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## From Arab land to ‘Israel Lands’: the legal dispossession of the Palestinians displaced by Israel in the wake of 1948

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**Abstract.** In this paper we examine the Israeli government’s use of law to institutionalize the dispossession of Palestinian Arabs displaced by the 1948 war and trace the legal transformation of their land during the formative years of Israel’s land regime (1948–60). This legal transformation facilitated the expropriation and reallocation of formerly Arab land to primarily Jewish hands and was therefore a central component of the legal reordering of space within Israel after 1948. Based on close examination of Israeli legislation, archival documents, Knesset proceedings, and other sources we delineate a 12-year legislative process consisting of four phases, each concluding with the enactment of major legislation. The process was led by senior and second-tier Israeli officials, and the result was the construction of a new Israeli legal geography. The culmination of the process was the integration of appropriated Arab land into the country’s new system of Jewish-Israeli ‘national land’ known as ‘Israel Lands’.

### Introduction

In contrast to the gradual geographical changes characteristic of peacetime, wars may cause swift, drastic spatial transformations involving vast and violent dispossession (Blomley, 2000; Golan, 2001). Displacement of the defeated and appropriation of their land are often central to the construction of postwar property regimes, which translate violent land acquisition into institutional arrangements representing and legitimizing new power relationships (Bell-Fialkoff, 1996; Kedar, 2003; Schechtman, 1949; 1962; 1964). Enactment of new legislation is a crucial component of the transformation of such ethnonational geographies of power.

In this paper we present a historical case study of one dramatic example of the wartime and postwar use of law to normalize displacement and dispossession: Israel’s dispossession of the Palestinians displaced by the 1948 war. Between 1948 and 1960, Israeli authorities gradually but rapidly created legal structures to seize, retain, expropriate, reallocate, and reclassify the Arab lands appropriated by the state. This process was part and parcel of the legal institutionalization of Israel’s new land regime, which was effectively completed in 1960. Although here we focus on legislation, it should be kept in mind that this central component of the process functioned in concert with other components such as the Israeli state administration and Israeli courts of law.<sup>(1)</sup>

Clearly, the experience of displacement and dispossession is not unique to the Palestinians of 1948 (Bell-Fialkoff, 1996). Examples of these phenomena over the past centuries have taken place in different parts of the world and under varying circumstances and can be roughly grouped into a number of categories. European colonial rule, in the

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<sup>¶</sup>Names of authors in alphabetical order.

<sup>(1)</sup> On administrative aspects see Golan (2001), Kark (1995), and Oren-Nordheim (2000). On the role of courts in the Israeli context see Kedar (2001; 2003).

many different forms it assumed over the years, was responsible for differing levels of displacement and dispossession between the 16th and 20th centuries (Butlin, 1993).<sup>(2)</sup> Other cases resulted from conflicts between competing ethnic groups directly identified with specific countries, such as the 1923 ethnic population exchange between Turkey and Greece and the massive religion-based population movements between the new states of India and Pakistan in 1947. In these cases, outgoing refugees lost vast amounts of property that was appropriated by the governments of each country and used in part to resettle incoming refugees from the other country (Das Gupta, 1958; Katz, 1992; Schechtman, 1949; Vernant, 1953). Other instances were the product of ethnically discriminatory domestic state policies towards internal minorities, such as Sri Lanka's post-1948 policies towards its Tamil population, Estonia's postsoviet policies towards its Russian inhabitants, and the United States' historic policy towards its Native Americans (Butlin, 1993; Roded, 2002). However, each specific case must also be regarded as historically unique. In fact, most cases incorporate elements of more than one of the general categories described above.

One relatively constant element of dispossession has been the use of law in effecting and/or normalizing the outcome. The central role of legislation in such situations derives from the fact that the provision, or, alternatively, the transformation or negation of property rights, is invariably institutionalized by some type of law. It is surprising, then, that the role of legislation in the dispossession of displaced ethnic and national groups has not received greater academic attention. In this paper we aim to stimulate and contribute to such a discussion by exploring one of many possible case studies: the emergence of Israeli state policy regarding the land of Palestinians displaced in the wake of 1948.

The case under discussion incorporates components of all three categories noted above. The colonial connection is found in the fact that Jewish–Arab relations in the country, the relative chaos in which the British Mandate over Palestine came to an end in 1948, and the administrative and legal infrastructure that served as the foundation of the new Israeli state were all to a large degree the product of British colonial rule. The events of 1948 are also similar to cases such as Turkey, Greece, India, and Pakistan in that a large number of refugees hostile to the new state exited its territory and a large number of refugees identifying with the state entered. In fact, the legal machinery devised by the state to appropriate Palestinian refugee land in Israel was based squarely on the Pakistani legislation of 1948 (Lifshitz, 1949). On the other hand, a Palestinian Arab state did not come into existence alongside Israel in 1948, and therefore external refugees did not enjoy the state sponsorship provided to refugees in the above cases. Finally, Israeli policy regarding appropriated Arab land was applied not only to refugees living outside the state's borders, but to the country's internal Palestinian Arab minority as well. As we will see, Israeli government officials worked actively to normalize and deepen the loss of land of a large portion of Israel's Palestinian Arab minority for the sake of state goals.

The war that erupted in Palestine in 1948 (referred to by Israelis as the 'War of Independence' and by Palestinians as 'the Catastrophe') was the culmination of an ethno-national conflict between Arabs and Jews. The war resulted in the establishment of Israel, the expulsion and flight of hundreds of thousands of Palestinian refugees, the immigration of hundreds of thousands of Jews to Israel, and the reallocation of land formerly held by Arabs to Jewish groups and individuals (Golan, 2001; Morris, 1987).

A number of studies have examined the land lost by displaced Palestinians in the wake of 1948, but none has sufficiently explored its legal transformation. Israeli

<sup>(2)</sup> On the role of colonial land law in British Mandate Palestine see Bunton (1999) and Forman and Kedar (2003).

historical geographers have looked at elements of state administration of this land (Golan, 1995; Oren-Nordheim, 2000), whereas Palestinian researchers have focused on its scope, the expropriation process, and issues of compensation and repatriation (Abu-Sitta, 2001; Hadawi, 1988; Jiryis, 1976). Legal researchers have examined the legal aspects of expropriation within the framework of broader studies (Bisharat, 1994; Hofnung, 1991; Kretzmer, 1990; Nakkara, 1985; Yiftachel and Kedar, 2000). And still others have looked at the role played by land in the Arab–Israeli conflict, as well as in the experiences of Israel's Palestinian Arab citizens and Palestinian refugees living abroad (Cohen, 2000; Fischbach, 2003; Kano, 1992; Peretz, 1958).

These works provide a solid understanding of the radical spatial changes that took place in Israel after 1948 and the mechanisms that facilitated them. However, because of the overriding legal nature of land use and land rights and Israeli officials' evident need to ground the appropriation of Palestinian land in legal terms, we argue that the legal side of the story is its main thread. The centrality of legalities in bringing about a distinct geographical transformation in this case study makes it of great interest to legal geography. This relatively new subdiscipline, positioned at the interdisciplinary crossroads of law and geography, explores the role of law in shaping human geographies (Blomley et al, 2001; Harrison and Holder, 2003). While grounded in historical tools, sources, and analysis, our research has been particularly inspired by critical legal geography, which exposes the role of law in constructing, organizing, and legitimizing social spatiality and spatial hierarchies (Blomley and Bakan, 1992; Delaney, 1993; 1998; Ford, 2001; Forest, 2000; Kedar, 2001; 2003; Soja, 1996).

This paper offers a historical case study of Israel's appropriation of Arab lands in the wake of 1948, including the land of Palestinian refugees living outside Israel (the lion's share of the land), that of internal refugees, and that of Palestinians who remained living in their homes as citizens of Israel. It offers insight into the shrouded history of the legal mechanisms through which Israel institutionalized its claims to formerly Palestinian-owned lands by examining the legal transformation of this land as a distinct 12-year process with four phases, each guided by senior and second-tier officials and resulting in major legislation. The first phase addressed the wartime seizure of millions of dunams (1 dunam = 1000 m<sup>2</sup> = 0.25 acre) by Jewish (turned Israeli) forces by generating legislation to provide a temporary legal basis for their appropriation and reallocation. During the second phase, officials made this 'temporary' expropriation permanent with legislation that furthered the unhindered use of the land by the state. The third phase addressed appropriated land whose legal status had still not been normalized. The fourth phase integrated this stock of appropriated Arab land into 'Israel Lands', a new system of Jewish-Israeli 'national land'. We begin with a brief discussion of Palestine's transition from British Mandate to Jewish state and then explore the 12-year transformation.

### **Between Mandate Palestine and Jewish state: Jewish land acquisition in transition**

Jewish colonization in Palestine began towards the end of Ottoman rule and intensified under British rule (1918–48). Land was a prerequisite for Jewish colonization, serving as the physical basis of each new settlement and the territorial basis of the Jewish state envisioned by Zionist leaders. Until the end of the mandate, land was acquired through purchase on the open market, primarily by the Jewish National Fund (herein, JNF) and other land-purchasing companies (Kretzmer, 1990). By 1948, 1.5 million dunams of Mandate Palestine's 26.3 million dunams were 'Jewish owned' (Government of Palestine, 1991a [1946]).<sup>(3)</sup>

<sup>(3)</sup> While Jewish ownership reflected 5.7% of all land in Palestine, it accounted for more than double this percentage when considered as part of the total cultivable land north of the Negev desert.

In the wake of the 1948 war and the establishment of Israel, only 160 000 of the approximately 850 000 Palestinian Arabs who, before the war, had lived in the territory incorporated into Israel remained (Kamen, 1985).<sup>(4)</sup> In contrast, the country's Jewish population doubled between 1946 and 1951, from 608 000 to 1.4 million (Government of Palestine, 1991b [1947]; Kimmerling, 1983). Israel was defined as a Jewish state, and its leaders welcomed the new demographic balance. However, they remained challenged by the country's land-tenure relations, which clashed with the state's Jewish-focused interests. While Israel's borders now enclosed 20.6 million dunams, only about 13.5% (2.8 million dunams) of Israeli territory was under formal state or Jewish ownership (Granott, 1952; Kark, 1995).

Officials of the new state were uneasy with the discrepancy between Jewish sovereignty and non-Jewish landownership. They also regarded Palestinian refugee land as a vital resource for securing state interests. In this context, elevation of Jewish national interests to governing interests, and newly gained access to the coercive implements of state sovereignty, had decisive influence on land acquisition for Jewish settlement. Jewish leaders, turned government officials, now strove to gain possession and ownership of as much of Israel's sovereign space as possible by making use of the legal mechanisms of the state at their disposal (Kimmerling, 1983; Kretzmer, 1990).

There is no one agreed-upon figure for the land that moved from Arab hands to the state in the wake of 1948. This stems from Israel's expansion of the conception of state land during the 1950s and 1960s, the fact that land registration and settlement of title were not completed during the mandate, and the differing views regarding which land should be included (Forman, 2002; Kedar, 2001). For instance, a 1951 United Nations Conciliation Commission for Palestine (UNCCP) study set a figure of 16.3 million dunams, including privately and communally held land, and the large Arab holdings of the Beersheba subdistrict. In contrast, a 1964 UNCCP estimate of just over 7 million dunams considered privately held land, a fragment of the Arab land of the Beersheba subdistrict, the land of Arab non-Palestinians, and the land of Palestinians who remained in Israel after 1948 (Fischbach, 2002). While estimates of Arab researchers and organizations have typically been between 5.7 million and 6.6 million dunams, former mandate and UNCCP land official Sami Hadawi reached a figure of 19 million dunams by classifying 'state' and 'public' land within Arab village boundaries as refugee land (Hadawi, 1988). Israeli officials and researchers have consistently estimated between 4.2 million and 6.5 million dunams (Golan, 1995; 2001; Granott, 1956; Kark, 1995; Weitz, 1954a). Despite these variations, it is clear that displaced Palestinians lost millions of dunams of land and that most land in question was acquired by Israel through force (whether through expulsion or blocking the return of those who fled).

As we will see, the gradual normalization of this seizure began almost immediately, with the repeated reclassification of the land, first as 'abandoned land', then as 'absentee land', and finally as 'Israel Lands'. Critical geographers argue that such legal categories serve as fundamental building blocks of spatial hierarchies, inscribing a "certain sort of meaning ... onto lived-in landscapes" (Delaney, 1998, page 3) and shaping landscapes of "social apartheid, inequitable distribution of public resources and political disenfranchisement" (Ford, 2001, page 53). Indeed, the Israeli state used law, along with other means, to impose and legitimize Jewish political and territorial domination within its sovereign space. The legal transformation of the appropriated Arab land of 1948, to which we now turn, was part and parcel of this drive towards Jewish domination of Israel's sovereign territory.

<sup>(4)</sup> Exact estimates vary. For a survey see Kedar (2001, page 62).

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### **Phase 1: from Arab land to 'absentee land'—the evolution of absentee property (*Nekhsei Nifkadim*)**

The first phase of the legal transformation of appropriated Arab land evolved as a response to the illegalities surrounding its physical seizure and reallocation. The Palestinian refugees that flowed out of areas conquered by Jewish forces during spring 1948 left behind vast tracts of land. Prior to the establishment of Israel in May, Jewish leaders focused on the 'civil war' and preparations to defend the borders of the state-to-be against attacks by the surrounding countries. Consequently, it was not the legal status of refugee land that interested Jewish leaders, but rather its physical status.

Preliminary machinery to administer refugee property was established within the Hagana (the organized Jewish community's military force, which served as the core of the Israeli military) in early spring 1948. The Hagana apparatus initially dealt only with securing abandoned Arab property, but it soon took on the harvest of abandoned crops as well. To ensure the population's food supply and prevent the return of refugees, the Hagana enlisted the Histadrut's (Jewish federation of labor) Agricultural Center and its network of Jewish agricultural settlements, settlement blocs, and regional councils (Golan, 1993).

With the establishment of the state, refugee property administration was moved to the short-lived Minority Affairs Ministry. The ministry's Department of Arab Property, which evolved out of the Hagana mechanism, initially retained responsibility for Arab land. But this changed when senior officials realized the enormity of the issue (Golan, 1995). Early June 1948 witnessed the establishment of a Ministerial Abandoned Property Committee (MAPC), headed by Prime Minister David Ben-Gurion and charged with setting policy on refugee property. The committee split responsibility for state-appropriated Arab land between the Finance Ministry and the Agricultural Ministry. The former, headed by Eliezer Kaplan of the dominant MAPAI party (Israel Workers Party), received overall responsibility for property, expropriations, and finances. The latter, headed by Aaron Tsizling of the left-wing MAPAM party (United Workers Party), was to administer agricultural property. The Minority Affairs Ministry, headed by Bekhor Shitrit of the small ethnic Sephardic party, retained only representative positions within this new structure and soon disappeared altogether (Bauml, 2002; MAPC, 1948a; 1948b). Within the Finance Ministry, authority for state-appropriated Arab property was vested in the new office of the Custodian of Abandoned Property.

The Ministry of Agriculture retained the Agricultural Center's framework previously enlisted by the Hagana and, in July 1948, began reallocating appropriated Arab land to Jews for cultivation. The Jewish agricultural sector played a key role: settlements, some of which had already seized tracts of abandoned land without government authorization, submitted cultivation requests; regional settlement bodies administered allocation; and the Agricultural Center encouraged, facilitated, subsidized, and supervised the process (Agricultural Center, 1948; Golan, 1993). By mid-summer 1948, the state and the Jewish agricultural sector were working hand in hand to mobilize the ostensibly temporary Jewish possession of appropriated Arab lands. In this way appropriation and reallocation were closely related.

However, this administrative arrangement lacked firm legal grounding, as the law had barely addressed the use of refugee land by this point. So far, the most relevant legislation was the extremely general Abandoned Areas Ordinance of June 1948, which empowered an authorized government minister to issue regulations concerning "abandoned property" in "abandoned areas"<sup>(5)</sup> (State of Israel, 1948a). However,

<sup>(5)</sup> The ordinance defined an 'abandoned area' as any place that: (1) had been conquered by or surrendered to Israeli armed forces; or (2) had been partially or completely deserted by its inhabitants.

the ordinance stipulated that abandoned areas had to be officially designated. As this step was never taken, it appears that the ordinance was never legally applied (Yifrah, 1949).

Lack of legal grounding and the temporary nature of reallocation made Jewish settlements wary of the risky investment (Golan, 1993). Officials therefore started to address the legal status of the land in July 1948, during its reallocation to Jewish hands. The MAPC charged Agriculture Minister Tsizling with drafting a bill that would regulate the possession of appropriated Arab agricultural land (MAPC, 1948a). Tsizling understood the importance of law in legitimizing the land appropriation and reallocation that was rapidly transforming the country's geography. For this reason, he insisted that it was "important in the international arena and before the world community that what is happening here appears legal" (MAPC, 1948a). He opposed basing appropriation on security considerations alone. Instead, he preferred a combination of agricultural and security considerations, based on the premise that the country's security demanded cultivation of fallow lands for a stable food supply. While this ostensibly temporary act did not expropriate the land, Tsizling made it clear that the settlement and development of the land would be permanent. "If the law must be a fiction", he stressed, "the development must not be" (MAPC, 1948c, page 2; Tsizling, 1948).

Based on this approach, Tsizling promulgated the Emergency Regulations regarding the Cultivation of Fallow Lands and Unexploited Water Sources (herein, the Fallow Lands Regulations) in October 1948 (State of Israel, 1948b, pages 3–8). This legislation was the first to legalize the seizure and reallocation of appropriated Arab land and served as a key component of the sophisticated mechanism that gradually turned temporary possession into unrestricted Jewish-Israeli ownership. The regulations were characteristic of most early legislation on the appropriated Arab land in that they legalized its past and future transfer to Jewish possession. They empowered the Agriculture Minister to authorize past seizure and reallocation retroactively. As for future acts, the regulations were employed in conjunction with Section 125 of the Defense Regulations of 1945, under which military commanders could close certain areas for security reasons (Government of Palestine, 1945, page 1090). Closure prevented Arab cultivators from reaching their land, which would eventually be declared 'fallow' and transferred to Jewish possession (Hofnung, 1991; Lustick, 1980; Nakkara, 1985).<sup>(6)</sup>

Still, the temporary possession enabled by the Fallow Lands Regulations did not correspond to the authorities' goals of securing long-term cultivation and development by Jewish individuals and groups. For this reason, while the Fallow Lands Regulations were still being drafted several leading jurists began preparing a second, more extensive, law designed to expropriate property ownership and vest it in the Custodian of Abandoned Property. The result was the Emergency Regulations regarding Absentee Property (herein, the Absentee Property Regulations), signed into force by Finance Minister Kaplan on 2 December 1948 (MAPC, 1948a; 1948b; 1948c; 1948d; State of Israel, 1948c). Whereas the permanent version of this legislation [the Absentee Property Law—1950 (State of Israel, 1950a)] would include notable changes, the 1948 regulations introduced a framework and terminology that would remain a central, permanent component of Israel's legal treatment of appropriated Arab land.

<sup>(6)</sup> In 1952, Arab Affairs Advisor Yehoshua Palmon warned that Section 125 was all that prevented the owners of 250 000 dunams of appropriated land from reclaiming their land in court (Palmon, 1952).

The Absentee Property Regulations created the new legal status of 'absentee', defining it in strict, all-encompassing terms. An absentee was anyone who, on or after 29 November 1947 (the date of the United Nations General Assembly resolution to partition Palestine), had been: (a) a citizen or subject of one of the Arab countries at war with Israel; (b) in any of these countries, or in any part of Palestine outside the jurisdiction of the regulations; or (c) a citizen of Palestine who abandoned his or her normal place of residence. Technically, this included virtually all Arabs who vacated their homes during the war, regardless of whether they returned. In fact, it was so all encompassing that it included most residents of Israel—Jews and Arabs alike (Vaks, 1949; Yifrah, 1949). Israel, however, had no intentions of applying this status to Jews, so the regulations contained a clause by which Jews could be systematically exempted, without incorporating explicitly discriminating provisions.<sup>(7)</sup> The result was that practically no Jewish Israelis, but tens of thousands of Arab Israeli citizens, were classified as absentees, assuming the paradoxical legal identity of 'present absentee' (Cohen, 2000).

The Absentee Property Regulations vested absentee property in the Custodian established in the Finance Ministry earlier that year. They also normalized the functions of the position of Custodian itself, renaming it 'Custodian of *Absentee* Property' (herein, CAP), replacing the temporary and vague legal category of 'abandoned' property with the well-defined, soon to be permanent category of 'absentee property'. The CAP possessed vast administrative and quasi-judicial powers, as well as evidentiary and procedural tools. He could seize property at his own discretion, and the burden of proving 'nonabsentee' status fell on the landholders. The Absentee Property Regulations were inspired by the British Trading with the Enemy Act (1939), which created an extremely powerful property custodian and formally extinguished all rights of former owners (see Domke, 1943, page 469).

The expropriation facilitated by the Absentee Property Regulations was not permanent, because of the temporary nature of the emergency regulation legislative form and the fact that it prohibited selling absentee property or leasing it for more than five years. However, absentee property was now treated by the administration as state property.<sup>(8)</sup> This being the case, Ben-Gurion and Kaplan negotiated the sale of one million dunams to the JNF the following month (Ben-Gurion, no date, entries from 6 and 13 December 1948; Golan, 1992). Ben-Gurion later noted the legal discrepancies involved with the JNF sale, acknowledging that "the government does as it pleases with this property"; despite the fact that "the law limits the government in its efficient, permanent use" (Ben-Gurion, no date, entry of 4 August 1949) This illegal sale reflected that, despite the temporary arrangements along the way, authorities had long-term plans for the permanent use of Palestinian refugee land and the transfer of its unrestricted ownership into Jewish hands.

As the sale to the JNF exceeded the limits of the new legal status of the land, the sale agreement included a clause by which the government agreed "to take upon itself all necessary legislative arrangements to ensure the JNF's full and legal ownership of all the land according to Israeli law" (Golan, 1992, page 150). This inability of the state to legally sell Palestinian refugee land sparked the next phase of its legal transformation—the evolution of the two-statute legislation of 1950.

<sup>(7)</sup> Section 28 of the regulations obligated the custodian to exempt absentees who left their home because of fear of Israel's enemies or military operations, or were, in his opinion, capable of managing their property efficiently without aiding Israel's enemies. Dov Shafir, the first Custodian of Abandoned Property, later declared that all efforts had been made not to apply the regulations to Jews (Knesset Law and Constitution Committee, 1949–50, minutes of 6 and 22 December).

<sup>(8)</sup> Israeli officials later related to 2 December 1948 as the date after which Israel would accept responsibility for the physical condition and deterioration of absentee land. See Fischbach (2002).

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## **Phase 2: the legislation of 1950—the Absentee Property Law and the Development Authority Law**

During the second phase, as well, it was senior and second-tier officials who tackled the legal complexities. This time, the architect was Zalman Lifshitz, the Prime Minister's Advisor on Land and Border Demarcation. On 30 March 1949, Lifshitz submitted to Ben-Gurion, and to the Foreign, Justice, and Finance Ministers, a "Report on the need for a legal settlement of the issue of absentee property to facilitate its permanent use for settlement, housing, and economic recovery needs" (Lifshitz, 1949).

Pointing to inconsistencies between the legal status of the land and actual government policy, Lifshitz wrote: "From the moment that the Arabs abandoned their places of work and residence, the government has taken an affirmative principled position on the use of this property for increasing agricultural production, settlement needs and housing needs" (1949). He also pointed out the government's disregard for the law when it sold one million dunams to the JNF a few months earlier. Lifshitz then turned to the future and called for action, emphasizing both financial and legal considerations:

"Investments that have already been made and that will be made in the future must be safeguarded. Legally unauthorized actions that have already been taken must be given legal force, in order to prevent complications and legal claims against the government or against the possessors of this absentee property. The Absentee Property Regulations and the Fallow Land Regulations are transitory regulations and prevent any possibility of using these properties permanently" (1949).

Lifshitz had recently argued against the return of Palestinian refugees (Morris, 1987),<sup>(9)</sup> and he now advocated the permanent use of their property for the political and economic benefit of the state. He asserted that countries in similar situations, such as Turkey, Greece, Bulgaria, and Czechoslovakia had assumed vast powers in order to liquidate refugee property for state use and urged the Israeli Government "to proceed in a similar manner" as "there is no lack of precedents" (Lifshitz, 1949).

Lifshitz then surveyed the two-statute model adopted by Pakistan a few months earlier. Like Israel, Pakistan had recently been established in a context of inter-communal violence after a period of British colonial rule, with the partition of British-controlled India into the states of Pakistan and India in 1947. Pakistani lawmakers also drew on the British Trading with the Enemy Act (Vernant, 1953), but their legislation of 1948 incorporated new components that facilitated not only expropriation but transfer of ownership and reallocation as well. The first ordinance empowered a 'Custodian of Evacuee Property' to appropriate refugee property and transfer it to a 'Rehabilitation Authority'. The Rehabilitation Authority, established the same day by another ordinance, was authorized to "pool and allot" (Lifshitz, 1949) property to others. Together, the laws created an integrated mechanism for the expropriation of Hindu and Sikh refugee property in Pakistan and its reallocation for the resettlement of Muslim refugees from India. Lifshitz proposed replacing the Absentee Property Regulations "with a new law, similar to the above mentioned Pakistani regulations and based on the principles they contain" (1949).

A meeting of Prime Minister Ben-Gurion, Finance Minister Kaplan, Foreign Minister Sharett, and CAP Moshe Dov Shafir approved Lifshitz's recommendations in May 1949 pending consultation with the Attorney General (Foreign Ministry, 1949). In early August, Ben-Gurion was again consulted, and directed Lifshitz and senior Justice Ministry officials to prepare draft legislation (Ben-Gurion, no date, entry of 4 August 1949).

<sup>(9)</sup> Lifshitz helped compile the massive "Report on a settlement of the Arab refugee issue", submitted to Ben-Gurion in fall 1948, which advanced a strategy of resettling Palestinian refugees in the surrounding Arab states (Danin et al, 1948).



Towards the end of the year, two bills along the lines of the Pakistani ordinances appeared before the Knesset: the Absentee Property Regulations Extension of Force Bill (herein, the Absentee Property Bill) and the Transfer of Property to the Development Authority Bill (herein, the Development Authority Bill) (State of Israel, 1949a; 1949b).

The subsequent legislative process differed from that of fall 1948, as the earlier legislation had taken the form of emergency regulations and had not been subject to Knesset approval. In fact, decisionmakers considered using the emergency regulation form in this case as well to avoid public debate but ultimately decided to take the parliamentary route (Ben-Gurion, no date, entry of 4 August 1949). As expected, the bills sparked lively debate. However, typical of Israel's Arab land legislation of the early 1950s, the government's general formula passed through the Knesset with only minor modifications.

The Knesset debates surrounding Lifshitz's two-statute model had little impact on the legislation itself. For one thing, the use of two ostensibly individual laws obfuscated what was in effect a single process and hindered any meaningful debate on the mechanism as a whole. The first bill dealt almost entirely with the taking process, replacing the Absentee Property Regulations with a permanent law that permitted the CAP to lease land for longer periods. The only indication of the intent of the bill was that the CAP could now sell (and not only lease) land to one single buyer: a new body to be established by the Knesset known as the Development Authority (herein, DA). In fact, Kaplan, who presented the bill to the Knesset and was familiar with its true goal, still argued that its main purpose remained the consolidation and safeguarding of absentee property (State of Israel, 1949c). Justice Minister Pinhas Rozen took a similar position, asserting that the CAP "may have additional functions to perform, but his main duty is to act as the absentees' trustee" (State of Israel, 1949d).

Debate on the Absentee Property Bill therefore focused on the issues involved with making the CAP's seizure of absentee property permanent. Critics attacked the way that the CAP had administered absentee property up to that point, the sweeping authority it held over Arab and Jewish citizens alike, and the encroachment on private property rights that the law enabled. Arab Knesset Members (herein, MK) were the most outspoken against the bill, leveling criticism at the perpetuation of the present-absentee status, held by approximately 15% of Israel's Arab citizens (Cohen, 2000; State of Israel, 1949d; 1950b). In fact, the demand to differentiate between external Palestinian refugee absentees and absentees living in Israel was endorsed by a Jewish–Arab coalition acknowledging the discriminatory nature of the statute. Regardless, an amendment to make this distinction was rejected by a close vote (Peretz, 1958).

The Development Authority Bill also made no reference to the two-statute mechanism or, for that matter, the CAP or the word 'absentee'.<sup>(10)</sup> Instead, this second bill gave the impression that the DA was to be a genuine agency for supervising the country's development, and not simply the intermediary 'land-laundering' body intended. However, legislators quickly realized that the proposed agency was merely a cover for the government's true intention—moving absentee land out of the restrictive tenure of the CAP and into the unobstructed ownership of the DA (Knesset Economics Committee, 1950, minutes of 10 January). One indication was that, although lawmakers preferred the name 'The Development Authority Law', the government insisted on emphasizing the specific process for which the law was intended: the 'Transfer of Property'. The final title of the law—'The Development Authority (Transfer of Property) Law'—was a compromise (State of Israel, 1950c). Furthermore, a number of MKs were critical of the fact that the bill was markedly short and general,

<sup>(10)</sup> Except for passing mention in the explanatory note to the bill.

lacking the detail that they regarded as necessary for a law that presumed to define the powers of a powerful development agency (State of Israel, 1949e).

The Knesset debates surrounding the Development Authority Bill addressed state land-sale policy, state–JNF relations, lack of Knesset control over the proposed body, and the unclear wording of the first version of the bill. The debates resulted in a number of amendments made in legislative committee, including prohibiting the DA's sale of agricultural land, limiting its sale of urban land, increasing accountability to the Knesset, and naming the JNF and the Jewish Agency (herein, JA) as legally sanctioned partners for DA operations. But, again, there was no mention of the two-statute model.

The government's desire to prevent public debate on the legislation was clear. Kaplan's introduction of the Development Authority Bill was exceedingly brief, and replete with phrases such as "I'll make do with just a few words", "the details are in the bill", and "I don't wish to expand on it" (State of Israel, 1949f, pages 226–227). Kaplan justified his terse introduction by explaining, "These things receive great attention all over the world, which notices and interprets our every word. We are still in the midst of the struggle, and I need not explain that, in such conditions, there are many things that are better off discussed in committee" (State of Israel, 1949e, page 308). "If I do not discuss certain issues here", he clarified, "it is because I think that the publicity will be detrimental to the state" (page 309).

This approach explains why little significant debate took place in the Knesset. Instead, two different Knesset committees modified the individual bills—the Law and Constitution Committee worked on the Absentee Property Bill (Knesset Law and Constitution Committee, 1949–50) and the Economics Committee worked on the Development Authority Bill (Knesset Economics Committee, 1950). In the confidential setting of the Economics Committee Kaplan loosened up and, in the context of refugee property claims and Israel's counterclaims against its opponents from the 1948 war, disclosed the concealed objectives of the dual legislation, and the government's reasons for concealing them. "I hope that this committee is confidential and that there is no possibility that things said here can be publicized" he began. He then continued:

"We are in a very delicate situation. Along with the Absentee Property Law, this issue sparks debate among countries around the world that see themselves as the Arabs' guardians. They are threatening to bring it to legal trial. For this reason, we must be careful. We must take this into account in our actions and what is publicized. We are totally mistaken if we think we are holding spoils with which we can do as we please... We could not insert the government into the law directly, and we therefore inserted an intermediary body that is responsible to the government, but that also possesses a degree of independence" (Knesset Economics Committee, 1950, minutes of 4 January).

The one major change made to the government's proposal in committee was the application of a qualified no-sale clause to agricultural land held by the DA (Katz, 2000). The bill now specified that agricultural land could be sold only to the state or the JNF. The Knesset enacted the Absentee Property Law in March 1950 and the Development Authority (Transfer of Property) Law in July 1950 (State of Israel, 1950a; 1950c). This institutionalized Lifshitz's two-statute model—a cornerstone of Israeli machinery facilitating the expropriation and reallocation of Arab land in the aftermath of 1948. Expropriated land entered a reservoir dominated by Jewish interests. The Absentee Property Law empowered the CAP to sell land to the DA alone, and the Development Authority Law empowered the DA to sell land to the state and the JNF. Despite its pivotal role in the evolving land regime and as a government agency in practice, the DA was legally defined as a distinct extragovernmental agency (Weisman, 1993). In this capacity, it served as an intermediary body to funnel expropriated land to the state and the JNF.

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But, when the dust of military conquest, unauthorized seizure, and temporary expropriation and reallocation settled with the laws of 1950, the state still held some land without legal foundation, or with problematic legal basis. In the next section we focus on how the state dealt with this problem.

### **Phase 3: illegally seized nonabsentee land, present absentees, and the 1953 Land Acquisition Law**

In addition to millions of dunams that fit the classification of absentee property, a considerable amount of land was seized with no legal basis at all, or based on provisional laws. The normalization of the seizure of nonabsentee property lasted from 1951 to 1953, and constituted the third phase in the legal transformation of Arab land appropriated in the wake of 1948.

Dispossessed nonabsentees started submitting claims soon after seizure, but authorities were frequently unwilling to release their property, which in many cases was already being used by others. By early 1951, the problem had intensified (Interior Ministry, 1949–52). “As time passes”, a senior JNF land official noted, “these disputed areas are likely to multiply” (Weitz, 1965, volume 4, page 119). Officials initially discussed the legal status of seized nonabsentee property along with present-absentee property. Despite the legal basis of present-absentee property, many in the administration viewed this arrangement as unjust, politically problematic, and in need of a solution. As will be recalled, the inclusion of present absentees in the Absentee Property Law passed by only a small margin in a close vote in the Knesset.

In early 1951, some absentee property officials began searching for ways to return certain types of property to present-absentee owners. CAP Moshe Porat warned that the dispossession of Arab citizens was not only a source of bitterness but also politically and practically untenable. The state should amend absentee status to exclude those living in Israel and release all their property, except for rural land (as this would harm Jewish settlers, tenants, and military facilities) (Porat, 1951a). Chief Assessor Arno Blum concurred (Blum, 1951). About the same time, a special committee began releasing nonlanded property in order to ease the situation of present absentees. It later released some urban buildings and lots as well, but no rural land (SAPRC, 1951).

Concerns about the rural land of present absentees and dispossessed nonabsentees grew rapidly during 1951. These concerns were vividly and succinctly expressed in an August 1951 letter from a JNF official to the DA Chairman, urging state action to forestall the legal challenge. “In the meantime”, the letter warned, “time is working against us, the Arabs are knocking on the doors of the court, and [Jewish] settlements are suffering from the results” (JNF, 1951; Porat, 1951b). In this context, Israeli officials began working on a solution to the legal threats to state-appropriated present-absentee and nonabsentee rural land. Foreign Minister Sharett convened a meeting of top land officials, top Foreign Ministry officials, and top Arab affairs officials in late August 1951 to address the issue. The task at hand was the construction of a legal barrier between lawsuits and the government to prevent the courts from ordering the return of land to its owners. Sharett appointed a subcommittee to draft legislation to achieve this goal as quickly as possible (Foreign Ministry, 1951a; Porat, 1951c).

Members of the subcommittee came to agree that amending the Absentee Property Law to include nonabsentee property was not the way to go about achieving their goal. First, this would confuse the legal concepts involved and spark further criticism of the Finance Ministry and the CAP. Second, only an estimated 10% of the cases in question involved present-absentee property. Instead, the task was conceived of as expropriating specific land for specific purposes. Therefore, the law was to focus on nonabsentee property, but be general enough to apply to absentee property as well, apparently to

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forestall attempts by present absentees or former absentees to use cracks in the law to claim their land in court successfully (Foreign Ministry, 1952; Porat, 1951c). The subcommittee stipulated:

“the new law, which will be aimed primarily at people who are not of ‘absentee’ status, should not be explicitly limited to this type of property. Wording of the new law must be general, so as to apply not only to the property of people who are generally accepted as not being ‘absentees,’ but to the property of people who are not clearly ‘absentees’ or ‘non-absentees’ and—as an alternative mechanism—to the property of people who are of ‘absentee’ status” (Foreign Ministry, 1952).

The subcommittee worked until January 1952 and generated three proposals. All were based on the principle that specific land would be declared indispensable for “security needs” or “essential development needs” (Foreign Ministry, 1952) and thereby become the property of the DA. The DA, in turn, would pay former owners compensation. The first proposal envisioned a general law that would empower an authorized agency to declare certain areas “development areas”, in which land could be seized for these two purposes. Legislation based on this approach would have not only legalized past seizure but explicitly expedited future expropriation as well. The second proposal called for a retroactive law that would validate the past seizure of land currently being used for one of the sanctioned purposes. The third proposal, which contradicted the subcommittee’s initial approach of not confusing the absentee status, called for legalizing the appropriation of all land that had ever been classified as absentee property (whether under the terms of the 1948 regulations or the 1950 law) and that was needed for one of the sanctioned purposes (Foreign Ministry, 1951b; Porat, 1951c).

The subcommittee submitted these three options to Sharett on 8 January 1952. In the end, the second, retroactive proposal was adopted: legislation to legalize the past seizure of land for security and development needs (Foreign Ministry, 1952), without specifying its absentee or nonabsentee status. This proposal was translated into the Land Acquisition (Validation of Acts and Compensation) Bill, submitted to the Knesset in May 1952 (State of Israel, 1952a). The introductory note to the bill explained that, because of “needs of security and essential development”, the land in question could not be returned to its owners. Its aim was thus twofold: “to establish a legal basis for the acquisition of this land and to provide its owners with the right to compensation” (page 234). Implementation was to be supervised by the Finance Minister, like all previous legislation regarding appropriated Arab land. Again, it was Kaplan who presented the bill to the Knesset, and, again, he was markedly brief. Preferring to rely on the written explanatory note to the bill, he explained that the main purpose of the law was to “instill legality in some acts undertaken during and following the war” (State of Israel, 1952b, page 2202).

In contrast to Knesset debate on the two-statute legislation of 1950, discussion of the Land Acquisition Bill focused on its true intention: the retroactive legalization of the seizure of land and the payment of compensation. Most participating MKs acknowledged a need for a solution, but differed on its terms. Several Jewish opposition parties proposed amendments that accepted the postwar reality, but strove to improve the situation of the dispossessed. For instance, Binyamin Avniel of the right-wing Herut party proposed empowering owners of unused appropriated land to claim its return in court (State of Israel, 1952b). Avniel and others also regarded the use of November 1947 land values as a way of artificially decreasing compensation (1952b). Aaron Tszling of MAPAM argued that landowners should have the right to be compensated in land in order to be ensured a livelihood (1952b). Calls to limit the application of the law to land already in use and to ensure just compensation were echoed by other speakers as well.

Other criticisms addressed the mechanism that would authorize expropriation. The Finance Minister would issue a certificate for each piece of land in question, confirming that it had been used for security or essential development purposes at some point after 29 November 1947 and that it was still needed for one of these purposes. Based on this certificate, land would become the property of the DA. Some MKs argued that the sanctioned purposes of the law had in the past served as pretexts for the seizure of Arab land (State of Israel, 1953a). Another concern was the finality of the Finance Minister's expropriation order, which would not be subject to judicial review. MAPAM proposed empowering the High Court of Justice to review whether a given property was in fact needed for one of the sanctioned purposes of the law (State of Israel, 1953a).<sup>(11)</sup>

Arab MKs were again the most critical of the attack on Arab land rights. From their perspective, the bill was part and parcel of state legal policy, which, since 1948, had aimed at dispossessing Arab landholders. It infringed on basic human rights and justified illegal acts. Masad Kasis, of a MAPAI-allied Arab list, estimated that the legislation would expropriate 300 000 dunams of Arab land (State of Israel, 1953a).

The Knesset's Law and Constitution Committee made a number of modifications to the bill, but none that resulted in a major change (State of Israel, 1953a). The most significant change was the introduction of an additional criterion for expropriation: that, on 1 April 1952, the land was not in the possession of its owners. Although the committee chair held that this ensured that only land actually held by the authorities could be expropriated, the law could still be applied to land whose owners were denied access based on military orders. Another change was the introduction of a third sanctioned purpose justifying expropriation: 'settlement', or Jewish settlement. But this was more of a clarification than a change of intention, as officials regarded Jewish settlement as an integral part of 'development'. Tsizling's call for in-kind compensation was also partially incorporated by obligating the DA to offer alternative land for seized land that had been a primary income source. Also, it was decided that compensation would be based on land values of 1 January 1950, with annual 3% increases.<sup>(12)</sup>

Aside from these changes, the Knesset rejected all formal amendments and enacted the law on 10 March 1953 (State of Israel, 1953b). The Land Acquisition (Validation of Acts and Compensation) Law applied to all land that was: used for essential development, settlement, or security purposes between 14 May 1948 and 1 April 1952; still needed for one of these purposes; and not in its owner's possession on 1 April 1952. The Finance Minister's power to expropriate such land was conclusive and limited to one year after the publication of the law. Authorized to sell land to the state and the JNF, the DA again functioned to hold expropriated Arab land and funnel it to state and Jewish ownership (State of Israel, 1953c).

During the year following its enactment, the Land Acquisition Law was used to expropriate some 1.2 million dunams. Of this, 311 000 dunams were expropriated from private ownership, with 304 700 dunams coming from Arab owners (Aloni, 1955; Weitz, 1954b). As envisioned by the subcommittee that designed the law, it was also applicable to absentee land and was used to expropriate 704 000 dunams of land from the CAP, though it is not clear how much of this was present-absentee land. It is also notable that

<sup>(11)</sup> In its February 1954 ruling in the case of *Younis vs Finance Minister* (High Court of Justice decision 5/54), the Israeli Supreme Court upheld the interpretation that a Land Acquisition Law confiscation order was in itself conclusive evidence and could not be contested in the courts (Kedar, 2003; Nakkara, 1985).

<sup>(12)</sup> The date 1 January 1950 became problematic for calculating compensation after a massive devaluation of the Israeli lira in January 1954. Officials negotiated compromise rates during the years to come, but compensation never reached the actual value of the land (Hofnung, 1991; Liskovski, 1959; Weitz, 1954b).

the mechanism set up to compensate former owners according to the Land Acquisition Law was used to compensate present absentees as well, even though their land had been expropriated by the Absentee Property Law (DA, 1958; LALIC, 1954; Liskovski, 1959).

Dispossessed Arab citizens and Israeli officials alike regarded compensation as legal and moral recognition of expropriation. This was one of a number of reasons why many owners refused to apply, and it also explains why Israeli authorities regarded compensation as critical. Despite efforts to persuade dispossessed Arab citizens to submit claims throughout the 1950s, compensation had been paid for only 64 500 dunams by 1959 (Liskovski, 1959; SLLC, 1955; 1956). Still, changes in Israel's policy towards its Arab citizens, increased state efforts, and better terms of compensation increased claim submission from the late 1950s onward. Compensation had been awarded for approximately 170 000 dunams by 1970 and 198 000 dunams by 1988 (Bauml, 2002; Kretzmer, 1990).

Individual expropriation orders based on the Land Acquisition Law legally normalized the seizure of nonabsentee land, and the compensation mechanism established was used for both dispossessed nonabsentee citizens and present absentees. With this, the officials who started working on a solution in 1951 achieved their goal. The enactment of the law also marked the end of Israel's legislative drive to provide a legal basis for the seizure and reallocation of appropriated Arab land. This is not to say that Arab land expropriation and acquisition through other methods ceased at this point (Forman, 2002; Holtzman, 1999; Kedar, 1998; 2001; 2003). However, it did signify the conclusion of the sweeping seizure of Arab property that characterized the first few years of statehood (Hofnung, 1991).

#### **Phase 4: from absentee land to Israel Lands**

In contrast to the first three phases of the legal transformation of the Arab land appropriated in the wake of 1948, the final phase focused on resolving inconsistencies and redundancies in Israel's land administration system. Although steps taken during this phase were not aimed specifically at expropriated Arab land, they nonetheless had a major effect on it.

During this phase, JNF and JA officials played a larger role, joining state officials who had dominated the first three phases. Now, efforts were aimed at creating a unified body for policy planning and land administration, as officials regarded centralized land administration as critical to achieving state goals (Akavia, 1953; Katz, 2000; Weitz, 1954a). Construction of this unified body had great symbolic and functional impact on appropriated Arab land by incorporating it into a new form of Jewish-Israeli national land legislated into existence in 1960.

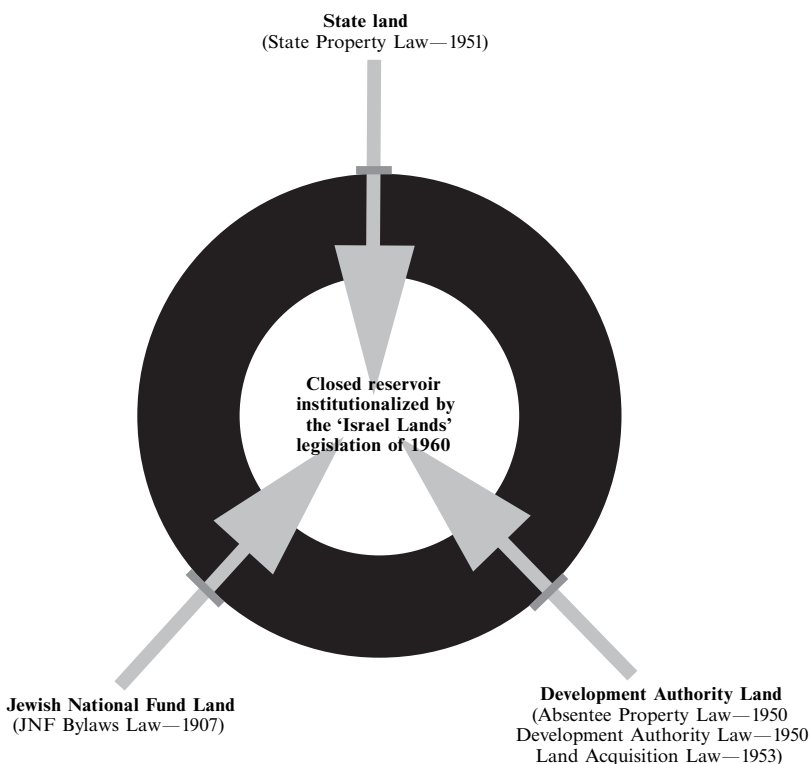
The establishment of the state complicated the concept of inalienable Jewish national land, which had played an increasingly central role in Zionist ideology, colonization, and political strategy after its adoption by the 5th Zionist Congress in 1901 (Lehn and Davis, 1988). Until 1948, the JNF had been the sole guardian of Jewish national land in Palestine, but the establishment of the Jewish state obfuscated the JNF's role. Now, the state was the sovereign undisputed guardian of Jewish national interests, and this resulted in a dual structure in terms of Jewish national landed interests. By 1950, the JNF owned 2.1 million dunams of land in Israel, and a combination of factors led the state to claim ownership rights to over 16.7 million dunams (JA, 1951; Kark, 1995).

The state's relationship with the JNF remained unclear well into the 1950s. On the one hand, Ben-Gurion approved the sale of 2 million dunams to the JNF in 1949 and 1950 and allowed it to retain a key position in the legislation of 1950 and 1951 (see below). On the other hand, he rarely saw a need for the JNF to buy land from Arabs, deemphasizing its prestate *raison d'être* of "land redemption" in favor of "redeeming

the land from waste” (Weitz, 1965, volume 4, pages 108, 210). Ben-Gurion also wanted to raise money from JNF and JA funds. However, when he realized that the JA was unwilling to pay for additional land purchases, the importance of this financial factor declined (Ben-Gurion, no date, entry of 13 December 1948; Weitz, 1965, volume 4).

Israeli policymakers faced important questions during the 1950s. Should the land regime remain split between JNF and state frameworks? Who should hold legal title to Palestinian refugee land and how should it be administered? Between 1948 and 1960, state, JNF, and JA officials grappled with these questions, generating answers that resulted in the creation of a new category of national land—Israel Lands—and a new administrative framework—the Israel Lands Administration (herein, ILA).<sup>(13)</sup>

Still, the creation of a joint administrative body was not a foregone conclusion. It was initially proposed in the second half of 1954 by JNF leadership (JNF, 1954; Weitz, 1965, volume 4). Until that point, Israeli land officials had focused on normalizing the seizure and reallocation of appropriated Arab land. As we have seen, the two-statute legislation of 1950 created a limited reservoir that enabled the two guardians of Jewish national land to use appropriated Arab land to further Jewish interests in the country. The State Property Law enacted the following year sealed this reservoir. It prohibited the state from transferring ownership of agricultural land to anyone except the JNF, the DA, or a local authority (State of Israel, 1951). In turn, the DA could transfer land to the state and the JNF alone, and the JNF was forbidden by its own bylaws to sell land at all. This closed reservoir, which already held an estimated 92% of the land in Israel in 1951, was institutionalized nine years later by the legislation of 1960 (ILA, 1965; Kark, 1995) (see figure 1).



**Figure 1.** The closed system of land that became 'Israel Lands'.

<sup>(13)</sup> For a legal description of Israel Lands see Weisman (1993).

The proposal to establish a joint body to administer JNF and state land started a process that clarified ambiguous state–JNF relations surrounding Jewish national land. Despite Ben-Gurion’s statist ambivalence towards the JNF and the idea in general, he eventually authorized Finance Minister Levy Eshkol to address the issue (Ben-Gurion, 1957; JNF, 1956; Weitz, 1965, volume 4). Eshkol, a government minister from MAPAI and a senior official in the JA, was intimately familiar with the parties involved and thus served as the pivotal facilitator in the evolution of the institution between 1954 and 1960.

After almost six years of discussions and negotiations within and among the government, the JNF, and the JA, legislation reached the Knesset. It consisted of three bills that would function together to create a new legal land category and a joint administration, while leaving ownership with the three partners. The bills presented to the Knesset in 1959 termed the new category “People’s Land”, and were entitled “Basic Law: People’s Land”, “The People’s Land Law”, and “The People’s Land Administration Law” (State of Israel, 1959a; 1959b; 1959c; 1959d). The first bill was classified as a ‘basic law’, carrying a ‘constitutional’ quality and a higher status than regular legislation (Rubinstein, 1996). It defined the new category as including state, DA, and JNF land and outlined a policy of no transfer of ownership, comparable to the inalienability of JNF land. The second bill defined exceptions to the no-sale policy. The third bill established a joint institution called “the People’s Land Administration”, under the authority of the Agriculture Ministry, to administer the new category. It also amended already existing legislation to institutionalize the no-sale policy and the administration director’s authority over all the land in question.

The Knesset Finance Committee and the Ministerial Legislative Affairs Committee made minor changes to the bills during committee work, including renaming the new category ‘Israel Lands’. Still, the proposed framework remained the same: a consolidated administrative and legal framework that would leave the three partners’ ownership rights intact (State of Israel, 1960a; 1960b; 1960c). The Knesset enacted the legislation in late July 1960, and, in conjunction with a covenant between the government and the JNF outlining the terms of cooperation, these laws constituted the core of Israel’s new land system (State of Israel, 1968). Israel Lands included all state, DA, and JNF landholdings. Aside from a few exceptions, it could not be sold or transferred except among the three partners.

With this, the appropriated Arab land of 1948 was consolidated into a new category of national land along with other state and JNF holdings. While the JNF’s restriction on leasing to non-Jews applied only to JNF land, the covenant ensured JNF control of almost 50% of the seats on the Israel Lands Council. This, along with the state’s Jewish-oriented agenda and the JA’s involvement in land allocations, ensured that ILA policy regarding state and DA land would be focused exclusively on Jewish interests as well.

Eshkol’s presentation of the bills in the Knesset was further indication that the new category was intended as a new form of inalienable Jewish-Israeli national land. His comments were replete with romantic imagery of the traditional forefather of Jewish national land, Herman Shapira, and the history of the JNF. This imagery was echoed by most MKs who spoke in favor of the bills (State of Israel, 1959d).

Ya’akov Hazan of MAPAM was the first MK to point out that the new category included a great deal of appropriated Arab land. “This land—a large portion of this land—has owners”, he held, “and we will eventually need to compensate them”. Still, Hazan believed that non-JNF land would be administered with all citizens in mind:

“in the case of government land, we must ensure equal rights for all citizens of Israel, regardless of race, nationality or religion. I hold that those who drafted



the law—from the JNF and the government—accept this tenet as a self-evident premise and that there was no disagreement on this point” (State of Israel, 1959e, page 2953).

Although the issue may have been discussed in this manner, there were large gaps between theory and practice in terms of the equality of Israel's Arab citizens during this period, when most were still living under military rule.<sup>(14)</sup> Furthermore, the bodies responsible for land allocation during the 1950s and 1960s implemented policies that blatantly discriminated against Arabs.<sup>(15)</sup>

Moshe Sneh, a Jewish MK of the Israeli communist party MAKI, was the most vocal critic of the legislation. He was also the only MK to advocate amendments to ensure equal land-use rights for Palestinian Arabs who remained in Israel as citizens, as well as the rights of external Palestinian refugees. He argued the impossibility of reserving vast areas for Jewish use and simultaneously safeguarding the land-use rights of Arab citizens. He then launched an attack on integrating appropriated Arab land into a state-sponsored Jewish-Israeli national land system.

“The state of Israel, and indirectly the JNF, inherited vast tracts of land from Arab landowners. I believe that granting the Arabs equal rights to settle and work this land—land that was transferred from Arab to State ownership, and in some cases via the state to JNF ownership—is the minimum of minimal compensation. Shall they not be given even this? ... Aside from the national discrimination practiced on JNF land, I see no reason not to transfer ownership of JNF land to the state of Israel. Doesn't the JNF trust the state of Israel? If there is a reason, it lies in the article of restriction based on nationality. Actually, we believe that this consideration obligates us to do the opposite: to consolidate the land in the hands of the state and to nullify restrictions based on nationality” (State of Israel, 1959e, page 2955).

Sneh's comments reflected what was then a rare view among Jewish-Israeli leaders. Despite his vocal participation in the debates, he and his party were fringe elements in Israeli politics (Korn and Shapira, 1997). None of his amendments was accepted and no other MKs vocally supported him.

Still, Sneh's argument highlights the fundamental contradiction of this phase of the process. He advocated 'nationalization' for state ownership and administration in the name of all citizens. However, Israeli policymakers did not have the civic Israeli 'nation' (the *demos*) in mind when designing the new system. They had in mind the same 'nation' that guided their work before 1948—the 'Jewish nation' (the *ethnos*).

## Conclusion

The Israel Lands legislation concluded the circuitous route from 'Arab land' to 'Israel Lands' traveled by the appropriated Arab land of 1948. In contrast to the physical components of conquest, seizure, reallocation, and cultivation implemented during and soon after the war, the legal transformation of the land took more time. The legislation that institutionalized the dispossession of the displaced Palestinians was enacted between 1948 and 1953, and the final step—the integration of their land into the new system of Jewish national land—was achieved in 1960.

<sup>(14)</sup> Between 1948 and 1966, Israel ruled most of its Arab citizens by a governing mechanism administered by military commanders according to regulations that facilitated severe limitation of movement, administrative arrests, surveillance, and other such tactics of control (Benziman and Mansour, 1992; Lustick, 1980).

<sup>(15)</sup> See minutes of the Supreme Land Leasing Committee, whose policy towards Arabs and Jews differed significantly (SLLC, 1955; 1956).

In the Israeli context, this paper demonstrates how the confidential and political deliberations of state officials were quickly translated into legislation, generating terminology and mechanisms that turned initially illegal appropriation into the constitutional law of the land. This was achieved through a 12-year process that transformed the legal status of the appropriated Arab land of 1948, directly facilitating Israel's new sociospatial reality and the land regime designed to sustain it. Ownership of this land, which has been administered by the ILA since 1960, remains in the hands of the DA, the state, and the JNF to this day. The Israel Lands Council, consisting of representatives of the government and the JNF, has been responsible for setting land policy for Israel Lands, and the appropriated Arab land of 1948 has become virtually indistinguishable from other types of Israel Lands placed at the disposal of the Jewish-dominated interests of the state.

The combined legislation of 1948–60 consolidated the spatial and demographic transformation that took place on the ground during and immediately following the 1948 war. It endowed the displacement of the Palestinians with legal force and simultaneously normalized and stabilized the geographical transformation that their displacement made possible. However, Israel's use of legal machinery to sever the ties between appropriated Arab land and its displaced owners appears to have convinced only Israeli Jews and some international audiences. Most Palestinians were not persuaded, and many refugees still demand the return of their lands (Aruri, 2001).

On a more general level, this paper highlights the central role of law, and legislation in particular, as a tool that endows the dispossession of individuals and groups with relatively long-term stability. Law can bring about and normalize dispossession in a spectrum of ways. It can be as explicit and brutal as the role of law in dispossessing Jews in Nazi Germany of their assets during the 1930s (Dean, 2002). But it can also be as subtle and difficult to discern as law's construction of private property in countries with liberal legal systems (Blomley, 2000; Cohen, 1993 [1927]; Hale, 1993 [1923]; Singer, 1992). This study has shown that law can also function within the administrative and parliamentary decisionmaking bodies of countries that regard themselves as democratic in essence in order to strip large numbers of people of legal rights to their own property. We hope that this case study encourages work on the role of law in bringing about dispossession in other countries, in order to prepare more fertile ground for comparative work on the subject.

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