3. NEW PERSPECTIVES ON PROPERTY AND LAND IN THE MIDDLE EAST

Edited by Roger Owen
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Reviewed by Anthony Watson*


The essays were initially presented at workshops on land and land records held at the Harvard Center for Middle Eastern Studies in 1995 and 1996. They pertain to both positive law and actual practice in the Ottoman Empire and its successor states during the nineteenth and twentieth centuries. Many of the subjects addressed in this volume set the stage for further consideration of property rights in Palestine whether they discuss land laws and practices that were implemented in Palestine or in other parts of the Ottoman Empire.

As the editor points out in the introduction, the study of property law in the Middle East has generally been encumbered by (1) too great a reliance on Islamic legal terms that often do not reflect actual practice; (2) an assumption of a linear progression of property ownership in the Middle East from pre-modern forms to forms of property ownership that are more similar to those of the West; and (3) a tendency by scholars to translate Arabic and Turkish legal terms neatly into Western legal terms where subtle differences demand further critique. The chapters of this book tackle these problems by focusing in detail on various types of land ownership and exploring them in their historical and local legal contexts. The editor distinguishes between the right of access to land and the right of access to its surplus. Although these two rights were distinct in the nineteenth century, over time, they melded together to form a single right to both land and its surplus, which is a right similar to the Western concept of individual private property. Understanding how this process developed gives the student of Middle Eastern history a greater appreciation for the differences between Middle Eastern and Western legal terms.

The essays presented here are not for general consumption; they are written for a specific audience of insiders whose vocabularies include Arabic and Turkish legal terms. For instance, in the second essay of this volume, Martha Mundy discusses implementation of the Ottoman Land Code of 1858 in two villages located in what is now northern Jordan. She examines the registration of land, called tapu registration, using the term defined in the Ottoman Land Code of 1858. Similarly, Amy Singer considers the Islamic charitable

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institutions called waqf and examines management of an Ottoman waqf established in Jerusalem in the sixteenth century. A basic knowledge of such terms is required in order to appreciate their historical significance.

Although most of the chapters in this volume do not speak directly to the problem of land ownership in Palestine, all of them concern land ownership in the Middle East. Therefore, many of the subjects addressed have an indirect bearing on the contentious issue of land registration, ownership and alienation in Palestine during the first half of the twentieth century. For instance, in the last chapter of the book, Birgit Schaebler discusses the musha system of periodically redistributing access to village lands in the Hawran region of southern Syria during the nineteenth and early twentieth centuries. She shows that a certain Druze clan's gobbling up of land in the Hawran region through the musha system of redistribution resulted in a peasant's revolt in 1889 and 1890. In another chapter, Abdul-Karim Rafeq discusses how individuals, often protégés of foreign governments, were able to obtain access to or ownership of real property in Syria during the latter half of the nineteenth century. Although the settings of neither of these essays is Palestine, both essays discuss contests for land that have remarkable similarities to the competition for land that has historically been at the heart of the conflict between Zionists and Palestinians.

In the first chapter of the book, Huri Islamoglu traces the evolution of Ottoman real property taxation from a complex system of revenue claims to a system that sought to recognize individual ownership for the purpose of collecting taxes to be paid directly to the Ottoman state. Although the syntax of this essay suggests that it is an imperfect translation, the author successfully argues that the change in Ottoman taxation policy reflected changes in state power and was implemented through the Ottoman Land Code of 1858. Continuing the examination of the Ottoman Land Code, Denise Jorgens compares it to the Egyptian Land Code also enacted in 1858. She argues that the Egyptian Land Code was enacted in response to extreme social changes in rural Egypt such as the creation of large plantation estates and increased taxation under Muhammad Ali. According to Ms. Jorgens, the Egyptian Land Code, like the Ottoman Land Code, was enacted, in part, to restore the traditional small peasant family farm system on state-owned land. Government policies aimed at encouraging ownership by small landowners or cultivators of land is a subject raised often in this volume and takes on substantial historical significance in Palestine during the British Mandate.

The chapter that is most relevant to the issue of landholding in Palestine is written by Martin Bunton. It examines the evolution of British policy toward land ownership during the Mandate period. Initially, the British Mandatory government encouraged private ownership of property as a means of encouraging economic development. This policy is illustrated by a special Land Commission's determination of a settlement claim that arose near Beisan in 1920. The land was called jiftlik land, which was a classification of land in Palestine acquired by the Ottoman Sultan in the 1870s and turned over to the Ottoman treasury after 1908. The Land Commission permitted registration of the Beisan jiftlik land in the names of its cultivators as individual owners of miri (that is state-owned) land. This decision is remarkable because it reflects the British Mandatory government's policy of encouraging private ownership of land in the early years of the Mandate.

Over time, this policy changed under the stress of displacement of Arab tenants created by their expulsion from agricultural lands. Although the Land Transfer Ordinance of 1920 attempted to prevent the expulsion of tenants from agricultural land by requiring gov-