 1931 to “safeguard Arab lands from



- sales” to Jews (Roza I.M. El-Eini, *Mandated Landscape: British Imperial Rule in Palestine, 1929–1948* (London and New York: Routledge, 2006), p. 24).
- 30 Katz lists many sources from the CZA files; however it is assumed that reference to the issue of Nahmani’s visa was from a letter dated 2 March 1945 from Nahmani to the Lands Department in the JNF Head Office, CZA KKL5/13904, as cited in Katz, *The Battle for the Land*, p. 175.
  - 31 Benny Morris, “Yosef Nahmani and the Arab Question in 1948,” p. 160.
  - 32 Morris, “Falsifying the Record: A Fresh Look at Zionist Documentation of 1948,” *Journal of Palestine Studies*, vol. 24, no. 3, Spring 1995, p. 52.
  - 33 *Ibid.*, p. 52.
  - 34 Yosef Weitz, *Yosef Nahmani: Ish Hagalil* [Yosef Nahmani: a Man of Galilee] (Ramat Gan: Massada, 1969), p. 33, as cited in Benny Morris, “Yosef Nahmani and the Arab Question in 1948,” p. 160.
  - 35 Morris, “Yosef Nahmani and the Arab Question in 1948,” pp. 160–61.
  - 36 *Ibid.*, p. 163.
  - 37 Letter from Nahmani to Yosef Weitz, 4 November 1938, in Yosef Weitz, *Yosef Nahmani: Ish Hagalil* [Yosef Nahmani: a Man of Galilee] (Ramat Gan: Massada, 1969), p. 96, as cited in Morris, “Yosef Nahmani and the Arab Question in 1948,” p. 163.
  - 38 Letters from Nahmani to Yosef Weitz on 16 April 1943, 4 November 1938, and 15 September 1944, in Weitz, *Yosef Nahmani*, pp. 98, 96, 99, cited in Morris, “Yosef Nahmani and the Arab Question ...,” p. 164.
  - 39 The quote continues, “The entire activity of obtaining and selling the lands involved many difficulties and only thanks to talent and tact in the conduct of the negotiations displayed by Weitz, it was concluded to the satisfaction of all interested parties. We could only express our sense of admiration over the way Mafruz was arranged by your representative in the presence of the settlement official. We, as you, are aware of the many obstacles which stood in the path of our obtaining rights to the land and only the vast experience and talent of your representatives, whom you placed at our disposal, availed us in obtaining our rights and facilitated the purchase of a large area which adjoins the JNF’s property.” CZA KKL 5/13675, letter from Gridinger and Kaminetsky of Yavneh Company to JNF 18 October 1943, as quoted by Katz in *The Battle for the Land*, p. 216.
  - 40 CZA KKL 9/416: Nahmani to JNF Head Office, Lands Department, Jerusalem, 24 October 1946; and Nahmani to JNF Head Office, Jerusalem, 8 October 1947; cited in Morris, “Yosef Nahmani and the Arab Question in 1948,” pp. 164–65.
  - 41 Morris, “Falsifying the Record,” p. 52.
  - 42 Nahmani diary, HaShomer Archive, Kfar Gil’adi, Israel, cited in Benny Morris, “Falsifying the Record,” p. 53.
  - 43 Morris, “Falsifying the Record ...,” p. 53.
  - 44 Nahmani diary, 6 November 1948, HaShomer Archive, Kfar Gil’adi, Israel, cited in Morris, “Falsifying the Record ...,” p. 55.
  - 45 There are other al-Majdal villages in Mandate Palestine that Nahmani could have been referring to, but the fact that these villagers knew and came to Nahmani would suggest that it was in fact the al-Majdal in Tiberias. (The others with similar names are: al-Majdal Asqalan in the sub-district of Gaza; Majdal Bani Fadil in the sub-district of Nablus; Majdal Yaba in the sub-district of al-Ramleh; and finally al-Majdal, Khirbat in the sub-district of Tulkarm.)
  - 46 Nahmani diary, 31 March 1948, HaShomer Archive, Kfar Gil’adi, Israel, cited in Morris, “Yosef Nahmani and the Arab Question in 1948,” p. 175.
  - 47 Nahmani diary, 18 April 1948, HaShomer Archive, Kfar Gil’adi, Israel, cited in Morris, “Yosef Nahmani and the Arab Question in 1948,” p. 175.
  - 48 Katz, *The Battle for the Land*, pp. 331–331.

- 49 As quoted in Jonathan Cook, *Disappearing Palestine: Israel's Experiments in Human Despair* (London; New York: Zed Books Ltd., 2008), p. 34.
- 50 Nur Masalha, "An Israeli Plan to Transfer Galilee's Christians to South America: Yosef Weitz and 'Operation Yohanan' 1949–53," Centre for Middle Eastern and Islamic Studies (CMEIS), Occasional Paper No. 55, CMEIS, University of Durham, August 1996, p. 15.
- 51 Quoted in Yosef Weitz, *Yosef Nahmani*, pp. 118–20, 134, cited in Nur Masalha, "An Israeli Plan to Transfer Galilee's Christians to South America," CMEIS, p. 15. The quote continues with the following three points: "1) [This minority] is likely to add to the burdens of the government and to create problems when the boundaries of our state are finally defined. The very existence of a homogenous group in this part of the country is a factor strengthening the claim of Arab states to the area ... in accordance with the UN resolution of November 1947; 2) At a suitable opportunity [this Arab minority is likely] to play a role similar to the one played by the Sudeten Germans in Czechoslovakia at the outbreak of World War II; 3) [It is likely] to be a motivating factor for the crystallisation of an Arab nationalist movement, influenced by the nationalist movements in the neighbouring countries, and guided and used by them to undermine the stability of the State."
- 52 Nur Masalha, "An Israeli Plan to Transfer Galilee's Christians to South America," pp. 15–17.
- 53 Morris, "Falsifying the Record: A Fresh Look at Zionist Documentation of 1948," p. 52.
- 54 Amos Nadan, *The Palestinian Peasant Economy Under the Mandate*, p. 287.
- 55 Khalidi (ed.), *All That Remains*, p. 547.
- 56 Shurrab, *Mu'jam Buldān Filastīn*, p. 728.
- 57 Khalidi, *All That Remains*, p. 547.

## 8 Conclusion

In less than a century, beginning with the reforms of the Ottoman Land Code of 1858 and ending with the establishment of the state of Israel in 1948, landownership in modern Palestine was completely revolutionized. The most substantial part of this transformation took place under the British Mandate administration, since it was during that period that the land tenure system was used by Zionist actors to fulfill another purpose – the establishment of a Jewish national home in Palestine through the means of a colonial-settler movement. The question posed in this book was whether the British Mandate land tenure system in Palestine facilitated the transfer of land from Palestinians to Zionist Jews, and if it did, to what extent?

It was argued that in each process of the land tenure system, the Jewish Agency and Zionist actors played a collaborative role. This study therefore concludes that by penetrating every part of the land tenure system, consisting of legislation, land survey, registration, transfers, and disputes, Zionist actors were able to manipulate the land tenure system in Palestine. Furthermore, it contends that not only did they succeed in purchasing a small percentage of the land, but that this was the most fertile land and that in buying it they also dispossessed many Palestinian *fellahin* from their land while dividing and destabilizing the already weak economy. Finally, the strategic location of the land thus acquired would form the outline map for the proposed partition of Palestine at the end of the British Mandate.

To reach these conclusions, it was first necessary to examine the politics of landownership, as well as to recognize that in studying land tenure systems in areas of land conflict, the establishment of the system needed to be studied in conjunction with its implementation. For this reason this book approached the analysis of land tenure following the guidelines established by UN-HABITAT for the study of land tenure conflicts, as discussed in Chapter Two.

While trying to adopt this standard approach, it was also necessary to take into account the fact that the conflict over the land in Palestine was not just between a local population and an imperial or colonial power, but rather was represented by a triangular relationship with the British Government at the top, and Zionist-Jews and Palestinians at either side, thus making it unique among other colonial encounters. For this reason Chapter Two also explored

those characteristics which make Zionism a colonial-settler movement. While the British Mandate government was under a legal obligation to both Palestinians and Zionist-Jews, what the research did show was not only that the scales were tipped more towards one of the two on a practical level, but that the cooperation that took place with one greatly hindered the rights, security, and opportunity for land tenure of the other. Furthermore, in land conflicts, as noted in Chapter Two, while the land registry records need to be studied for conflict resolution to take place, there are additional factors that must be taken into consideration, although these may not be apparent in the records themselves, especially when it comes to the subordinate party within the conflict. Only by taking both the theoretical aspect of a colonial-settler framework along with the practical approach to analyzing the land registry records could the role of Zionism within the formation of the land tenure system be re-examined.

As discussed in Chapters Three and Four, the land question in Palestine has been approached by many authors. Each addressed the role of Zionism but analyzed it differently. Abraham Granovsky offered an Orientalist approach, making Zionist activities in Palestine equivalent to modernization and portraying Zionist land acquisition and settlement almost as the saviour of the weak Palestinian economy and agricultural industry of the *fellahin*. Kenneth Stein, on the other hand, gives credit to the high level of organization and influence of Zionist actors within the British Mandate government and administration, while being highly critical of the divided Palestinian society, citing it as being the main reason for the loss of landownership.

Others, such as Dov Gavish, proved that certain parts of the land tenure system were completely driven by Zionist objectives, the result being that the only land to be surveyed and settled during the Mandate was that which Zionist Jews demanded for purchase; while Amos Nadan concluded that, overall, the British Mandate government caused the Palestinian peasant economy to stagnate economically, even if it did not actively hinder it, using the example of reform of the *musha'* system to show how division of land allowed Zionists to purchase parcels. Amos suggests that the *fellahin* would have been better off if the British had not enforced parcellation of the land. Martin Bunton, however, claims that the dichotomy between Palestinians and Zionist Jews over land in Palestine has been exaggerated, and that the land policies of the British Administration in Palestine were actually similar to other colonial land policies, thereby playing down the role of Zionist actors within the system.

Therefore, in studying the land tenure system the author returned to most of the primary sources for the above-mentioned literature. It was confirmed that in the legal part of the land tenure system in Palestine, the records of the Jewish Agency had been interpreted and downplayed to fulfil a Zionist agenda. This book argued that Zionism was the driving force at each level of the land tenure system, and Chapter Two discussed how, in the politics of landownership, land reforms and legislation are based on the government's

objectives. In the case of Mandate Palestine, the British Government's objective was to fulfill the dual obligation of the Mandate to the Palestinian Arabs and Zionist Jews; however, the Jewish Agency and other Zionist actors infiltrated the legislative process to achieve their own objectives. In other words, Zionist actors recognized that unless they completely penetrated the legislative system of the British Administration they would be unable to shape a land tenure system to suit their needs, just as they had failed to do in Ottoman Palestine.

Chapter Three showed how Zionist plans to infiltrate the system were under way even before the British Military Administration had begun in Palestine, and how, throughout the Mandate, the Jewish Agency and the Jewish National Fund drafted and delayed land ordinances and their amendments, with the Protection of Cultivators Ordinance being a notable case in point. Furthermore, certain individuals in high positions could guarantee special privileges – as was shown in looking at the role of the first High Commissioner, Herbert Samuel, as well as the interviews with High Commissioner Arthur Wauchope – while Norman Bentwich, the Attorney General, was perhaps the most significant figure with regard to the legal framework of the land tenure system. Although it seems that the British Administration tried to prevent the Jewish Agency from reviewing the draft of the Land Transfer Regulations of 1940, they nevertheless delayed the process as much as possible, so that by the time the regulations came into force it was too late. Perhaps in the implementation of these land laws in the villages, Zionist infiltration was not as evident; but there is no doubt that when it came to creating a legal framework for the land tenure system, the Jewish Agency successfully infiltrated the legislation in more ways than one.

Zionist penetration into land survey, as the next part of the tenure system, was evident both in its establishment and its implementation, as Chapter Four reveals. As stated by Gavish, and confirmed by Palestinian surveyors who worked for the Jordanian Department of Lands and Survey, the only land surveyed was that which was under Zionist demand for purchase. While some may argue that because of the late start and for financial reasons the land survey of Palestine was incomplete, these reasons do not justify why the only land settled was the most fertile land in Palestine. Gavish confirmed that Zionist land buyers found it more cost-beneficial to purchase fertile land, since it would require less financial investment, and would take less time to prepare for cultivation, compared with the other types of soil found in the eastern and southern parts of Palestine. Finally, even though it made no logistical sense, the Survey Department, out of all the departments of the British Mandate, was the only one whose headquarters were not based in Jerusalem. At all times its main office was somewhere along the western coast of Palestine, the reason being that the land that needed to be surveyed first, according to Zionist demands, was that of the coastal plains.

On a smaller scale, this need to survey the coastal plain lands was found in the implementation of the survey process in the village of Al-Haram

(Chapter Six), in the sub-district of Jaffa. Al-Haram was a village where the majority of the land was owned by Zionist land companies, and their involvement in the land survey of Al-Haram was a direct and vigorous one, with the legal representatives of the companies, such as the PLDC, demanding that the cadastral survey of the village be completed as quickly as possible. Proposals for the demarcation of the land were even provided by the PLDC to the Land Settlement Office. This was especially seen in the *musha'* records of the village, where Zionist companies and their representatives put pressure on the Land Settlement Officer to speed the survey process along. The American Zion Commonwealth went so far as to bring their own surveyor, Mr Torok, to survey Jewish lands only. The Land Settlement Officer was well-disposed to this offer, as long as the Final Maps (of the Fiscal/Registration Blocks) were not altered. Whether in choosing which land in Palestine was to be surveyed, or how the land was to be surveyed within villages where most of the land was owned by Jews, Zionist collaboration with the British Mandate Administration and the Land Settlement Office was therefore very clear.

As with the previous component of the land tenure system, infiltration of Zionist actors was evident both in the foundation and the implementation of the parcellation process, without which individual registration could not have occurred. As Amos Nadan explains, had it not been for the parcellation of the Palestinian Arab *musha'* land, which (contrary to what modernization and land reform studies have shown) was economical for the *fellahin*, Zionist land companies would not have been able to purchase land within the villages. Furthermore, collaboration between Zionist land companies over the parcellation of *musha'* land was witnessed in the Jewish village of Al-Haram, and by an individual, Yosef Nahmani, in the mixed village of Yaquq in Tiberias. In Al-Haram, there was such a sense of urgency and pressure from the land companies and their representatives to complete the parcellation and settlement process that, had it not been for one Assistant Settlement Officer, Mr As'ad Salim, the parcellation would have gone ahead without the consent of most of the Arab landowners. This was because approximately two-thirds of the village lands were owned by Keren Kayemeth Leisrael Ltd., Keren Hayessod, and Ahuza Eleh Inc. (all of which were legally represented by Mr Ben Shemesh), and as noted, the partition scheme for the parcels required only a two-thirds approval.

One important observation that should be noted concerning the Zionist tactics over registration and parcellation of lands was that the same land companies that needed the division of parcels to take place in order to purchase land did the opposite in return once the land had been acquired. For example, as seen from the very beginning, companies such as the PLDC had made it known that their aim, from as far back as 1910, was to purchase large land areas, cultivate them, then divide and sell them to Jewish settlers. And during the registration process, and more specifically the division of localities or registration blocks, they would ask that all Jewish-owned lands

be grouped together (as was done in Al-Haram) so that, where possible, the entire registration block could be Jewish-owned.

In the village of Yaquq, it was obvious that there was one individual who was being treated differently from the rest of the villagers during the division of the village land, but there was no indication as to who he was, or what he represented. In fact the only information about him was that he was referred to as *al-khawaja*, suggesting he was a foreigner (there was also one reference to a PICA agent in Case No. 6). It was this term, along with the special treatment he received during the parcellation and the legal disputes, that prompted further research. Only then, as discussed in Chapter Seven, did it become clear that Yosef Nahmani was an individual land buyer for the Jewish National Fund and a member of the Tiberias city council, who used his position to purchase approximately 3,000 dunums for the JNF (3 dunums were privately registered in his name). This is another example of Zionist penetration in the implementation of the registration process; however, based only on the information provided in the registry records it would not have been clear.

In the village of Al-Haram, testimonies made by the descendants of Al-Haram refugees claimed that they had been forced off their land prior to the initiation of the registration process. Again, such information is not recorded in the land registry files of the village. In the files of the village of Sarafand al-Kharab, there was no information regarding the registration of title, or any type of partition schemes. Nevertheless, whether in the formation of the land settlement process and registration of title, or whether in the implementation of registration and the parcellation scheme (in two of the three villages), it is evident that Zionist penetration existed in this process of the land tenure system.

As discussed in Chapter Four (Different Sellers, Non-Palestinians, Notables, and Fellahin), most of the land purchased by the JNF and other Zionist land buyers was either from non-Palestinians or urban elites. Further research is required on the landowners from Lebanon and Syria, and especially on the claims of landowners who were unable to cross the new border between Lebanon and Syria after the Mandate system came into effect. Some evidence indicates that there were attempts by some Lebanese landowners to access their land, even just to collect their crops, but to no avail. Zionist land buyers took advantage of such opportunities to purchase large amounts of land from non-Palestinians, and as seen in Table 4.2, this was how 461,250 dunums of land were purchased.

It can be concluded that in the transfers process of the land tenure system Zionist directness was obscured; however, it was the infiltration into all parts of the system that allowed Zionists to have power over the land in Palestine, as opposed to the amount of land that was actually purchased. The achievement of the Zionist objective of establishing a Jewish homeland was facilitated by strategic geographic, economic, and political tactics, and by the purchase of small amounts of land spread out over the most fertile area of

Palestine, deliberately selected to be sufficiently dispersed to extend over a sizeable territory, but concentrated enough to outline a solely Jewish area. In addition, while simultaneously weakening the agricultural economy for the Palestinian *fellahin* and acquiring the commodity that gave urban notables their source of political power, Zionists were able to use their role in the land tenure system in British Mandate Palestine to establish the conditions that would lead to the partition of the land and the establishment of a separate Jewish state.

For the *fellahin*, Zionist penetration in the transfers of the land tenure system was not a direct process, but rather an indirect one into the Palestinian peasant economy. As discussed in Chapter Four, the divided economy established by Zionist Jews in Palestine personified itself as a modernizing tool of economic development for all of Palestine, while in fact it was the very thing driving the *fellahin* into financial debt. The global agricultural economy was vulnerable after World War I and remained so until World War II. In Palestine it was no different. Zionist claims of bringing in capital may have been true, but this capital was used to purchase Palestinian land, dispossess the labourers or tenants from it, and make it solely Jewish to ensure that from that point onwards it would always remain in Jewish hands.

The *fellahin* could not afford to compete with the subsidized Zionist agriculturalists and resorted either to selling portions of their land in attempts to sustain the rest of it, or to selling it all and moving to urban centers. This was seen in the land registry records of the village of Sarafand al-Kharab, the only village to have documented the transfers of title between Palestinian and Zionist landowners. Not only do the sellers state that they are selling a small percentage of their parcel in the hope of receiving enough money to maintain the rest of their land, but some of them also mortgage their land to individual Jewish landowners. Having earlier discussed the fact that agricultural loans were not readily accessible to the *fellahin* during the Mandate, and that Zionists had even asked the British Government to delay their issuance because these loans were not available for Jewish agriculturalists, it is therefore no surprise that Palestinian landowners could not mortgage their land to a financial institution, unlike their Zionist counterparts within the same village. Therefore on the subject of transfers within the land tenure system, the author concludes that while Zionist infiltration in the transfer process may not have been overt, it could be perceived in the surrounding economic and political conditions that led landowners to sell their land.

An examination of the system as a whole, and the way that it was implemented in the three villages, has shed light on many actions and events that require further investigation. However it will require someone with a legal background to determine the legality of the methods and events that took place. For a political scientist, what can be established based on the analysis of the system is the ethics of it, the bias within it, and the corruption in certain components. This holds especially true for the legal disputes over components of the land tenure system. Chapter Four showed that once land had



been transferred into the possession of Zionists, they were determined to hold on to it, no matter what. This view was also seen in the Jewish village of Al-Haram, where there were thirty legal disputes. Of the ones selected for scrutiny between Zionist land companies and Arab landowners, not once did the claim of the Arab Plaintiffs prevail. This might be coincidental; nevertheless it can be concluded that in the legal disputes of Al-Haram, the Arab claims were often overlooked and dismissed. Indeed, Chapter Six shows how Arab Plaintiffs, whether in the Magistrate's Court or the Land Settlement Court, would try to make their case and bring witnesses to support their claims. In one case it was evident that the testimony of one landowner and his lawyer was not even translated, and therefore was not even considered before the final judgment of the case.

However, in the village of Sarafand al-Kharab there was not a single case between the Arab and Zionist landowners. In both Sarafand al-Kharab and Yaquq, many, if not most, of the legal disputes concerned the division of shares, boundary issues, and matters of inheritance, whereas in Yaquq at least fifteen of the thirty cases also involved Palestinian individuals versus Zionist land companies. This also raises the question as to whether or not the fact that Al-Haram was a village within the jurisdiction of a Jewish-majority sub-district of Jaffa was an issue, since it was the only one of the three villages where the Land Settlement Court and Office blatantly insulted the character and claims of Palestinian landowners (as seen on the subject of the partition scheme in Appendix III). Such treatment was not found in either Yaquq or Sarafand al-Kharab. It can therefore be concluded that Zionist penetration of the land tenure system was evident in the legal disputes between Palestinian landowners and Zionist land companies.

The study of the three villages confirms the author's argument. It shows that Zionist involvement in the land system cannot be singled out in only one of the parts of the land system, as well as confirming the methodology used to select the three case studies. For example, in the village of Sarafand al-Kharab, there were no disputes between Zionist Jews and Arab landowners, but Zionist penetration in Al Haram was evident within half of the disputes of each village. While there were no disputes with Zionist Jews in Sarafand al-Kharab, their involvement in the village was seen in the transfers and in the economic situation of the Arab landowners, who resorted to selling portions of their parcels in order to gain some financial sustainability; while some sold their land, others mortgaged it to Zionist-Jewish landowners.

In Yaquq and Al Haram, there was no information in regards to transfers, but as just noted, in the disputes section Zionist involvement was very clear. And while Zionist landownership in both these villages was not by individuals, but took place through the Jewish National Fund and Zionist land companies, the cooperation with the British Mandate Land Settlement Office was different. In Yaquq, it was through Yosef Nahmani, who was personally involved in the parcellation of the *musha'* land and, unlike the other village landowners, received exclusive treatment. In Al Haram, not only were the

land companies involved in almost half of the village disputes, but they also pressured the Land Settlement Office to complete the settlement process, specifically in the land survey and parcellation of the *musha'* land, and even submitted their own proposals as to how the village land should be divided.

These aspects show that studying the land registry records and taking them at face value is not sufficient; instead, the creation of the land tenure system needs to be examined alongside its implementation. Perhaps if only one of these parts of the land tenure system had been affected by Zionism, Palestinian landowners, and especially the *fellaheen*, might have been able to maintain a secure land tenure system, and even to have had a chance to compete in the agricultural industry with their Zionist-Jewish counterparts. But the combination of Zionist infiltration in the laws, survey, registration, transfer, and disputes produced an accessible system for the transfer of landownership. By dissecting the land tenure system in terms of its formation and implementation, it was shown that, with little doubt, the land tenure system in British Mandate in Palestine did in fact facilitate Zionist land acquisition by allowing enough of the most fertile land to be purchased in order to form a separate Jewish territory. And furthermore it shows that the Jewish Agency, along with other Zionist actors, played a collaborative role in all parts of the land tenure system, which weakened the land tenure security of the Palestinian population.

This research has not only shown that it is necessary to study the formation alongside the implementation of the land tenure system in Palestine, but has also concluded that the land registry records of the British Mandate in Palestine need to be researched and examined. As mentioned at the beginning of Chapter Five, *Village Statistics 1945* (as collected by the Government of Palestine and explained and edited by Sami Hadawi) was even used by the UNCCP to calculate the value of refugee property for compensation upon the resolution of the Palestinian–Israeli conflict. Michael Fischbach describes the great lengths to which the UNCCP went to determine the most neutral source for landownership statistics before deciding to use *Village Statistics 1945*, along with the available (but unreliable) tax records. The findings from these three villages implies that all the village land registry records of Mandate Palestine from the Jordanian Department of Lands and Survey need to be examined and recalculated for such purposes in order to be synthesized with the updated coordinates and statistics of the villages.

For example, Figure 8.1 shows that the greatest difference was found in the village of Sarafand al-Kharab. Not only do the records show that the village size was approximately double the estimate recorded in *Village Statistics*, but it was also found that the majority of the land was owned by Jews, as opposed to previous estimates showing that it was mostly Arab-owned land. It would seem that the reason behind this great difference in size is that, between the time the land settlement process took place in Sarafand al-Kharab in 1931 and the publication of *Village Statistics* in 1945, the village of Sarafand al-Kharab was divided in order for Zionist-Jewish owned land to

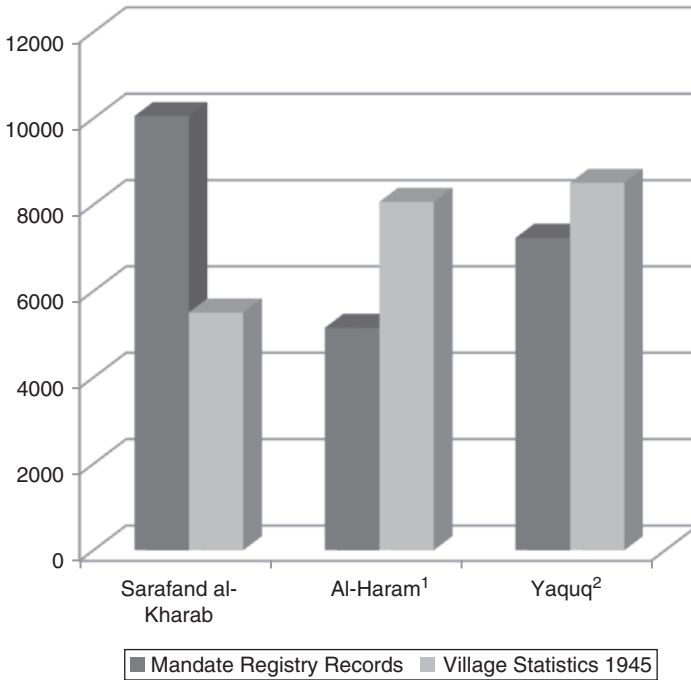


Figure 8.1 Comparison of village statistics 1945 and mandate registry records

<sup>1</sup>For the village of Al-Haram, the author was unable to access all the Schedules of Rights/Decisions for the village, and therefore Figure 8.1 shows only the number of dunums calculated through the access schedules. However, as noted in Chapter Six, other documents in the village records indicate that the village had between 8,653.342 and 11,698 dunums, thereby making it, either way, larger than estimated in *Village Statistics*.

<sup>2</sup>In the calculations for the village of Yaquq, it was apparent that not all the schedules of each of the registration blocks were available. As mentioned in Chapter Seven, based on other registry records in the village it cannot be determined whether the entire village is larger than its estimate in *Village Statistics*, yet it was evident that the amount of public land was in fact more than had been estimated.

become a separate village. This further supports the argument that the Zionist tactic was to divide the *musha'* system in order to make Arab land purchasable, then to purchase the land parcels so that no Arab-owned parcels would be amongst or within the Jewish ones, and finally, once enough land had been acquired, to break away as a solely Jewish village.

These findings implicate that the statistics of landownership of the British Mandate land registry records for each village at the Department of Lands and Survey in Jordan need to be revised and compared with those as published by Sami Hadawi in *Village Statistics 1945*. From the author's experience, these records are somewhat incomplete, but nevertheless they provide an accurate image of what took place in the workings of the land tenure system

in Mandate Palestine. This revision, in turn, would affect the calculations of the UNCCP records, and therefore property valuation and studies for the financial compensation of Palestinian refugees.

This Zionist strategy of acquisition and division links to another conclusion the author has come to which needs further research. As mentioned in Chapter One, it was never about how much land Zionist-Jews purchased by the end of the Mandate, but about the land's quality of soil and location. But after closely examining all the tactics of Zionists within the land tenure system in Mandate Palestine and comparing Arab and Jewish villages, along with the legal disputes in the case studies, the following can also be deduced: Zionist land purchases of land parcels were closely knit together in small amounts in comparison to the Arab villages, and this allowed them to be dispersed amongst a large amount of Palestine; furthermore, while dispersed, they were still close enough to one another to be grouped together as a state when it came time to partition Palestine, yet far enough from one another to absorb all the land that was not purchased or acquired (Arab-owned land) in-between.

The findings for both the formation and implementation of the land tenure system, along with the calculations of dunums in each village have shown that the facts need to be reviewed, taking into account a narrative that deconstructs the role of the colonial-settler movement of Zionism in the land tenure system. This combination of the interpretations and the facts is crucial to the study of the Palestinian–Israeli conflict, and furthermore to contributing to a truth commission in the conflict resolution process. Therefore the argument and these conclusions have illustrated the need to re-examine all the land registry records of British Mandate Palestine, while taking into account the formation of the land tenure system and the intrusive role of Zionism within it.

**Appendix I**  
**Letters to the Editor of *The***  
***Times* (London)**

21 May 1930

## PALESTINE LAND

### AN EXAMPLE FROM THE PUNJAB

TO THE EDITOR OF THE TIMES

Sir,—The problem awaiting decision in Palestine is, at the core, agrarian. The Jewish capitalist, with ample funds at his disposal, is prepared to pay uneconomic prices for the land of the Arab. This means the ultimate expropriation of the Arab peasantry, and the decline of the Arab peasant proprietor to the status of a landless serf, entirely at the mercy of the Jew. Until this terror is exorcised there can be no peace in the land.

British statesmen have already faced and solved a similar problem in India. Conditions in the Punjab, especially in the western tracts, at the beginning of the present century, offer an interesting parallel in many respects to the situation in Palestine to-day. The virile agricultural tribes of the Punjab, most of them Moslem, were losing their lands rapidly to the Hindu moneylenders and lawyers of the towns. This economic revolution which was rapidly turning the best military recruiting grounds in India into hotbeds of disaffection against the British Raj, was the direct outcome of British policy, administrative and judicial. That policy was still under the influence of the *laissez-faire* doctrine of the Manchester school, with its sheet-anchor the sanctity of contract, no matter how much the contract might offend a reasonable standard of equity. The danger was too pressing to admit of delay. The question was handled on broad and courageous lines. The Punjab Land Alienation Act set up an almost insuperable barrier between the peasant's land and the moneylender. The peasant could only sell or alienate his land within his own tribal group; the land remained with the tribe or clan. This act of statesmanship saved the Punjab from revolution; a dozen years or so later, the Moslem tribesmen of the Punjab were fighting in their thousands for the Empire.

Lord Kitchener, when High Commissioner, adopted in Egypt the principles of the Punjab Land Alienation Act in the Five Feddan Law. The object in view was similar to that which had inspired the Government of India, to protect the Egyptian peasant against the Greek moneylender. It is worth considering whether a policy of the kind would not go a long way towards solving the trouble in Palestine. Safeguard the Arab's land by legislative enactment; keep the major portion of the land within the tribe or clan, and there is little doubt that the existing friction between Jew and Arab would disappear. The suggested legislation would not necessarily be discriminatory; it is mainly a question of protecting the Arab clansman against his own improvidence. There was no such necessity under the régime of the Turk; the economic position has changed under the British mandate.

I am, Sir, yours faithfully,  
W. P. BARTON (lately British  
Resident at Hyderabad, Deccan).  
Ten Acre Wood, Hartfield, Sussex,  
May 19.

24 May 1930

## PALESTINE LAND

TO THE EDITOR OF THE TIMES

Sir,—In reply to Sir W. P. Barton's letter, as an ex-Director of Lands and Survey in territories taken over from the late Ottoman Empire, I think I can safely say that such laws as the Punjab Land Alienation Act and the Egyptian Five Feddan Law are at present in force in Palestine. By the Ottoman Land Code, when an owner of land is selling the land which he possesses in a particular village to an outsider, the inhabitants of that village have a preferential right to buy it from him for the price at which he has sold it to the outsider. Likewise, when the land of a villager is being sold, a quantity sufficient for his maintenance is reserved for his use.

Both these laws have been freely used in Cyprus, which has the same land code as Palestine, and the Five Feddan Law enacted in Egypt by Lord Kitchener (under whom I served when he was Director of Lands and Survey in Cyprus) is an adaptation from the latter law.

I am, Sir, your obedient servant,

F. ONGLEY.

33, Scarsdale-villas, W.8.

# Appendix II

## Land Settlement Court's Response to Plea

J/68/12  
JAFFA

JAFFA  
P.O.B. 595,

21st December, 1934

My dear Camp,

Replying to your letter JA/1 of the 15th inst. I can understand your being puzzled by my letter to Horowitz, but the explanation is simple. About a month ago I received a petition from certain members of the 'Umari family saying that no account had been taken in the Schedules of Rights to Shares of their very extensive Masha' holdings, for which they had Kushans, and pleading absence from Palestine as lawful excuse for delay in presenting their objection. Two of the gentlemen called on me on the 19th and elaborated the plea, which they based on Section 58(b) of the Land Settlement Ordinance.

I advised them to apply to me for leave to appeal in the manner prescribed and to indicate in their application the nature of the evidence on which they proposed to rely in order to substantiate their plea of absence. The evidence might or might not have been conclusive, but if conclusive would of necessity have compelled my grant to leave. With this possibility, and the consequent possibility of the Appeal succeeding, in view I thought it wiser to delay publication of the Schedules of Partition.

No proper application for leave had, however, reached me by the 10th December, i.e. 30 days after the date of my interview with the 'Umaris. In other words the legal period has elapsed since the date when the would-be Appellants were apprized of the situation and advised of the proper course to take. This seemed to me to put them right out of Court and I shall not now accede to any application for leave to appeal. They may of course seek it in the Land Court, but probably without success.

Yours sincerely,  
(Sgd.) A.T.O. LEES

(Stamped by the Land  
Settlement Office in  
Jaffa on 21 Dec. 1934)

**Appendix III**  
**JDLS: Report by the Land Settlement**  
**Officer on 27 February 1934 on the**  
**Parcellation of al-Haram Lands in JDLS**  
**Al Haram/J-10-12/Masha'**  
**Parcellation.1157**

68/12

Jaffa & Ramles,  
P.O. Box 595, Jaffa.  
18 May, 1934

Commissioner of Lands.

Subject:- Partition of al-Haram.

The partition of the Masha' Lands of al-Haram is now nearing final completion. That is to say that there remains now only the preparation of the Final Block Plans by the Survey Department and the compilation and typing of the Schedules of Partition.

2. I wish to take this opportunity of placing on record my high opinion of the manner in which Mr. As'ad Salim has carried out this very difficult task. In a period of less than two months this officer has partitioned 12,000 dunoms of land averaging between L.P.25 – L.P.30 per dunom between groups who were mutually suspicious of each other and, as regards the al-Haram Villagers, at sixes and sevens inter se. Actuated by the highest motives Mr. Salim from the first aimed at achieving an amicable partition along lines which would concentrate any individual's in one locality instead of leaving small, uneconomical holdings dotted about the different localities. More, he was not content with securing the statutory two-thirds majority (which would have xxxxxx saved him an immense amount of trouble) but spared no efforts to obtain the concerted agreement of as sweeping a majority as possible. The agreed Scheme of Partition as accepted by me was subscribed by about 97% of the shareholders and since that date Mr. Salim has succeeded in overcoming the opposition of so many of the dissentient minority that the aggregate shares of de facto adherents now constitute over 99% of the total shares



owned. This is little less than astounding, having regard to the shifty, irresponsible, unreliable and grasping nature of the people of al-Haram. I can speak with authority on this point, having on three occasions participated in the final stages of the work (i.e. the drawing of lots for individual positions and the payment of compensation). The villagers were truculent, disrespectful and ready to go back on their agreement or deny their signatures if they thought they could thereby squeeze a few more piastres out of the Jews. To have guided and cajoled and persuaded them through the difficult preliminary and middle stages must have required the utmost tact, patience and determination on the part of Mr. Salim and I consider that he is highly to be congratulated.

3. Lest it should be thought that this officer was wasting his energies in securing a perfect agreement when a two-thirds one could have sufficed, may I express the contrary view. The dissentient one-third in the Yahu-diya Partition have been causing me and the Settlement Staff untold trouble and waste of time for the last year, as they have fought obstinately at every position and their appeal will shortly be lodged. By his unsparing efforts Mr. Salim has spared me and the staff possibly months of trouble and correspondence.

4. As to the technique of Mr. Salim's work I shall shortly be sending you a copy of his detailed report. Meanwhile I may just mention that he has himself prepared Provisional Block Plans showing all Block and Parcel numbers and showing the areas of all parcels as calculated by him on the basis of the shares and of the final Masha' locality areas furnished by the Surveys. This means that his partition scheme as submitted to the Surveys will be much more complete a form than that in which such schemes are usually submitted and the chances of misunderstanding and error reduced practically to zero.

5. In conclusion I may say that although much opposition was encountered from the Arabs (in the hope of squeezing more money out of the Jews) and a certain amount from the Jews, who would have preferred a scattered form of partition as widening their sphere of occupation and likely to facilitate their future acquisition of the small, detached Arab holdings, there is no doubt that economically and equitably Mr. Salim's scheme of grouping is admirable and to the best interests of the land owners. The compensation paid to the Arabs (not for land taken, but for the mere leaving of some localities in order to concentrate in others chosen by themselves) is on a generous scale, based on a "weighting" made by the Arabs themselves. It amounts to an aggregate of about L.P.3,000. I take the opportunity in this connection of expressing my appreciation of the Jews' attitude, particularly that of Mr. Lifschitz, Mr. Stuchiner, Mr. A. Danin and Mr. Strumza. In return for the firm attitude which I adopted in dealing with attempts at evasion and recalcitrancy by the Arabs they were ready, in the two or three cases where I

thought the gesture necessary, to agree to certain ex-gratia payments not covered by the letter of the agreement.

6. I sent this in duplicate in case you wish to place a copy on Mr. As'ad Salim's Personal File.

(Sgd.) A.T.O. LEES  
SETTLEMENT OFFICER

L/?  
(Stamped by the Land  
Settlement Office in  
Jaffa on 19 May 1934)

JAFFA AND RAMLE SETTLEMENT AREAS.

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