# "The Tree Is the Enemy Soldier": A Sociolegal Making of War Landscapes in the Occupied West Bank

Irus Braverman

War landscapes have a particular sociology; they are also formed through distinct legal technologies. By examining the genealogy of trees as totemic displacements in the occupied West Bank I demonstrate how the Israeli/Palestinian war is deflected onto the landscape and how this deflection erodes the boundary between law and war. Dealing with issues of colonization, nationalization, and the way that these implicate landscape as a "natural alibi," the article examines the intricate making of politics into nature. Further, it explores the ironic nesting of colonial processes from Ottoman, to British, to Zionist, and finally to the new Jewish settler society that seeks to unsettle the old colonial landscapes of this place. Utilizing a detailed interpretation of a range of interviews and participatory observations, the article unpacks the mutually constitutive relationship between law, technologies of seeing, and landscape, illustrating how this relationship is played out by various actors in the occupied West Bank.

> "[L]andscape is a medium not only for expressing value but also for expressing meaning, for communication between persons."
> (W. J. T. Mitchell, *Landscape and Power*, p. 15)

> "A landscape, like a language, is the field of perpetual conflict and compromise between what is established by authority and what the vernacular insists upon preferring."
> (John B. Jackson, *Discovering the Vernacular Landscape*, p. 148)

## A Treefurcated Landscape

Along the mountainous strip that runs across the center of Israel/Palestine, from the Hebron Mountains in the south to the Galilee in the north, two major landscapes prevail intermittently: conifer pine forests and deciduous olive groves (see Figures 1 and

I would like to thank David Schneiderman, Mariana Valverde, Davina Cooper, Duncan Kennedy, and Jean Comaroff for their invaluable comments on this article. Special thanks to Gregor Harvey for his editing assistance and moral support. Please address correspondence to Irus Braverman, SUNY Buffalo Law School, 625 O'Brian Hall, Buffalo, NY 14260-1100; e-mail: irusb@buffalo.edu.

*Law & Society Review,* Volume 42, Number 3 (2008)


https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

**Figure 1: A Jewish Settlement in the Northern West Bank, surrounded by state pine trees; Palestinian olive groves in the valley (September 2006, photo by author)**

2). These landscapes are not as random or natural as it first seems. Trees in general, and olive and pine trees in particular, perform a pivotal role in both Zionist and Palestinian national narratives. Since 1901, the Jewish National Fund (JNF), an organization established by the Fifth Zionist Congress to purchase land in biblical Israel, has planted more than 240 million trees (mostly pines) in Israel. This massive enterprise transformed the Israeli/Palestinian landscape in fundamental ways. Over the years, the pine has become the quintessential symbol of the Zionist project of afforesting the Holy Land into a European-looking landscape (Bardenstein 1999; Zerubavel 1995; Amir & Rechtman 2006:39; Cohen 1993; Long 2005). Simultaneously, the olive tree has become the quintessential symbol of Palestinian resistance and an emblem of the Palestinians' steadfast connection (*tsumud*) to the land. Consequently, the pitting of pine tree/people against olive tree/people reflects the discursive and material split constructed with much fervency and determinacy by the two national ideologies that compete in and over Israel/Palestine. Moreover, these two tree types assume the totemic quality of their people (see Figure 2).

By examining the genealogy of trees as totemic displacements in the occupied West Bank, this article demonstrates how the Israeli/Palestinian war is deflected onto the landscape and how this deflection erodes the boundary between law and war. Dealing with issues of colonization, nationalization, and the way that these

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

**Figure 2: (Palestinian) olive groves on the left, (state) pine forests on the right (August 2006, photos by author)**

implicate landscape as a "natural alibi," the article examines the intricate making of politics into nature. Further, it explores the ironic nesting of colonial processes from Ottoman, to British, to Zionist, and finally to the new Jewish settler society that seeks to unsettle the old colonial landscapes in this place.[1]

In particular, this article is concerned with the mutually constitutive relationship between law, scientific technology, and landscape in the occupied West Bank after 1967. The legal norm that has had the most effect on the shaping of tree struggles in the West Bank is Article 78 of the Ottoman Land Code (1274 to the *Hijra*, the Muslim calendar). Put simply, Article 78 grants a long-time cultivator the right of adverse possession. This pertains only to undeveloped and nonprivate lands in Areas B and C of the West Bank, and mostly to Area C, which is considered largely rural.[2] Article 78 reflects a certain cultural, historical, economic, and material understanding of what cultivation means and entails. At the same time, it also illuminates law's unique power to *construct* the physical landscape by defining actions that might be recognized as cultivation and by employing technologies that assist in defining such actions.

The landscape is both a representation and a physical materiality (W. J. T. Mitchell 2000; Blomley 1998:568; D. Mitchell 1996:34). Ascertaining the genealogy of the landscape's material production is a rather complicated process that involves paying close attention to the various translations offered by an array of

[1] While trees have been made into tools of war in both Israel and the West Bank alike, there are also certain institutional and ideological differences between tree-related behaviors in these two places. The different legal system that prevails in the West Bank, and the intense application and unique interpretation of Article 78 of the 1858 Ottoman Land Code in particular, has shaped the course of the tree wars in this place in different ways than those that occur in Israel. On the use of trees in Israel see Braverman (2007).

[2] Since the 1993 Oslo Accords the Palestinian Authority has controlled the urban areas of the West Bank (defined as Area A), which constitute some 40 percent of the West Bank. Areas B and C have remained under the direct control of Israel's military and civil administration.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

actors who speak in the name of the landscape. Who gets to make/read the West Bank treescapes,[3] which making/reading takes precedence over others, and in what sense does legibility matter to the working of the law? The detailed analysis provided herein indicates that the work of landscape seeks to erase the very fact of its social production (D. Mitchell 1996:6). This erasure is in itself a form of hegemony. Situated in the intersection between critical legal geography, science and technology studies (S&TS), and anthropology, this article's triadic focus on the interrelations between law, technology, and landscape has been largely overlooked as such both by critical legal geographers and S&TS scholars. Moreover, to the best of my knowledge, the specific study of the interrelations between trees and nationalism in the Israeli/Palestinian context has never been the focus of critical geolegal work.[4]

Keeping the agrarian context of the Ottoman Land Code in mind, it is revealing to witness the intensified application of Article 78 of this code as part of Israel's civil administration of the West Bank between 1979 and 1993. Specifically, the circumstances that have led to Article 78's intense application by the State of Israel, then to its decline, and, finally, to its recent revival by certain Jewish settlers in the West Bank—all occurring more than a century after its original inception by the Ottomans—are illustrated in the first part of this article ("A Historical Background of Article 78's Application in the West Bank"). The second part ("Why Trees?—A Matter of Legibility") considers how and why trees have come to figure so prominently in the application of Article 78. The short answer to these questions introduces the importance of *visibility* or *legibility* for establishing a legally recognized control over territory. A longer answer examines the specific technologies deployed by various relevant actors, and especially state officials such as inspectors and aerial photo interpreters, so that they can *see* the tree in the West Bank landscape in such a way that is acknowledged by the law. The third part ("Re-Reading the Landscape Through Aerial Photos") further explores the significance of aerial photographs for the application of Article 78 and, consequently, for the making of the West Bank landscape. Finally, the fourth part ("The New Settlers: Unsettling Tree Legibility") introduces a new set of actors

[3] I have coined the term *treescape* to indicate a physical and representational landscape of trees, and the term *treefurcation* to indicate the project of bifurcation when conducted through trees.

[4] One possible exception is Cohen's work (1993), which differs from mine in several significant aspects. For example, Cohen's work focuses on the physical rather than the symbolic dimensions of tree planting and uprooting, is mostly confined to the Jerusalem area, and relies on archival rather than ethnographic methods. Long conducted another interesting study in this context (2005), yet it does not explicitly address the role of the law in the construction of landscape and consciously avoids discussing the Palestinian connection to the olive.

who have recently joined the negotiations over the meaning of Article 78 in the West Bank: the New Settlers.

Ultimately, I argue that the sociolegal power dynamics between the various actors are not only something that can be read from the landscape but, crucially, that these sociolegal power dynamics are also something that the physical landscape serves to mask and conceal behind a seemingly natural façade. This, I claim, is especially the case with national agendas, which strongly rely on things such as land, trees, and other physical embodiments for their effective application in the world (Malkki 1992). The negotiations of national agendas are particularly intriguing in the context of the occupied West Bank, which, at least according to most international law interpretations, is not considered part of any national entity. Yet despite (and perhaps precisely because of) its depiction as an instance of no man's land (Navaro-Yashin 2003), this place is important for at least two imaginary national communities (Anderson 1991).

Finally, while this article draws on the insights of James Scott's project *Seeing Like a State* (1998), it assigns the state much weaker and more fragmented executive powers in administering its vision. Instead, it recognizes the power of various actors to make the project of seeing into something that is constantly negotiated and ever-changing (also see Coronil 2001).

## Methodology

This article is a work of legal ethnography. The definition of ethnography in general is highly controversial within anthropological circles and has been undergoing major changes in the last several decades (see, e.g., Gupta & Ferguson 1997; Fox 1991; Clifford & Marcus 1986; Riles 2006). In addition, not much has been written about the definition of legal ethnography (Darian-Smith 2004; Merry 2000; Moore 2001; Riles 1994). This concept therefore remains to be molded by further use in empirical research. Nonetheless, the definition of my work as a legal ethnography is based in its commitment to producing an understanding of legal structures and actors through thick and intimate descriptions that rely on personalized narratives (see also Ortner 1995). This article explores the governing power of trees and landscape, and it does so, among other ways, by recording the on-the-ground personalized experiences of the law by various officials and activists, abstracting from these narrations so as to better grasp the power struggles that occur in this particular context. Indeed, according to Darian-Smith, ethnography lets us "approach law's rule from the perspective of the subject who finds herself already in

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

the practice, rather than from the perspective of rules operating on a collection of individuals" (Darian-Smith 2004:556).

This article mostly relies on 30 semi-structured interviews and a half dozen participatory observations conducted during my fieldwork visit to Israel and the occupied West Bank from July through September 2006. Most of the interviews were conducted with Israeli military and state officials and human rights activists, as well as with Israeli and Palestinian planners, lawyers, and farmers. The interviews record the interviewees' personalized experiences of the law and their on-the-ground accounts of how law in the books is negotiated in action. At the start of this fieldwork visit I identified an initial group of interviewees that could provide me with some understanding of the role of trees in this geolegal context (a purposeful sample). This method was followed by a snowball sampling, whereby I identified a wide range of interviewees that could provide diverse angles on this topic (also known as the chain referral method). As one might suspect, the task of obtaining permission to interview military officials as well as state officials who work within the Israeli civil administration of the West Bank was not at all easy. My past experience as a legal practitioner in Israel as well as my specific identity as an Israeli Jew who speaks fluent Hebrew assisted me in gaining access to certain military officials and in obtaining official documents.

This brings a related point to mind: "insider" ethnography, one that is based on one's experience growing up in the "field," most clearly challenges the unspoken assumptions about what makes a site a "field" in anthropology (Gupta & Ferguson 1997:31). Abu-Lughod (1991), for example, somewhat cynically defines herself as a "halfie": an anthropologist who studies her own non-Western community. She also goes on to suggest that halfies are still more recognizable as anthropologists than Americans who study Americans (see, e.g., Ortner 1995; Lutz 2001; Amenta 2007). Whether I am also a "halfie" depends on Israel/Palestine's label as a Western or a non-Western society. One thing is clear: the previously unquestioned reliance on distinct fieldwork is now questioned in a way that attempts to take into account one's experience and background, considering this experience to be an extended participant observation of sorts (Gupta & Ferguson 1997:32).

By and large, the interviews ranged from two to eight hours long; some were also supplemented by participatory observations. The interviews and participatory observations were all recorded, annotated, and fully transcribed. When conducted in Hebrew (my first language), I translated both the interviews and the Hebrew documents into English; when conducted in Arabic, I used a translator. Various legal texts that pertain to trees provided another source of information about the administration of trees in

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

this context. Accordingly, I traced and utilized various Ottoman, British, Jordanian, and Israeli statutes and case law as well as documents issued by the government and by various organizations and newspaper articles.

Finally, a word about my decision to use real rather than fictitious names of interviewees. Surprisingly, not much has been written on this controversial issue. A strong case for using names in ethnographic writing is made by Duneier (1999). Although pseudonyms supposedly protect the privacy of interviewees (see, e.g., Amenta 2007:225), Duneier suggests that "[w]hen I have asked myself whom I am protecting by refusing to disclose the names, the answer has always been me" (Duneier 1999:348). Especially in the political context in which my study takes place, and taking into account that most of my interviewees are state and nongovernmental officials, I find that the use of real names rather than pseudonyms lends more credibility and accountability to my study. The interviewees have all explicitly provided their consent to this use.

## A Historical Background of Article 78's Application in the West Bank

### A Legal and Political Background

Article 78 of the 1858 Ottoman Land Code states that "every one who has possessed and cultivated [*Miri*] land for ten years without dispute acquires a right by prescription [. . .], and he shall be given a new title deed gratuitously."[5] This article is still in force in the West Bank. It is part of the legal property regime administered by Israel in its capacity as the occupying power after 1967. Indeed, in the midst of the 1967 war, the military commander in charge of the area issued a Proclamation on Law and Administration (see Shehadeh 1982), which declared that the existing legislation in the West Bank would remain in force unless incompatible with Israeli military orders. In effect, the law in the West Bank is an eclectic combination of Ottoman, British Mandatory, and Jordanian laws, as well as an overriding set of roughly 1,000 Israeli military orders, judicial case law, and administrative regulations (Shehadeh 1993).

The 1858 Ottoman Land Code established local land committees for the management of disputes over land ownership. Jorda-

[5] Miri is the bulk of nonurban land in the West Bank and one of five land categories established by the Ottoman Land Code (Shehadeh 1982; Zamir 1985). The original translation of the code by R.C. Tute uses the term *state land* instead of *miri land*. However, Shehadeh claims that the proper translation is Crown land in the British sense of the term (1982:90).

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

nian law, and mainly the 1964 Law of First Registration of Land (#6), assigned two committees for the administration of land registration in the West Bank: the Committee for the First Registration of Land, and the Land Appeal Committee. Initially, these two committees were composed of local judges, lawyers, and government officials. However, several Israeli military orders, and Military Order 1034 of 1982 in particular, altered the Jordanian law so that both committees are now officially run by Israeli institutions: the First Registration Committee by the Israeli civil administration, and the Land Appeal Committee by the Israeli military court system.[6] This article focuses only on the military Land Appeal Committee and on its implementation of Article 78 in particular.

Article 78's application in the West Bank since the start of the Israeli occupation is strongly tied with Israel's practices of seizing land, mostly for the purpose of settling it with a Jewish population. Initially, the definition of state land in the West Bank included land that was owned at the time of occupation by an enemy state or by any corporation thereof.[7] In addition, although not significant in sheer numbers, during their Mandate over Palestine (1917–1948) the British declared certain lands as forest reserves, thereby transforming them into state lands.[8] Similar practices occurred in other colonies (see for example Thirgood's 1987 depiction of Cyprus), and especially in India (Guha & Gadgil 1989). Later on, lands acquired for *public use*, as articulated in Article 1 of the 1967 Military Order on Governmental Property (Number 59), were also defined by Israeli military orders as state land. However, this mechanism of confiscating land for public use has rarely been used by Israel due to the cumbersome procedure it entails.

As a result, Israel sought other, more effective, mechanisms that would enable it to legally seize land. During most of the 1970s, the requisition of lands for *military use* served this purpose. Although Article 46 of the 1907 Hague Regulations prohibits an occupying force from confiscating the private property of an occupied population, Article 52 states an exception to this rule for temporary military needs. Based on this exception, between 1968 and 1979, Israel captured a vast amount of private Palestinian property for what was then defined as military purposes. In a

[6] The Israeli military authority managed the various affairs of the occupied Palestinian population until 1981, when a civil administration was established as part of the military authority to manage local civil matters such as health and education.

[7] The term *day of occupation* was amended in a 1982 military order (Number 1091) to include any enemy property.

[8] However, the British Mandatory government scarcely made use of this power: of a total of 26 million *dunams*, they declared only 850,000 dunams (some 215,000 hectares) as forest land. The declared areas were divided into 430 forest reserves.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

landmark decision on this matter,[9] the Israeli High Court of Justice (HCJ) rejected a petition submitted by several Palestinian landowners against the military requisition of their land for building the Jewish settlements of Beit El and Beqa'ot. In this case, the HCJ accepted the state's argument that the military requisition was temporary and that it indeed intended to meet security needs.

Approximately six months after its ruling in the Beit El case, the HCJ issued its decision on the matter of Elon Moreh.[10] Basing his decision on the observation that "both the Ministerial Committee and most of the government were decisively influenced by the Zionist philosophy of settling all of the Land of Israel," Justice Yitzhak Landau saw himself compelled to reject the state's claim that the lands were acquired for military needs. Following this decision, Menachem Begin, then Israel's prime minister, announced an end to the practice of military requisitions for establishing Jewish civil settlements in the occupied Palestinian territories (OPT).

The Elon Moreh decision prompted the Israeli administration to come up with an alternative legal mechanism for acquiring land in the OPT. Such a mechanism was soon devised by Plia Albek, director of the civil division in the State Attorney's Office between 1969 and 1992. Based on Albek's legal construction, instead of using Article 78 to encourage and strengthen individual cultivation, as was the original intention of the Ottoman legislature and the actual practice of subsequent governments, the Israeli military authority interpreted and continues to interpret this norm so as to declare all *non*-cultivated lands as state land. The brilliancy of this declaration is twofold: first, it flips Article 78 on its head by focusing on the *absence* rather than on the *presence* of cultivation. Second, it works around the international law principle that prohibits an occupier from making irreversible changes to existing property rights. Based on this tactic, between 1979 and 1993, Israel declared more than 40 percent of the land in the West Bank (roughly 400,000 acres) as state land.[11] In the years since the 1993 Oslo Accords Israel has gradually decreased its use of Article 78, shifting the focus to securing control over lands that have already been declared as state land. The registration of state land as such is administered by the Land Appeal Committee.

[9] HCJ 606, 610/78, *Suleiman Tawfiq Ayyub et al v. Minister of Defense et al*, Piskei Din 33 (2) 113, 120–122 (1978) (hereafter: Beit El).

[10] HCJ 390/79, *'Azat Mahmad Mustafa Dweikat et al v. State of Israel et al*, Piskei Din 34(1) 1, 29 (1979) (hereafter: Elon Moreh).

[11] Based on interviews with Nir Shalevof B'Tselem, Alon Cohen-Lifshitz of Bimkom - Planners for Human Rights, and Dror Etkes of Peace Now.

Albek's innovative legal mechanism has no explicit statutory basis, neither in Israel's military regulations, nor in international practices (Zamir 1985:32) and it has been applied by Israel only in the occupied territories. When making this declaration, a military commander must operate according to the administrative procedure established by Israel's attorney general. The operation of the Land Appeal Committee is currently defined by the 1967 Order of Appeal Committees (Number 172). If no appeals are submitted to the Land Appeal Committee within 45 days of this declaration, the commander may take possession of the land and register it as state land. The mechanism of state declaration of land applies only with regard to miri land, which is not registered as privately owned,[12] and which has remained uncultivated for 10 years or more. The assertion of cultivation for at least 10 years has become a central contestation site for Israel's state declarations of land and as such is the main focus of this article.

## A (Post)Colonial Reading of Article 78

Apparently, the original purpose of Article 78 was to encourage agriculture in those areas that were distant from the direct control of the Ottoman Empire, mostly for the purpose of eliciting taxes (Shafir 1989; Sluglett & Farouk-Sluglett 1996:226). Conversely, Israel's relationship to agriculture in the West Bank has been a complex combination of encouragement and prevention. In general, early Zionist discourses expressed much appreciation, if not admiration, toward agricultural labor. However, this appreciation had as its main focus the transformation of the uprooted cosmopolitan Jew into a rooted pioneer and, as such, was largely confined to Jewish labor. The stakes changed when, in light of the Elon Moreh decision mentioned earlier, Israel realized that the most effective technique for seizing land was the negative application of Article 78, namely, its application for the purpose of declaring state land rather than for its explicit purpose of recognizing cultivation entitlement. Contrary to the situation in Israel, where the state has made all efforts to erode Article 78's application altogether (Kedar 1998, 2001), in the West Bank Israel has in fact been interested in keeping this norm intact, if only for the purpose of legitimizing its pursuit of capturing land.

But the project of maintaining Article 78's viability also comes with a price: in order to legitimize its wide application, it was

[12] When occupying the West Bank in 1967, the Israeli military authority froze all registration procedures, leaving more than two-thirds of the land unregistered and thereby open to dispute.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

necessary for Israel to recognize ownership also when claimed by Palestinian cultivators. Consequently, in its application of Article 78 in the West Bank Israel has been walking a fine line between restricting the application of Article 78 for the purpose of Palestinian cultivation, on the one hand, and acknowledging its powers for the purpose of declaring state land, on the other hand. Accordingly, the Land Appeal Committee has been strictly adhering to the development-through-cultivation model designed in the Ottoman period, refusing to broaden the definition of development to include other forms of improvement such as industry or even forestry. Put differently, while the apparent rationale for Article 78's application by the Ottomans was based in the liberal Lockean idea of recognizing improved nature as the property of the improver (Locke [1690] 2003; see also Cronon 2003:79), Article 78 has been utilized by Israel to *restrict* Israel's recognition of the possible scope of improvement by confining the terms of the article to agriculture. At the same time, what Israel considers as real improvement in the West Bank has been taking place through noncultivation, which then enables other forms of improvement, such as Jewish settlement.

A comparison to Locke's attitude toward the American Indians in the seventeenth century is almost inevitable in this context. According to Locke, "several nations of the Americans are of this, who are rich in land, and poor in all the comforts of life; [. . .] and a king of a large and fruitful territory there feeds, lodges, and is clad worse than a day labourer in England" ([1690] 2003:118). The twist in this context is that cultivation, which represents Locke's highest form of improvement in the state of nature, has come to both reinforce and conceal the opposite of improvement in the context of Israel's military administration of the West Bank. It serves to confine Palestinians to limited agricultural practices, while defining them, as Locke defined the American Indians, as being part of nature rather than active transformers of this nature.

Article 78 also resonates with the Zionist stereotype of the Palestinian. This point is vividly articulated by advocate Michael Sfard, who represents Palestinians in legal disputes with various Israeli agencies. According to Sfard,

> Essentially, Israel [. . .] portrays the Palestinian as only capable of a primitive and archaic use [of land]: agricultural use. This image doesn't take into account that Zionism also started with the myth of cultivating land [. . .]. But now they see the Palestinians [. . .] as something a bit wild [*prai*]. The idea that Palestinians can use [their] land for recreational purposes, for a picnic, for a housing development, or even as open space—is totally alien to the Israeli perception of the Palestinian.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

In other words, the reinforcement of Palestinian traditional identity goes hand-in-hand with the production of a juxtaposed Jewish identity that is modern and highly technological. Sfard notes that

> We [Jews], on the other hand, know how to make use of land. We know how to dig very deep and construct a parking lot; we know how to build very high and create a mall; and we know how to do so many things with land. But them? They don't need all these things.

According to this understanding, both modernist practices and customary norms are state ordained and state enforced. This fits into what some postcolonial scholars have identified as a central feature of the colonial state: its bifurcation into two forms of power that function under a single hegemonic authority, whereby "[u]rban power [speaks] the language of civil society, rural power of community and culture" (Mamdani 1996:18). This interpretation lends a colonial edge to Israel's acknowledgment of Palestinian cultivation, which serves to keep the division between the modern and the traditional intact.

Finally, Sfard stresses that the legal recognition of Palestinian land use only when it can be identified as a specific form of agriculture devalues various other, more polycultural, local forms of cultivation. In particular, coupled with the extreme conditions in the occupied West Bank, this legal reduction of cultivation might explain why Palestinians have mostly resorted to thin monocultural cultivation of olive trees, especially as a specific response to Israel's largely monocultural use of pines. This intensified form of monocultural treescaping is a central feature of modern scientific agriculture (Scott 1998:262–306).

Having illustrated the legal, political, and (semi)colonial (Shafir 1989) circumstances of Article 78's revival by Israel almost a century after its original inception by the Ottomans, I now proceed to the second part of the article: the exploration of *how* and *why* trees have become such a valuable instrument in the war over land in the West Bank, and *which* technologies of seeing have contributed to this central role.

## Why Trees?—A Matter of Legibility

> We have entered the game phase, and without the scheme of Article 78 we wouldn't have the tools with which to play this game. Instead of saying up front "*This is our land not yours*," we [Jews] prefer to beautify the conflict and stress over the minute details of whether this is private or state property. While at the same time, we know very well that the conflict is much deeper

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

> than a piece of tree: the tree is just a convenient cover story to work with. Sadly, everybody plays the game. *Is the land cultivated, or uncultivated?*—this has become the central concern for all the players in this game. (interview, Chief Inspector David Kishik)[13]

The interviewees in this study have all highlighted the centrality of the tree in the struggle over land in the West Bank. "The struggle over land is fought mainly through the tree," says one informant; "The tree is a double-edged sword in the fight over land in the occupied territories," says another; and "the olive tree is the best technique for acquiring ownership," says a third. Rather than seeing tree wars as a bizarre fetish on the part of the people that reside in this region, this section explores the institutional and techno-scientific grounds that these tree wars are founded upon. When asking why trees perform such a pivotal role in this specific struggle over land, it is important to engage with both the tree's physical and symbolic attributes and with the specificities of the legal practices that are negotiated alongside Article 78's application.

Although it makes no explicit mention of trees, in practice, Article 78 sets a clear preference toward cultivation by trees rather than any other form of cultivation. The key factor in making the tree into such an efficient technology of cultivation in this specific context is its robust legibility. The following sections unpack the concept of legibility, considering what in the tree's materiality makes it into such a favorite artifact in the eyes of the state.

## A Legibility of Physical Presence

Many of the interviewees point to the robust and easily achieved presence of the tree in the landscape as a possible explanation for its centrality in the war over land in the West Bank. Alon Cohen-Lifshitz from Bimkom - Planners for Human Rights says, for example, that "the tree just stands out. It has a presence. [. . .] Trees have dozens and sometimes hundreds of years behind them, and any damage made to them is easily apparent." Moreover, the interviewees stress that trees, and especially olives, require less maintenance than other forms of cultivation, such as seasonal farming. "The use of trees is the easiest thing in the world," explains Marko Ben-Shabbat, Deputy Chief Inspector of Israel's civil administration of the West Bank, "You just throw them there and [then you] hardly need to do anything." "This is because trees live for a long time," adds Chief Inspector David Kishik, "The olive, for example, can live up to 1,000 years without requiring much care."

[13] The interviews were conducted orally. When an interviewee highlighted or emphasized certain words or ideas, I reflected this by using italics. In this sense it is in the original rather than my added emphasis.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

Interrelated with the tree's strong presence, durability, longevity, and easy maintenance is also the tree's spatial immutability. The head justice of the Land Appeal Committee explains that "trees make for easy cases. The harder cases are those that involve terraces or other markers of cultivation history." Similarly, Chief Inspector Kishik explains that "when you plant a tree there is no such thing as taking your hands off the territory. A farmer might not have seeds to plant one year or, for some reason, he cannot reach his land that year, but trees prevent such problems from happening in the first place." The relatively uninterrupted presence of the tree in the land, which is merely one of its many physical traits, is infused with significance in this specific legal constellation. It is the combination of the tree's physicality and the legal meaning attributed to this physicality that makes the distinction between nonseasonal trees and seasonal vegetation meaningful in this context, in turn setting this distinction as grounds for a series of sociolegal consequences.

But what the law identifies as the tree's meaningful physical traits expands beyond its detectable and immutable physical presence on the ground. Other physical traits also feature in the drama that frequently revolves around the tree's rooting, and even more so, around the spectacle that is performed with regard to the tree's uprooting.

## The Rooting/Uprooting Spectacle

The act of tree rooting is performed in the West Bank by both Israelis and Palestinians. Doron Nir-Tsvi, an advocate and a Jewish settler, remarks in an interview that "we get pine tree saplings from the JNF and from the Jewish agency every Tu Bishvat [Jewish Arbor Day], and we plant those on state land to prevent their seizure by aliens. [. . .] These pines cost nothing, and after 10 years there is an entire forest there." Nir-Tsvi's comments demonstrate that the pine planting project is a joint effort between the State of Israel, the JNF (mostly through its subsidiary company Hemnutha; see Lehn 1988), and the Jewish settlers for afforesting state land so as to protect it from non-Jewish invasions.

The choice of the pine as the Jewish tree is significant. Since the Ottoman Land Code acknowledges cultivation by fruit trees as the only form of tree cultivation, the pines, which are defined as forest rather than fruit trees, are excluded from the scope of Article 78. As a result, pine planting is considered a form of *noncultivation*. This legal definition not only reflects and constitutes cultural *ideas* of cultivation, but it also affects the tree choices made by the polarized parties of the Israeli/Palestinian conflict, shaping the landscape accordingly. The pines, it so happens, are indicators of (Jewish Israeli) state control

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

over territory, while fruit trees, and especially olive groves, signify a local (Palestinian) and agrarian presence.

At the same time, Palestinian residents of the OPT also perform extensive tree planting projects by planting olive trees. Indeed, several state officials interviewed as part of this study complain about the political manipulation of trees by the Palestinians. For example, Chief Inspector Kishik describes how, immediately following the Oslo Accords in 1993, "Tens of thousands of [Palestinian] trees invaded state land . . . . It's not like the Arabs have a 'tree commando,'" Kishik clarifies, "but [Arab] farmers are definitely encouraged to plant, and are even paid to do so by the Palestinian Authority." Moreover, Deputy Chief Inspector Ben-Shabbat perceives olive planting as a statement of Palestinian resistance to Israel's declarations of state land: "We notify our intention to declare a certain land as state land, and, sure enough, they soon start planting this area with new trees." Instead of assigning the invasiveness to Palestinians, it is assigned to the natural flora. This type of projection serves to totemically displace through naturalization the perceived threat to Israel's national existence and legitimize the emergence of new forms of postcolonial discrimination (Comaroff & Comaroff 2001).

Both inspectors refer to Palestinian tree "invasions" as an effective tactic, explaining their efficiency in that "we don't have one eye in the front and one eye [in] the back." Indeed, the inspectors portray themselves as the eyes of the state. As such, they execute a detailed visual survey of the West Bank for the purpose of detecting Palestinian tree invasions. The inspectors' focus on invasive trees provides them with the narrowed vision necessary for attaining a heightened level of centralized control (Scott 1998:11). Chief Inspector Kishik, head of the inspection unit of the Israeli civil administration for more than 27 years, supervises 14 inspectors. Within their specific jurisdictions, each of these inspectors is expected to detect any new tree that has invaded either present or future state land.

However, the inspectors serve not only as the eyes of the state but also as the state's hands. Following the detection of an invading tree and the inspection of the tree's age, the state inspectors proceed to the uprooting project. By distinguishing new trees from trees that are more than 10 years old, the inspectors can then assert which tree may be legally uprooted. Indeed, the simple presence of a new Palestinian tree on state land is defined by the Israeli civil administration as an instance of illegal trespassing, in turn legitimizing the brutality of tree uprooting by the state. At the same time, Chief Inspector Kishik stresses that tree uprooting is not a casual act but rather one that necessitates a stringent procedure: "It might be easier for the inspector to just uproot the tree as soon

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

as he discovers it, and this way to bypass all those tedious legal procedures, but we [. . .] prefer to act generously towards [Palestinian] citizens so that Abu Mazen [Mahmoud Abbas, Palestinian prime minister since 2004] doesn't start with his yelling."

## "The Tree Is the Enemy Soldier": A Narrative of Patriotic Inspection

Tree uprooting is perceived by the inspectors as a patriotic act designed to protect national lands. The ideology that makes the uprooting of trees into a national apparatus is clearly articulated by Chief Inspector Kishik. It is worthwhile to mention in this context that Chief Inspector Kishik is also an Orthodox Jew and a settler. When I ask him how his uprooting job fits with the biblical prohibition on uprooting fruit trees, even if those are enemy trees in a time of war, Chief Inspector Kishik replies,

> [T]he tree is the *source* of the problem. It's not just an incidental thing like [it is] in the Bible. Here, the tree is not only a symbol of the Arab's occupation of the land, but it is also the central means through which they carry out this occupation. [. . .] It's not like the tree is the enemy's property, in which case the Bible tells you not to uproot it because it has nothing to do with the fight. Here it has everything to do with it. The tree *is* the enemy soldier.

The tree is not a representation of the enemy but rather its totemic displacement, namely the enemy itself. Indeed, a totem is an animal/plant "which stands in a peculiar relationship to the whole clan" (Freud [1950] 1989:5, 129), thereby displacing real blood relationships with social and symbolic totem kinship (DiCenso 1996: 559). In this case, olives and pines are transformed to signify and even amplify powerful social structures and national affiliations. Hence, Chief Inspector Kishik believes that one is morally allowed, and even obliged, to uproot the Palestinian tree despite the biblical prohibition. What the state sees, therefore, through the eyes of its inspectors, is not a tree that is less than 10 years old but rather a cunning enemy soldier that threatens its existence as such and must therefore be eliminated from the landscape.

Yet it remains unclear from this citation what makes certain trees into "enemy soldiers." Is the decisive factor the national identity of the people who planted these trees? Or perhaps the trees' location on state land? Or their classification as fruit rather than forest trees? According to Israel's official interpretation of Article 78, it is only the age of the tree that matters when deciding whether or not the tree may legally be uprooted from nonprivate miri lands: namely, only trees that are less than 10 years old are legally susceptible to uprooting. As already mentioned, it is in the inspectors' authority to read the age of the tree; they perform this

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

reading based on their experiential knowledge of the tree's physical appearance.

However, this sort of naked eye tree reading by the inspectors has become a site of Palestinian resistance. Eyal Zamir, the former legal advisor on land issues for Israel's civil administration, describes Article 78's manipulation by local Palestinian residents, who trespass on state land by planting trees that are more than 10 years old. In his words:

> They think that the bigger the trees they plant the better, so that they can pretend they've been there long enough. But if there were really trees on their land it wouldn't be declared as state land in the first place.

In Zamir's narrative, the presence of (fruit) trees indicates local control over land, thereby preventing its declaration as state land, while the absence of such trees is an indicator of state control over land. However, the ease with which one can read ownership through determining the age of trees has been confused by Palestinian acts of planting "bigger" (namely, older) trees. Similarly, another former state official describes: "We caught them bringing big trees and planting them in large barrels and then claiming that they are the owners of the land." Apparently, Palestinian farmers take advantage of the occupier's law (Article 78) and, in particular, of the formal requirement of cultivation defined by this law, as a means to subvert the narrative of improvement articulated by the same law. In this new constellation, the mere presence of old-looking trees no longer provides a clear demarcation between local and state control but rather becomes a text that is open to various readings. This, in turn, serves to undermine what has previously been considered an accurate reading of the tree's age based on the naked eye observations of the inspectors. In order to counter this counterhegemonic act and to prevent such "misreadings" of the tree's age, the Israeli military authority has introduced the technology of aerial photos into the interpretation of cultivation within the framework of Article 78.

## Re-Reading the Landscape Through Aerial Photos

### The Aerial Photo as a Technology of Legal Visualization

The admittance of aerial photos as secondary evidence has become a standard procedure in the application of Article 78 by the Israeli Land Appeal Committee in the occupied West Bank. In particular, the use of aerial photos in this context serves to establish the duration and percentage of cultivation. In weighing the value of various forms of evidence, the Land Appeal Committee has

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

often cited from the Israeli supreme court decision that "the way of aerial photos is not to lie,"[14] thereby asserting that aerial photos provide objective proof. This approach is hardly surprising. Similar to other photographic images, aerial photos are also perceived as an exact reflection of things rather than their mere representation. Indeed, visual imagery has always been considered more direct than words, and "mechanical images that could be touted as nature's self portrait were perceived as yet more immediate" (Daston & Galison 1992:120). This particular nature of aerial photos lends them the force of being categorized by the law as objective facts rather than subjective interpretations, thereby constituting a "regime of truth" (Foucault 1980:133). The strong tendency that legal actors share toward mechanisms of sensual visualization also makes the law into an aesthetic experience (Darian-Smith 2004; see also Leach 2002; Jasanoff 1998).

Malka Offri of the Survey of Israel: Agency for Geodesy, Cadastre, Mapping and Geographic Information is the only expert on aerial photos who testifies on behalf of the State of Israel in Israeli courts and in the Land Appeal Committee in the West Bank. Eventually, Offri is expected to produce a credible reply to the central question posed by Article 78: has the land been cultivated for a period of at least 10 years? However, even in those instances where she finds that the land was indeed cultivated, Offri can still determine that this cultivation does not reach a 50 percent threshold, defined by Israeli case law as establishing cultivation for the purpose of Article 78.[15] Offri's reply is submitted to the Land Appeal Committee in the form of a report, which also includes a reproduction of the relevant aerial photo. In her report, Offri presents "a very accurate definition of cultivation, non-cultivation, and partial cultivation" (interview, Offri). Both her functional rhetoric and the appearance of accuracy are frequent features of scientific reporting and serve to reinforce Offri's positioning as a virtual witness whose function resembles the eyeglasses of a telescope (Shapin & Schaffer 1985:66; Hilgartner 2000:17).

The reproduced aerial photo attached to Offri's written report (Figure 3) is yet another technique for enhancing the report's credibility. But while the Land Appeal Committee perceives aerial photos as photographic mirror of reality, they are in fact the end-product of a dense process of human interpretation, which includes the working of at least three machines (zoom-transfer-

[14] Criminal Appeal 149/81, *Ahmad Yussef Alian Sallah vs. the State of Israel*, Padi 38(3): 374 (1981). In this case, the court preferred aerial photos over witness testimony.

[15] Civil Appeal 148/62, *the State of Israel v. Said Salah*, Padi 16:1446 (1962); Civil Appeal 479/62, *the State of Israel v. Salah Kir*, Padi 17, 631 (1962); and Civil Appeal 567/83, *Rashid Said Abass v. the State of Israel*, Padi 41(3): 741 (1962).

**Figure 3: A reproduced aerial photo, demonstrating the boundaries of parcels, their various colors, and single trees (e.g., in the lower right corner) (black & white photocopy of colored photo); (Courtesy of Survey of Israel: Agency for Geodesy, Cadastre, Mapping and Geographic Information)**

scope, double-photo, and stereoscope). The committee never gets to see the "original" aerial photo and is only exposed to it through translation by its official spokesperson (Callon 1986), Malka Offri.

Offri explains that toward the end of the reproduction process, "I mark the photo with fixed colors and simple signs." When asked about her knowledge of the legal situation, and about what she knows about Article 78 in particular, Offri insists on presenting herself as a clueless layperson. In her words,

> Article 78? I am not sure what you're talking about, what does it say? [. . .] I just do what they tell me, and the lawyer makes the arguments. [. . .] Sometimes it's good for one side, sometimes for the other. I'm not supposed to know anything. And really [. . .] I have no idea who's fighting against who.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

Yet along with her insistence on the accuracy and impartiality of her work, Offri eventually admits the more subjective grounds of her expertise: "Look, the only way that I know if something is cultivation or not is just from experience, based on my previous work. It's not like you can actually study [how to determine] if an area is cultivated or not." Furthermore, when asked how she forms her decision in those ambiguous cases that do not fall under the clear-cut colors depicted by the legend of the aerial photo, Offri replies that

> [W]hen I see a terrain that exhibits signs of cultivation I immediately think how hard it must have been to cultivate this place, to plough it and to clear it from all these rocks. And as a result, I tend to interpret the situation *in favor of the cultivator*. I think that this is more just.

Evidently, even from the standpoint of the expert herself, the technology of aerial photos involves a certain degree of subjectivity, a political bias. Ironically, Israel's practices of restricting Palestinian cultivation are subverted by the same state-appointed expert who is exclusively in charge of seeing for the state. At the same time, the rhetoric conveyed through the formal narratives displayed in and by the Land Appeal Committee disregards the fragility of the aerial photo as a form of evidence, suggesting that the use of aerial photos in fact promotes a regime of truth.

## Contesting the Legibility of Aerial Photos

As was the case with the inspectors' reading of the tree's age using their naked eyes, the reading of the landscape by the mechanical gaze of the aerial photo has also become a point of contestation. Several interviewees express their discontent with the Land Appeal Committee's use of aerial photos. For example, Palestinian advocate Suliman Shahin identifies two distinct problems with the courts' extensive reliance on aerial photos. First, he argues that the high costs involved make aerial photos inaccessible to most Palestinian farmers, thereby reinforcing their basic discrimination (see also Kedar 1998). More important, Shahin critiques the limited perspective encouraged by the frequent use that the Land Appeal Committee makes of aerial photos. In particular, he claims that by restricting the discussion to the single question of whether or not the land has been cultivated for a legally defined period of time, the aerial photos enable the Land Appeal Committee to ignore the conditions that have prevented Palestinians from cultivating their lands in the first place: occupation, closures, settler harassment, and so on. In addition, aerial photos privilege specific landscapes over others, thereby promoting certain ideological

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

agendas. Their absolute favorite landscape, as the next section clearly depicts, is the treescape.

### Aerial Photos and Trees: Mapping "Existing Things"

On the immediate physical level, climatic conditions limit the use of aerial photography to certain seasons of the year, namely fall and spring. This affects the capacity of the aerial photo to document a year-round cultivation cycle. The technical blindness of aerial photos to certain seasonal vegetation leads the discussion back to trees. Indeed, mostly because of the tree's unambiguous and continuous physical presence through the seasons, the technology of aerial photography strongly favors trees. In this sense, the status of the aerial photo as admissible evidence to the Land Appeal Committee results in that it has the power not only to *read* the landscape but also to *make* it. In other words, the legal monopoly that aerial photos have over the practice of reading the landscape affects landscaping choices, and especially the choices of planting and uprooting *trees* rather than any other form of cultivation or land use that is less recognizable by the aerial photo.

Specifically, Offri, the state's expert on aerial photos, regards trees as strategic reference points or, in her words, as "anchors in the landscape." Offri explains, for example, that

> *There's no detail in the area that escapes our eyes*. Every detail in the territory gets a code [. . .]. That doesn't include humans. [. . .] You can't really map people. Trees, on the other hand, don't move. People move, but things stay in place . . . . Sometimes I spot goats in the aerial photo. It's amazing to see them there. Of course, I don't mark them into the map, because they move. *[I only map] existing things*.

Because trees "exist" in an immobile, nonseasonal way, they are the most readable objects in the nonbuilt terrain, thereby serving as the central reference point for the aerial photo interpreter. In this sense, the relationship between trees and aerial photos also speaks to the correlation between visibility and fixity. But then again, the ability of the state to read time and to interpret space through the use of aerial photography is contested by the same features that are also so intrinsic to the application of this technology: a disregard for things that "do not exist"; namely, human behavior. Hence, even if the aerial photo technology was capable of perfectly determining the age of a tree for the purpose of establishing a clear legal category of cultivation according to Article 78, its reading would still not determine the identity of the person who planted the tree and of the person who cultivated it through the years. These blind spots have become more apparent as a result of the recent introduction of new actors into the West Bank scene: the New Settlers.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

## The New Settlers: Unsettling Tree Legibility

The 1990s saw a gradual decline in state declarations of land and a parallel rise in the transfer of lands into Jewish hands through private purchases, conducted mainly by Jewish straw-companies.[16] Simultaneously, a new practice of acquiring land has emerged in the West Bank: cultivation by individual Jewish settlers. This new practice relies on the same legal mechanism exercised previously by Israel: Article 78 of the 1858 Ottoman Land Code. But while its application by the Israeli military authority was mostly used to declare uncultivated lands as state land, thereby focusing on a "half-empty-glass" interpretation of Article 78, the New Settlers utilize Article 78 to positively assert their individual possession of the land in question. By doing so, the New Settlers also contest the traditional tree affiliations previously assumed by the conflicting people in this region, thereby opening up another front in the tree "lawfare" conducted in the West Bank. This section traces the changes brought about by the New Settlers, illustrating how these changes have in turn affected the practices of the various actants discussed up to this point: the Israeli military officials, the Palestinian farmers, and the trees.

### Parallel Cultivation

"I claim that I cultivated the land for 10 years and you claim exactly the same. So how can the law make a credible decision between us?" This question, posed by the Palestinian advocate Shahin, highlights the basic assumption that rests at the core of Article 78's interpretation: the exclusivity of cultivation. Indeed, Shahin further clarifies that: "in fact, it might even be that both cultivated the land at the same time. *And what is the definition of cultivation anyway?* If one comes once a year and does some works on the land, does that mean that this person is entitled to own this land?" Put differently, Shahin rhetorically wonders about the degree of improvement that suffices to establish ownership. John Locke—the initiator of the idea that labored nature establishes ownership—avoided the question of degree by assuming an abundance of land in the state of nature, so that "in effect, there was never the less left for others because of his enclosure for himself" ([1690] 2003:114). In addition, Locke made it clear that a later improver "ought not to meddle with what was already improved

[16] Although the system of purchase seems to place the Palestinians in a better position than direct appropriation by military requisition, Banner's study in New Zealand shows how the legal regulations of the market eventually weakened the position of Maori land sellers and facilitated extensive land acquisitions by white settlers (Banner 2000; see also Merry 2004). A study of this sort remains to be conducted in the West Bank.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

by another's labor" ([1690] 2003:114). But when two parties claim to have "mixed" their labor with the same piece of land, how can law enforcers legitimately decide which of these claims to prefer?

The possibility of parallel cultivation poses interesting challenges to Article 78's interpretation: what constitutes an ownership claim—the act of cultivating through planting a tree, or that of maintaining this tree in the years that follow its planting? And how do contesting claims of cultivation—either dual cultivation of the same tree, parallel cultivation of different trees situated on the same parcel of land, or even acts of grazing a parcel of land that is simultaneously cultivated by another—affect the status of ownership over this specific parcel of land? These questions have become more acute since the recent introduction of the New Settlers into the West Bank landscape.

## The New Settlers: A New Treescaping Language?

Advocate Nir-Tsvi represents the Fund for the Redemption of Land, the most prominent Jewish land purchasing company in the West Bank. He is also a resident of a Jewish outpost in the West Bank. Nir-Tsvi describes the recent shifts within the settler movement. In his words,

> [I see] the people of the Outpost Movement as the New Pioneers. [. . .]. They want to go beyond the ghetto settlements of Judea and Samaria to create new spaces. Most of them are farmers. The outposts are an exodus from the fences into open spaces with a goal of cultivating the land. [. . .] We have understood a long while back that there cannot be any vacuum in land ownership in this place, so the only question is who will capture more lands.

The increase in tree cultivation in "Judea and Samaria" is, according to Nir-Tsvi, a liberating process, not only in the sense that it takes the New Settlers out of what he refers to as the "ghettos" into "open spaces," but also in the sense that it brings these settlers closer to the land. Indeed, since the 1990s this small group has been settling the terrain in small outposts situated on hilltops, using buildings and trees as proxy settlers to compensate for their demographic inferiority in the place.[17] This notion of settlement resonates with the ideal of the Jewish pioneer prevalent in early Zionist narratives, which also highlighted the urgency of settling the frontier (Troen 2000).

[17] There are 121 settlements in the West Bank and 102 outposts (half of the latter were built since 2001). Approximately 250,000 settlers (of which a few thousand reside in outposts) and 2.5 million Palestinians currently reside in the West Bank (http://www.peacenow.org.il, accessed on November 26, 2006).

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

Although the recent alienation of this group from mainstream Israeli society is not the focus of this article, it nonetheless has far-reaching effects on the dynamics of land control in the West Bank, and therefore also on the nature of the tree lawfare that takes place there. According to the official legal position of the Israeli military authority, as presented to me by several interviewees, Jewish settlers cannot acquire land by cultivating it. This position requires that cultivators demonstrate that they have acquired the land through a "legal source," namely either through purchasing the land from its uncontested owner or through its direct inheritance.

In one of the briefs he submitted to the Land Appeal Committee, Nir-Tsvi challenged this recent requirement, arguing that it contradicts the logic of Article 78. His claim, in short, is that if the land was purchased legally, the settlers would not need to bother with Article 78 and its 10-year cultivation requirement in the first place.

Israel's official position may indeed seem inconsistent, both with the general logic of adverse possession and with Israel's long-standing policy of appropriating lands in the West Bank, followed by their settlement by Jewish people. One possible explanation for Israel's new position is its desire to set itself apart from certain settlers, especially those who reside in what the state has currently defined as "unauthorized outposts."[18] More often than not, these settlers are no longer perceived as promoting Israel's "national security" interests in the West Bank but rather as presenting a national threat.

Nir-Tsvi, who defines himself as part of the New Settler collective, openly declares that he uses trees only as a device for acquiring land. In his words:

> I planted 500 fruit trees in my former outpost . . . . I don't bother selling the fruit. Anyone that wants them, can just go ahead and pick for themselves; anyone but the Arabs of course. [. . .] I definitely planted the trees only for the purpose of seizing land. *I'm a lawyer; I don't have time to be a farmer.*

This narrative, which portrays a *performance* of cultivation by the settlers for the sake of acquiring legal possession according to Article 78 rather than for agricultural purposes, serves to confirm the state's bifurcated perspective. According to this perspective, which I alluded to earlier, the Palestinians are considered an underdeveloped agrarian society, while the Jewish settlers are perceived as sophisticated modernists in that they use cultivation in more complex manners.

However, what the official state position did not (and perhaps could not) take into account is the large number of New Settlers who, unlike Nir-Tsvi, plant trees because they genuinely believe in

[18] See, e.g., the report at http://www.fmep.org/documents/sassonreport.html (accessed on May 21, 2007).

reconnecting to the Holy Land. Such a blurring of distinctions does not seem to correspond very well with Israel's (colonial) investment in maintaining a clear taxonomy between the modern and the traditional (Mamdani 1996) in the West Bank. Indeed, the transformation of the modernist Jew into a traditional cultivator has been a source of much confusion for Israeli officials and has required state lawyers to come up with legal devices to explain why the category of cultivation established by Article 78 cannot apply to Jewish settlers. Evidently, the only way that this colonial bifurcation can be kept intact is by mobilizing the settlers "downward" so as to reclassify them as either primitive farmers or as plain fanatics. Accordingly, the current official state position is that in order to establish cultivation, one must possess an "agricultural intent." This new interpretation of the legal norm not only focuses on the actus reus of the cultivators but also on their agricultural consciousness. This position was recently argued before the Land Appeal Committee by the Israeli military authority, which stated that "non-agricultural cultivation cannot be defined as cultivation for the purposes of Article 78 of the Ottoman Land Code."[19] A legal battle over this issue is currently being fought in the Land Appeal Committee between the Jewish settlers and the State of Israel.

Clearly, the New Settlers' recent interjection into the scene of Article 78's legal deployment in the West Bank has challenged Israel's assertions about what cultivation means and what it entails. The next two sections explore the additional challenges posed recently by the settlers. First by contesting the totemic affiliation between Palestinians and olive trees, then by challenging the affiliation between the Jewish state and pine trees, the New Settlers have been consistently undermining the juxtaposed landscape of olive/Palestinian versus pine/state so prevalent in the West Bank. Will these challenges frustrate the ability of governmental and nongovernmental actors to further read the West Bank landscape for the purpose of asserting control over land, thereby undermining their desire to make tree landscapes in the first place; or will the challenges provoke yet another modification of the tree language through which these power relations may be articulated?

## Challenging the Palestinian/Olive Affiliation

Dror Etkes, Peace Now's expert on Jewish settlements, explains that "it is not incidental at all that settlers plant olive trees. The struggle over land is conducted mainly through the olive tree: [it is about] who owns the olive tree" (see Figure 4). Indeed, in his interview, Nir-Tsvi (the lawyer/settler) mentions several olive tactics:

[19] Cited from the draft of the state's legal request to be admitted as a formal side in the legal proceedings pending before the Land Appeal Committee (in Article 16 of this draft).

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

**Figure 4: Damaged Palestinian olive groves near the village of Burin in the district of Nablus (Courtesy of "Yesh Din")**

> When I see an olive grove I can just decide to trespass. When I do, if the Arab that cultivated the olives until that point doesn't take me to court within 10 years, he is legally limited from doing so afterwards. [. . .] We uproot [their] trees because so long as Arab trees are on the land, it would be reasonably possible for them to question our possession of this land. [. . .] So there are places where olive groves that have been neglected [by the Arabs] were uprooted and then replanted by us.

Toward the end of his interview, Nir-Tsvi also describes a recent conflict over the olive trees—this time trees that were planted by settlers—that took place in the outpost where he resides:

> [M]y outpost [. . .] is built on state land. The area that lies between its current boundaries and the [nearby Arab] village was originally planted by seasonal vegetation, not by trees. It was important for us [to capture this specific land] because, topographically, the outpost doesn't have much territory to which it can expand. [So] this area soon became a conflict zone. We planted [olive] trees there twice already, and in both cases the Arabs uprooted them in the middle of the night. We intend to plant there for the third time very soon. The planting and replanting of this specific piece of land has been going on for several years now.

The project of promoting control over territory through physical occupancy is performed, Nir-Tsvi further explains, through creating a visible continuity between Jewish buildings and Jewish trees. The placement of artifacts as proxy Jewish settlers for the purpose of constructing a tangible and continuous linearity again illustrates the

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

**Figure 5: On the mountain ridge in the background—a continuous line between the trees and buildings of the Settlement Eli. Foreground—an Israeli flag over the "Haroe" outpost (August 2007, photo by author )**

importance of landscape in the power dynamics played out in the occupied West Bank. Accordingly, instead of reading the trees and buildings (for example, those portrayed in Figures 1 and 5) as simply trees and buildings, one should shift one's perception to reading them as statements and as practices of domination over the territory.

As a result of the settlers' use of olives as a tactic for seizing lands in the West Bank, the cultivation of olive trees has ceased to be an exclusive Palestinian practice. However, more than the physical threat to land, Palestinian advocate Shahin laments the loss of the olive's exclusivity as a symbolic representation of the Palestinian nation. In his words:

> By making [the olive] into an ethos also for the [Jewish] settlement, [t]he symbol of the olive is flipped on its head: because it has become a game that everybody participates in, the Palestinian's affiliation with the olive tree is now in danger. [. . .] *They even steal our symbol is what I want to say.*

Indeed, instead of the rivalry between pine and olive people, the national war now involves a much tighter contest between various nuances of olive treescaping.[20] In particular, the clear distinction between Palestinian acts of olive planting and Jewish acts of olive

[20] Indeed, the olive is increasingly utilized by the State of Israel and by Israeli artists as a universal symbol of peace and as a national icon of authenticity. For more about the genealogy of Jewish/Israeli olive symbology, see Braverman (2007:107–58).

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

uprooting has transformed into interchangeable acts of planting, uprooting, and replanting of olive trees. Indeed, as part of an initiative to help Palestinian farmers cultivate lands, the Israeli nongovernmental organization Rabbis for Human Rights (RHR) buys olive trees from Jewish Israeli nurseries so as to replace those olive trees uprooted by the Jewish settlers in the West Bank. According to RHR's policy, the new olive trees donated by the organization must be planted either exactly in the place of the uprooted olives or in a place that otherwise threatens the settlers' control over the specific land in question. Moreover, in a recent incident, RHR activists uprooted trees planted by settlers because they "stood in the way" of plowing the land in preparation for Palestinian cultivation. Rabbi Arik Ascherman, director of RHR, summarizes the situation as involving "these little back-and-forth struggles of chopping down trees, uprooting trees, replanting. [. . .] So while the Palestinians plant [olives], the settlers come and plant [more olives] on top of that, and then the Palestinians come and plant for a third time [. . .]. [Sometimes] they don't even bother to uproot; they just plant more and more." Rabbi Ascherman coins a phrase to describe these myriad tree performances: the West Bank *tree carnival*.

Notably, the war over the identity of the tree and over its national affiliation is still framed within a binary logic: the olive, along with the land on which it is planted, is understood to be the exclusive property of either one side of the conflict or the other. There appears to be no middle ground within this legal construction. And in those cases where a middle ground could arise, the official interpretation of the law reestablishes the binary distinctions so necessary for simplifying the visual practices of controlling the terrain.

## Challenging the State/Pine Affiliation

The previous section illustrates the challenges that the New Settlers pose to the exclusivity of the Palestinian affiliation with the olive tree. Simultaneously, the settlers also challenge Israel's exclusive affiliation with the pine tree. As mentioned earlier, the State of Israel has been planting pine trees in the West Bank as a form of noncultivation and to prevent individuals from activating Article 78 by cultivating present or future state land. This sort of planting has assumed its meaning through the "natural" classification of the pine as a forest tree, which corresponds with the categories of forest and fruit trees established by the 1858 Ottoman Land Code (again, the code restricts tree cultivation to fruit trees only). Recently, however, advocate Nir-Tsvi initiated a legal argument that defines pines as fruit rather than forest trees. In his words,

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

> [T]he farmers also have a legitimate interest in pine trees: first, because the goats eat the pines; and, even more importantly, because of the pine nuts. [As a result], we argued that you could define the pine as a fruit tree, especially since eating pine nuts has become such a popular practice nowadays.

Although the State of Israel strongly objected to such a late resurrection of Article 78, the Land Appeal Committee ended up accepting the settlers' argument. In a decision that was an utter surprise to all parties involved, including Nir-Tsvi himself, the Land Appeal Committee has declared that it is now willing to consider pines as fruit trees for the purpose of establishing cultivation according to Article 78 (interview, Nir-Tsvi).

In principle, Palestinian farmers could also benefit from this interpretive legal turn. While previously prohibited to argue for cultivation whenever pine trees were extensively present in the landscape, they now have a foot in the door, so to speak, for claiming cultivation over what may be considered as new terrains. In this constellation, the Palestinians could share a common legal interest with the settlers vis-à-vis the state. Nir-Tsvi illustrates this point, explaining that the only reason that this common ground has not occurred is that the Palestinians "are rigid: their idea is that they should always situate themselves against whatever it is that we are claiming."

Nir-Tsvi's idea about the Palestinian attitude toward their trees again illustrates the vested colonial interest in preserving the distinction between tradition and modernity. According to Nir-Tsvi, the Palestinian perceives trees as physical things and is unable to see them as representations of abstract and complex ideas. The Jewish settler, on the other hand, is portrayed by Nir-Tsvi as someone who is capable of using trees strategically to advance land claims.

## Epilogue: Treescaping the National Terrain—A Game That Matters?

> But no one wants to be uncivilized and say that this is a war over land. [. . .] If there wasn't Article 78 [we] would have found something else. [But] the trees look so naïve, as if they couldn't harm anyone. Just like children. But then, many years later, they turn into terrorists that actually kill people
>
> (interview, Chief Inspector Kishik).

The lawfare over trees in the occupied West Bank is framed by the two sides of the conflict as a war that kills. It is, essentially, a war over national territory. But as Chief Inspector Kishik makes abundantly clear, fighting this war through legal doctrines of tree cultivation and scientific technologies for visualizing trees makes this war seem more civilized; more legitimate; even more natural. This

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

article has explored the mutually constitutive relationship between law, scientific technology, and landscape. I have argued that one can figure out the power dynamics in the West Bank by simply reading the "natural" landscape of this place. I have also demonstrated the fluidity of this reading, which is mostly a product of the sophisticated negotiations over the legitimate interpretation of a specific legal norm: Article 78 of the 1858 Ottoman Land Code, and of the term *cultivation* in particular. Article 78 provides a microcosm through which to examine the fluctuating national debates that mold the identities and the physicalities of this place.

Israel's knowledge of the West Bank landscape, I have asserted, is produced to fit a bifurcated format. In particular, the bifurcation of treescapes (what I have termed *treefurcation*) provides the State of Israel with the managerial and normative means for governing the occupied population of the West Bank, as well as some unruly settlers, through the governance of trees. But the legibility of this treefurcation of the landscape has also become a site of contestation. What used to be a direct and immediate derivation—from seeing an olive tree to asserting Palestinian possession of a specific land, and from seeing a pine tree or the absence of trees to knowing state possession—is increasingly contested by the various actors that operate in the occupied West Bank, and, most recently, also by the New Settlers.

Although initially each actor just seems to be "doing their thing" independent of the others—whether planting, uprooting, pruning, or plowing—it quickly becomes evident that they are all speaking an amazingly coherent language: before declaring specific lands as state land, Israeli inspectors uproot the (olive) trees planted on it. At the same time, Palestinians plant (olive) trees to threaten Israel's state declarations of land; Israel plants (pine) trees to strengthen the status of its state-declared lands; and Jewish settlers uproot Palestinian (olive) trees, planting their own (olive, pine) trees instead. All are speaking the same language: a mixture of official and vernacular narratives in which the acts of planting and uprooting trees say something important about the status of the contested land. Instead of shouting "This land is mine!" or announcing "This land is definitely not yours!" all relevant actors participate in commonly understood performances of tree planting and uprooting. This culture-specific way for communicating control over land demonstrates the vernacular language that has developed in the margins of Article 78's interpretation, as this interpretation has been negotiated between the conflicting actors in the West Bank since its occupation by Israel in 1967.

This article has also explored the power of legal forms of visualization for constructing both real and imaginary national landscapes. Specifically, it has illustrated how the tree's "natural" visibility has made it into a technology of power in the West Bank

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

landscape. Situated in the nexus of visualization and cognition (Latour 1986; Scott 1998), the making of a treescape is at the same time a making of knowledge. But the knowledge that can be derived from the legible treescape is constantly being confused and challenged. Indeed, through their contestation of the national landscape, the New Settlers could be seen as seeking to question the national enterprise of the Jewish (secular) state, thereby interrupting the binary juxtaposition between Israel and Palestine.

What remains to be seen is whether the recent challenges to the landscape's legibility would lend themselves to the abolition of trees as a relevant technology of power in the war over land in the West Bank. The stories I have recorded throughout my empirical research speak to the contrary: while the strategic behaviors of the various actors have indeed undergone significant changes, as has the landscape, the lawfare over trees in the occupied West Bank is still as prevalent as ever. Indeed, not unlike many other forms of resistance, the New Settlers' contestation of the national scheme seems to eventually lead back to and even reinforce the hegemonic national framework.

One way or the other, this study in legal ethnography indicates that land, in its physical form, still matters. It also shows that the combined workings of law and technology, which have much to do with the representational aspects of landscape, not only reflect these physical matters but also make them into what they are. Finally, the different sociolegal reading proposed here could perhaps be exported (with modifications) to other landscapes as well, thus providing a framework for analyzing the dynamics between the material and symbolic dimensions of trees (or other natural things) in various cultural geographies. This new sociolegal reading of landscapes would pay much more attention to the complex interrelations between law, scientific technology, and tree landscapes, and, most importantly, to the dynamics between the more obvious governance of trees through humans and the implicit governance of humans through trees.

## References

Abu-Lughod, Lila (1991) "Writing Against Culture," in R. G. Fox, ed., *Recapturing Anthropology: Working in the Present*. Santa Fe: School of American Research Press.

Amenta, Edwin (2007) *Professor Basketball*. Chicago and London: Univ. of Chicago Press.

Amir, Shaul, & Orly Rechtman (2006) "The Development of Forest Policy in Israel in the 20th Century: Implications for the Future," 8 *Forest Policy and Economics* 35–51.

Anderson, Benedict (1991) *Imagined Communities*, 2d ed. London and New York: Verso.

Banner, Stuart (2000) "Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand," 34 *Law & Society Rev.* 47–96.

Bardenstein, Carol B. (1999) "Trees, Forests, and the Shaping of Palestinian and Collective Memory," in M. Bal et al., eds., *Acts of Memory: Cultural Recall and the Present*. Hanover, NH, and London: Univ. Press of New England.

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press

Blomley, Nicholas (1998) "Landscapes of Property," 32 *Law & Society Rev.* 567–612.
Braverman, Irus (2007) "Tree Wars: A Study of Natural Governance in Israel/Palestine and in Four North American Cities," SJD thesis, University of Toronto, June.
Callon, Michel (1986) "Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fisherman of St Brieuc Bay," in J. Law, ed., *Power, Action and Belief: A New Sociology of Knowledge?* London and Boston: Routledge, Kegan Paul.
Clifford, James, & George Marcus, eds. (1986) *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley: Univ. of California Press.
Cohen, Shaul Efraim (1993) *The Politics of Planting: Israeli-Palestinian Competition for Control of Land in the Jerusalem Periphery*. Chicago and London: Univ. of Chicago Press.
Comaroff, Jean, & John L. Comaroff (2001) "Naturing the Nation: Aliens, Apocalypse and the Postcolonial State," 27 *J. of Southern African Studies* 627–51.
Coronil, Fernando (2001) "Smelling Like a Market," 106 *American Historical Rev.* 119–29.
Cronon, William (2003) *Changes in the Land: Indians, Colonists, and the Ecology of New England*, 2d ed. New York: Hill and Wang.
Darian-Smith, Eve (2004) "Ethnographies of Law," in A. Sarat, ed., *The Blackwell Companion to Law and Society*. Malden, MA: Blackwell.
Daston, Lorraine, & Peter Galison (1992) "The Image of Objectivity," 40 *Representations* 81–128.
DiCenso, James J. (1996) "Totem and Taboo and the Constitutive Function of Symbolic Forms," 64 *J. of the American Academy of Religion* 557–74.
Duneier, Mitchell (1999) *Sidewalk*. New York: Farrar, Straus and Giroux.
Foucault, Michel (1980) *Power/Knowledge: Selected Interviews & Other Writings 1972–1977*. Ed. Colin Gordon New York: Pantheon Books.
Fox, Richard G., ed. (1991) *Recapturing Anthropology: Working in the Present*. Santa Fe: School of American Research Press.
Freud, Sigmund ([1950]1989) *Totem and Taboo: Some Points of Agreement between the Mental Lives of Savages and Neurotics*. Trans. James Strachey New York and London: W. W. Norton.
Guha, Ramachandra, & Madhav Gadgil (1989) "State Forestry and Social Conflict in British India," 123 *Past and Present* 141–77.
Gupta, Akhil, & Jim Ferguson, eds. (1997) *Anthropological Locations: Boundaries and Grounds of a Field Science*. Berkeley: Univ. of California Press.
Hilgartner, Stephen (2000) *Science on Stage-Expert Advice as Public Drama*. Stanford, CA: Stanford Univ. Press.
Jasanoff, Sheila (1998) "The Eye of Everyman: Witnessing DNA in the Simpson Trial," 28 *Social Studies of Science* 713–40.
Kedar, Sandy (1998) "Majority Time, Minority Time: Land, Nationality and Adverse Possession Laws in Israel," 21 *Iyuney Mishpat* 655–746 (in Hebrew).
——— (2001) "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948–1967," 33 *NYU J. of International Law and Politics* 923–1000.
Latour, Bruno (1986) "Visualization and Cognition: Thinking with eyes and hands," in H. Kuklick & E. Long, eds., *Knowledge and Society: Studies in the Sociology of Culture Past and Present*. Greenwich, CT: JAI Press London, distributed by JAICON Press 1986.
Leach, James (2002) "Drum and Voice: Aesthetics and Social Process on the Rai Coast of Papua New Guinea," 8 *J. of the Royal Anthropological Institute* 713–34.
Lehn, Walter , in association with Uri Davis (1988) *The Jewish National Fund*. London and New York: Kegan Paul International.
Locke, John ([1690] 2003) *Two Treatises of Government and A Letter Concerning Toleration*. Ed. Ian Shapiro. Book two, second treatise. New Haven, CT, and London: Yale Univ. Press.

Long, Joanna Claire (2005) "(En)planting Israel: Jewish National Fund Forestry and the Naturalisation of Zionism." MA thesis (Geography). The University of British Columbia, July 2005 (cited with permission).
Lutz, Catherine (2001) *Homefront: A Military City and the American 20th Century*. Boston: Beacon Press.
Malkki, Liisa (1992) "National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees," 7 *Cultural Anthropology* 24–44.
Mamdani, Mahmoud (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton, NJ: Princeton Univ. Press.
Merry, Sally Engle (2000) "Crossing Boundaries: Ethnography in the Twenty-First Century," 23 *PoLAR* 127–33.
——— (2004) "Colonial and Postcolonial Law," in A. Sarat, ed., *The Blackwell Companion to Law and Society*. Malden, MA: Blackwell.
Mitchell, Don (1996) *The Lie of the Land: Migrant Workers and the California Landscape*. Minneapolis and London: Univ. of Minnesota Press.
Mitchell, W. J. T. (2000) "Holy Landscape: Israel, Palestine, and the American Wilderness," 26 *Critical Inquiry* 193–223.
Moore, Sally Folk (2001) "Certainties Undone: Fifty Turbulent Years of Legal Anthropology: 1949–1999," 7 *J. of the Royal Anthropological Institute* 95–116.
Navaro-Yashin, Yael (2003) "Life Is Dead Here: Sensing the Political in 'No-Man's Land'" 3 *Anthropological Theory* 107–25.
Ortner, Sherry B. (1995) "Resistance and the Problem of Ethnographic Refusal," 37 *Comparative Studies in Society and History* 173–93.
Riles, Annelise (1994) "Representing In-Between: Law, Anthropology, and the Rhetoric of Interdisciplinarity," 1994 *University of Illinois Law Rev.* 597–650.
———, ed. (2006) *Documents: Artifacts of Modern Knowledge*. Ann Arbor: Univ. of Michigan Press.
Scott, James (1998) *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale Univ. Press.
Shafir, Gershon (1989) *Land, Labor and the Origins of the Israeli-Palestinian Conflict 1882–1914*. Cambridge, United Kingdom, and New York: Cambridge Univ. Press.
Shapin, Steven, & Simon Schaffer (1985) *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life*. Princeton, NJ: Princeton Univ. Press.
Shehadeh, Raja (1982) "The Land Law of Palestine: An Analysis of the Definition of State Lands," 11 *J. of Palestine Studies* 82–99.
——— (1993) *The Law of the Land: Settlements and Land Issues under Israeli Military Occupation*. Jerusalem: Passia Publications.
Sluglett, Peter, & Marion Farouk-Sluglett, eds. (1996) *The Times Guide to the Middle East*. London: Times Books.
Thirgood, J. V. (1987) *Cyprus: A Chronicle of Its Forests, Land, and People*. Vancouver: UBC Press.
Troen, Ilan (2000) "Frontier Myths and Their Applications in America and Israel: A Transnational Perspective," 5 *Israel Studies* 301–29.
Zamir, Eyal (1985) *State Land in Judea and Samaria: A Legal Review*. Jerusalem: Jerusalem Institute for Israel Studies [in Hebrew].
Zerubavel, Yael (1995) *Recovered Roots: Collective Memory and the Making of Israeli National Tradition*. Chicago and London: Univ. of Chicago Press.

## Cases Cited

HCJ 606, 610/78, *Suleiman Tawfiq Ayyub et al v. Minister of Defense et al*, Piskei Din 33(2) 113, 120–122 (1978).

HCJ 390/79, *'Azat Mahmad Mustafa Dweikat et al v. State of Israel et al*, Piskei Din 34(1) 1, 29 (1979).

Criminal Appeal 149/81, *Ahmad Yussef Alian Sallah vs. the State of Israel*, Padi 38(3): 374 (1981).

Civil Appeal 148/62, *the State of Israel v. Said Salah*, Padi 16:1446 (1962); Civil Appeal 479/62, *the State of Israel v. Salah Kir*, Padi 17, 631 (1962); Civil Appeal 567/83, *Rashid Said Abass v. the State of Israel*, Padi 41(3): 741 (1962).

## Statutes Cited

Hague Regulations, Articles 46, 52 (1907). See http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=195&t=art (accessed 1 June 2008).

Registration of Previously Unregistered Immovable Property Law, No. 6 for 1964, in Planning, Building and Land Laws in Judea and Samaria, ed. Maj. Aharon Mishnayot (of the Judge Advocate's Office, the Civil Administration of Judea and Samaria) [in Hebrew], p. 503.

Military Order 59 on Governmental Property, Article 1 (1967). See http://www.israellawresourcecenter.org/cgi-bin/browse.py?sectionname=laws&action=view&item=1 (accessed 1 June 2008).

Military Orders 1034, 1091 (1982). See http://www.israellawresourcecenter.org/cgi-bin/browse.py?sectionname=laws&action=view&item=1 (accessed 1 June 2008).

Order of Appeal Committees #172 (1967). See http://www.israellawresourcecenter.org/cgi-bin/browse.py?sectionname=laws&action=view&item=1 (accessed 1 June 2008).

Ottoman Land Code. Article 78, Ottoman Land Law in Planning, Building and Land Laws, p. 528 (1858).

***Irus Braverman*** *is an Associate Professor of Law at SUNY Buffalo. Her doctoral thesis in law from the University of Toronto (2007) explores the social construction of natural landscapes in Israel/Palestine and in four North American cities. Braverman was an Associate with the Humanities Center at Harvard University, a Visiting Fellow with the Geography Department at The Hebrew University of Jerusalem, a Visiting Fellow with the Human Rights Program at Harvard University Law School, and a Junior Fellow with the Center of Criminology at the University of Toronto. Her publications include "Checkpoint Gazes," in* Isin, Engin, and Neilsen, Acts of Citizenship *(Zed Publishers, 2008); "Powers of Illegality: House Demolitions and Resistance in East Jerusalem," in* Law and Social Inquiry *(2007); and "The Place of Translation in Jerusalem's Criminal Trial Court," in* New Criminal Law Review *(April 2007).*

https://doi.org/10.1111/j.1540-5893.2008.00348.x Published online by Cambridge University Press