The discourse of expropriation in contemporary Syria

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This paper reconsiders the discourse of expropriation in contemporary Syria based on four episodes. First, the ḥall al-awqāf al-dhurriya (dissolution of mortmain family properties) which was initiated by Husni al-Zaʿīm (who acted as the nominal head of state) in his brief tenure in 1949, and which kept the civil courts busy in the 1950s and later; second, the agrarian reforms of the 1960s and later; third, the nationalization of the cotton and textile manufactures in Aleppo and Idlib in 1965; and, fourth, the expropriation of properties in Idlib since the 1990s for the sake of the public projects. For the most part this study is based on sporadic family archives which would in all circumstances be difficult to retrieve from court records, considering the lack of appropriately kept and accessible public archives, and the sensitivity that surrounds all matters related to family wealth.

It is usually assumed that the discourse of expropriation was initiated during the ill-fated Union with Egypt in 1958–1961, amid the agrarian reforms which were promulgated in Egypt and Syria at the same time under one presidential decree. Yet, expropriation goes earlier than that, at least as early as 1949, when a decree ordered that all private family *dhurrī* waqfs should be "dissolved" in order to become private properties ready for exchange. This was at a time when the postwar presidency and parliamentary system were still "liberal," unaffected by what turned out successive military shakeups from 1949 to 1953. To wit, the whole operation of "dissolution," which was simultaneous to the promulgation of the civil and penal codes, was the work of the "liberal" juridical and political élites. There was, indeed, that sentiment that Ottoman rule was finally "over," namely, that the institutions of the sultanic ancien régime would not fit with the precepts of the modern nation-state. In sum, the dissolution of private family waqfs was certainly not meant to add more property to the portfolio of state-owned properties, as the true aim was more on the side of creating lucrative deals among private parties. The idea was that once waqfs were "freed" from their deadlocks, they would be "ready" for exchange. In practice, however, as we can see from the few cases at our disposal, the status of family bonds in a society like Syria, where kin matters at all levels, including politics and the economy, dissolving waqfs, as required by the law that was enacted in 1949–1950, meant that many of the waqf's beneficiaries would have not much to say; many discovered that they had not much at hand to "inherit" in the first place; some realized that they were not eligible for reasons that were either left undisclosed, or else disclosed at trial. In sum, whenever the beneficiary failed to deliver (some never made any claim; they may have not even been notified by the waqf's administrator or by other authorities; they may have been living abroad permanently; or may have opted for immigration; some may have been coached by the administrator or the other beneficiaries to "give up" on their claim; this may be more true

from married women who wedded from "outside" the clan), the property *may* have ended with the Directorate of Awqāf, which was, and still is, state sponsored. In the end, an unknown fairly large portion of "dissolved" waqfs unwittingly ended in the hands of the Directorate, placing them under strict rule of appropriation and exchange. The waqf chapter, though not expropriation per se, is nonetheless a de facto expropriation of properties which were initially private, and which ended in the hands of state-sponsored institutions. There was, therefore, a change in the "governmentality" of the waqfs, from properties which were in Ottoman times within a patrimonial framework of governance, both by the Ottoman administration and private parties, to one that becomes state controlled. Thus, when we look at the waqf chapter in relation to the agrarian reforms first under the Union and then under the Baath; or the nationalizations of 1964–1965; or the expropriation of rural properties in the vicinity of urban areas for the sake of public projects that would be appended to urban zones; the expropriation of waqfs does indeed look benign in comparison; but it does confirm that trend of the state's takeover in a domain that is quintessentially "private," in the sense of protecting the privacy of both individual and family.

Between the dissolution of waqfs and the nationalizations of 1964–1965, stands the chapter of the Union with Egypt, when the agrarian reforms were initiated in 1958, the first year of the unfortunate Union. Suffice it to say for our purposes that expropriation begins to assume the shape of a *dirigiste* economy and politics, or rather a statist economy whose only purpose was to "protect" the political survival of the ʿaṣabiyya-dominated state. Thus, even though the agrarian reforms of 1958, 1963, 1966, and later, very much contributed at distributing property to landless peasants, such distribution, which was not "direct" entitlement per se but demanded labor over several years prior to ownership, was very much uneven across regions and provinces. More importantly, once the state in 2000 gave up its monopoly over agrarian ownership by dissolving "state farms," the properties went for the most part to the big landowners of the "old classes," a process that some experts have described as a re-feudalization of agriculture and agrarian relations (a 2004 law reorganizes such relations by favoring the "organizer (owner) of labor," *ṣāḥib al-ʿamal*). This comes at a time when the state had already given up on much of its vaunted "socialist" utopia, adopting a hands-off approach towards social resources, services, and utilities, by permitting a class of plutocrats and kleptocrats to emerge since the 1990s.

By the time the Baath took state power by force in 1963, the discourse of expropriation was already maturing in the direction of a more radical "Marxist" "socialism." The founder of the Arab Socialist Party, Akram Hourani, who joined ranks in 1952 with Michel ʿAflaq for the Arab Baath Socialist Party, was already bemoaning the nationalizations of manufactures and industries in 1964–65 on the basis that the Baath became militarized whilst adopting a Marxist radical ideology to distinguish itself from the civilians who founded the movement. Hourani, who had spent his lifetime pushing for the agrarian reforms, was nonetheless adamant on the futility of the nationalizations that touched the textile and other industries. His point was that Syrian manufacturing was by and large based on *local* capital, and that the expropriation of

the properties of the bourgeoisie had no purpose but "political."

I. The governmentality of waqfs amid their dismantlement

It is well known that waqfs are considered a hindrance for the spread and ubiquity of private property: the more a locality or a country is imbued with waqfs (family or religious), the more eligible and "transferable" properties would be blocked from circulation. Moreover, though waqfs are supposed to last for centuries, if not for eternity, their finances, even in slow moving economies like the Mamluk or Ottoman, would barely make sense for a couple generations. Ottoman sharia court records point to financial woes in waqfs from the time they were instituted, or else by the time of the "eligibility" of the second or third generation of beneficiaries. There is therefore a historical paradox at work here. On the one hand, historical explanations have tended to promote as *explicans* for the spread of waqfs in the middle ages (the militarized post-Abbasid period of the Ayyubids and Mamluks) as a conduit for the "protection" of "private" non-state property from state seizure, either by what stands as "state," or else by various agents, princes, emirs, and prebendal assignees. On the other hand, the finances of such institutions stand as precarious, to say the least, considering how much it takes to keep up with the will of the founder for generations to come. Timur Kuran has argued how much, between the east and west of the Mediterranean of the last millennium, the waqf has blocked "freer" forms of contractual settlements. Even the ability for the wālī or mutaṣarrif to make decisions that would not be limited to the founder's will prove extremely hazardous. To elaborate, things would have been entirely different had the will of the founder been by definition "open" to a "board of trustees" for decision making; decisions that would have been certainly in "congruence" with the time; at least more so than an "obsolete" will of the founder.

The mystery that needs to be explained, the explicandum, is apropos the "usefulness" of the waqf system, not simply its historical "origins." If the purpose of the waqf is to "protect" family property from sultanic seizure, how come the inner workings of the system would not provide safety guards against the haphazardness of the times? Why not let a board of trustees free to re-interpret the original will of the founder? The system seems here caught in a deadlock. It is supposed to protect family property, while not given the adequate resources to do so.

In the nineteenth century, if not earlier, a practice known as the *marṣad* seems to have come at the rescue of such impasse. It consists of a long-term "investment" of the tenant in the leased property, giving him the advantage of a long-term lease. The "investment" itself would thus secure the finances of the waqf, at least for a certain period, while the tenant would benefit thanks to a "long lease."

At the same period, administrators in Egypt and the Ottoman Empire began new regulations constricting the use of waqfs, primarily by subjugating them to centralizing efforts. Already nineteenth-century jurists like Ibn ʿĀbidīn in Damascus were complaining that the "corruption" of the miri system, whereby overpriced "lords" would bring the rent system down

("low rents"), had contaminated the waqf system, so that the latter had been irrevocably damaged thanks to the "low rents" of the miri system, at least from the late eighteenth century and on.

When the French took over Syria and Lebanon in the 1920s, there was that eagerness to transform as much "public" domains into private hands. Such was the plan for the waqfs in general, whether family or religious waqfs. To be sure, such measures were not as drastic as the ones envisaged in Algeria in the 1830s, in the early stages of colonization. But they still mattered: even if many of the family and religious waqfs were maintained, based on Ottoman wills, they were nonetheless given the opportunity to "revamp," that is, to re-register the property with a fresh will and administration. Not much work has been done in this regard, hence we only know the principles, but short on details and the mechanisms of modernization of waqfs. What was probably new in the 1920s and 1930s and later, was the growth of a professional middle class, and the internal and external migration of members of that class for a better living, a trend which has accelerated since independence. Consequently, waqfs have become inflicted with beneficiaries who may have lived abroad, and with wālīs and mutawallis who were not as well versed in the fiqh matters as their predecessors. It remains to be seen, however, whether the mandate period was truly a "blessing" for the waqfs in general, or whether no much has improved—in terms of financing and competitiveness—in respect to the Ottomans.

However, more radical steps were to come in the aftermath of independence. Syria was at the time divided between the two "conservative" camps of the Hizb al-Waṭanī (formally the Kutla), based in Damascus, and the Hizb al-Shaʿb, based in Aleppo. Both were too conservative due to their landowning roots: too much land was in few hands, hence there was neither a willingness to introduce changes in land and property ownership nor in the codes themselves for that matter. Politicians, which have nurtured stalemates for long, finally gave up to military dictatorships in 1949–53, and to the Union in 1958–1961, prior to endorsing the coming of the Baath in 1963.

It was therefore in 1949, in the six-month military interlude of Husni Zaʿīm, that the waqf system witnessed its most radical revamp, primarily affecting the private family waqfs, as they were totally dismantled and transferred as private properties, milk. As to public religious waqfs, they were centralized under a national administration of awqāf. This came in conjunction with the rapid promulgation of the civil and penal codes, in which the minister of justice at the time, Asʿad Gorani, played a big role, not to mention the supportive role of the Egyptian legist Abdul-Razzaq Sanhuri.

The dismantlement of private family waqfs was referred to in the Law of April 1949 as *ḥall al-awqāf al-dhurriya,* which consisted in the transformation of blocked waqf properties either into fungibles (cash compensations) or else into private property. Considering that there was no option for family waqfs to maintain their status quo ante, every waqf property had to be

officially declared as "ready" for the *ḥall* process, which in itself consisted of several steps that we will examine below in detail based on few case histories.

As to the public religious waqfs they were centralized in June 1949 to a Directorate of Awqāf. Referred to as Islamic *khayri* waqfs in a decree signed, among others, by Husni Zaʿīm himself, who at the time was commander of the army, its Joint Chiefs of Staff, the prime minister, and minister of defense and the interior, the document defines such waqfs as philanthropic in nature. (Hence there was no "president" at the time; Zaʿīm would attempt later to fill the vacancy in the presidency through a national referendum where he was elected president on a yes/no basis in what became in Syrian and Arab countries as the 99.99 percent approval norm.) *Khayri* would include anything from mosques, sufi lodges, schools and madrasas, hospitals, cemeteries, to places of worship and visitations. Because the Directorate would regulate the properties and finances of such waqfs through state agencies of its own, it became henceforth illegal for the beneficiaries (persons or institutions) to appoint their own mutawallis or nāẓirs; and if they did, the appointment would be considered null and void. Moreover, a founder was unable to appoint himself as mutawalli as long as he was alive, which did suggest the possibility that he would become a "symbolic mutawalli" upon his death, if s/he wished to do so. Older waqfs with already assigned mutawallis and nāẓirs would have such functions immediately terminated, hence centralized in turn under the general directorate; terminated administrators would receive a monetary compensation and severance package which would not exceed 2,500 liras. Those working as religious experts would be operating under Law 474 (27 February 1949) which centralized religious functions and hierarchies. Lawsuits on all the matters above, in particular regarding mutawallis and nāẓirs, were not to be permitted.

There was yet another more radical measure to come than the centralization of waqfs and their administration under a general directorate. When Syria went on with its fated Union with Egypt, president Nasser issued Law 104 in 1960 in which the public religious waqfs were one more time a target for administrative purposes, this time for what is known in the waqf system as the *istibdāl,* that is, the exchange of properties, from a property that belongs to the waqf to one that is better suited. In classical Hanafi law, which the Ottomans followed religiously, the judge had to approve of any act of *istibdāl,* which was limited to an exchange between properties, that is, immovable properties (*amwāl ghayr manqūla*), hence an exchange between immovable and movable properties (*amwāl manqūla*) was tightly restricted. Which means that exchanging a property for cash in order to redeem it with another property for the same amount was in all likelihood extremely difficult to pursue in practice. Historical research would not point to anything in that direction when it comes to the Ottoman courts, though there may have been jurists who may have sided with such an approach.

The mandate was therefore left with a big "hole" when it came to public waqf properties, not mention private ones. There were too many of them, they were inalienable, hence non-

transferable. The *istibdāl* problem was addressed in a decree in 1930 and in a legislative decree in 1952, but that was apparently not enough, considering all the restrictions imposed on transfer. By contrast the 1960 text, signed by president Nasser, permits the practice of *istibdāl* with a one-lease term (*ijāra wāḥida*) in cash, which includes cemeteries, and damaged buildings of mosques and charitable institutions. The value of *istibdāl* should be assessed only by the minister of awqāf, prior to receiving acknowledgment from a local majlis. The *istibdāl* should take place as an auction to the highest bidder, if possible, unless it is initiated from within a governmental institution. In this instance, the cash compensation would be assessed through committee work, whose findings would be approved by the minister of awqāf. Once approved, the indemnity should be made available within a one-month period, which could be paid in installments not exceeding for general purposes a five-year period, or eight years if the property was initially a state public property. If the property holder fails to deliver and defaults, the ministry would have the right to sell the property on his behalf at the price initially agreed upon.

It is only in article 12 (out of the 15 total) that the text finally addresses what needs to be done with the "sold" properties: "In lieu of the indemnity for the *istibdāl,* properties should be purchased with the sole purpose of transforming them into buildings for the waqf, or to mosques and charitable institutions, pending on need. It would also be permissible to construct popular housing units, to be sold to people with limited income, within the constraints of this Law."

Notice how the text devotes itself at explaining how to "exchange" property for cash. When it comes to the cash itself—that is, to the counter-exchange, which would transform the initial exchange, through the cash deposit, into properties for the waqf—the text becomes all of a sudden extremely limited.

There are a couple of ambiguities here. First of all, the counter-exchange is not necessarily to be limited to the waqf itself, as the text makes it plain that the cash could be used for additional purpose, such as the construction of mosques and charitable institutions, which are not necessarily limited to the waqf itself. To be sure, this is not explicitly stated as such in the text, but only by insinuation, as there is no hard close that any purchase, any project, must be linked to the original waqf from which the property was exchanged. Moreover, the Law permits using the cash compensations for housing projects, which, again, places the counter-exchange far beyond what the original waqf was supposed to be in the first place.

The purpose of the law is fairly clear: it intends at unblocking all kinds of religious waqf properties, which since 1949, have been under a single national administration of the ministry of awqāf, by transforming them, via open cash transactions, into more "useful" and more manageable properties—which were not even necessarily linked to the original waqf. Indeed, the project was more ambitious and much wider than the awqāf itself, as it sets the norm for the use of the cash compensations into public housing projects, and similar projects.

The main issue here is: What happened to all the "exchanged" properties? Which properties have been exchanged? What was the overall size of exchange? Such questions need a lot of empirical work, specific to periods, cities and neighborhoods. But, as everyone who had ventured into such projects already knows, the awqāf would not release any of their archives, assuming they've got everything in order in the first place. As some have volunteered to tell me, so many awqāf have been "illegally" "sold" for cash, since the 1960 Law, if not before, without even following the procedures outlined in articles 1–13, that any investigation by journalists or scholars would create an immediate scandal. There were for instance all kinds of rumors circulating around the name of the then-director of awqāf in Aleppo, Dr. Shaykh Suhayb al-Shami, who had earned his doctorate at the Sorbonne, and who assumed his position in the 1990s for over a decade, regarding his alleged embezzlement schemes which led to the sale of large chunks of the city's awqāf. He then allegedly invested some of the embezzled capitals into private projects, under his own name, such as the Dayri textiles, which collapsed in 2005.

To use a Foucauldian term, let's say that the Ottoman waqf was quintessentially sovereign power, as was sultanic power, which means that it was mainly a patrimonial household institution regulated primarily by the family, on the one hand, and sharia law on the other; that is to say: it was outside state power as such. Sharia law itself should be considered as sovereign law, which is different from state law. Foucault distinguishes between the macrophysics of sovereignty and the microphysics of disciplinary power: "While sovereign power manifests itself essentially through the symbols of the fulgurant force of the individual that holds it, disciplinary power by contrast is discrete power, dispersed; it is a power that functions in networks and whose visibility only exists in the docility and submission of those who in silence it is exercised upon."[1]

There was therefore for waqfs that passage from a patrimonial sovereign power, where governmentality was left within the family, which had the exclusive power to appoint its own mutawallis and nāẓirs, to one controlled by a corporatist state. In the 1949 Law on religious waqfs, the most crucial element was that waqfs were ripped off their administrators, only to be subjugated to the general directorate of awqāf. Even founders had lost the right to supervise the workings of their own waqfs. Clearly then the reform consisted at taking off individual waqfs from their family milieu while centralizing them within a state bureaucracy. A decade later, the next step was to commodify the waqf, to let it sell and produce like any other commodity on the market. Hence the sanctity of the waqf was at stake, as it could not be looked upon as a sacred space. Moreover, in that process of commercialization, instead of transforming the waqf into a modern "trust" system, to be administered through a board of trustees that would not be limited in its decision-making to the will of the founder, the general

[1] Michel Foucault, *Le pouvoir psychiatrique. Cours au Collège de France, 1973–1974,* Paris: Gallimard–Seuil, 2003, 23–24.

administrative strategy throws the waqf into the uncompetitive economy of the state. In other words, instead of liberalizing the waqf, make it competitive through a competitive process of private administration, its fate was relegated to that of a statist economy: in one word, it was expropriated, like the major financial, industrial, and educational institutions that became a prime target of the Baath in the 1960s.

Let us consider in this regard a concrete example of a family waqf that was seized in light of the 1949 reforms.

The process by which each private family was "closed" for eternity was referred to as *taṣfiya,* or closing, which could not be completed without court procedure. The three-judge court (in addition to an assistant) was specifically named for that purpose as "The court for closing family and partnered waqfs." The Aleppo waqf in question was originally founded in 1160/1747 by a member of the Jalabi family and registered in an Ottoman sharia court that same year. As was common back then, the waqfiyya gave the founder the right of administration as long as he was alive, without sharing it or competing with anyone—an exclusive right. The document then details the rights of the beneficiaries. For the first generation, that of the founder's sons and daughters, the sons would have twice the female shares; the sons' heirs (male or females) would also stand as beneficiaries but not the daughters' heirs, and so on. As to the administration, it goes to the *arshad* among the beneficiaries, upon the founder's death. Needless to say, the foundation of the waqf follows a classical Ottoman formula, as it applies the sharia—inequality of the sexes—on waqfs, though it was also as common to disinherit the females totally; but then the women were partially excluded beginning with the second generation.

In Ottoman times the waqf properties were delineated in relation to all four adjacent properties, which gave a purely descriptive but inaccurate system. The novelty of the mandate was that it introduced a modern topographical system that was long overdue. Here the eight properties, carrying each a separate letter from the Latin alphabet, were annexed to the lawsuit in a map-format: they came in two sets in relation to two built and numbered areas from the city.

What is probably novel in relation to Ottoman times were the notifications which were attached to the lawsuit. The purpose seems to confirm that the waqf *did* exist as waqf past its Ottoman origins. There was thus a notification dating from 1935, issued from a sharia court, regarding the accounting of the mutawalli in relation to some of the beneficiaries. Another notification, also from 1935, gave right to some beneficiaries. A third one, from 1936, requested adding "eligible" beneficiaries, which may also have become administrators based on the *arshad* rule. The court noted that the third sharia court document helped in that it listed all beneficiaries, but, in a cautionary note, it added that many of those have either left the country or died, hence an update was needed. Here the court was adamant that they would only include as beneficiary a person who has applied to be so, and who had provided

evidence.

The document then listed a total of 237 beneficiaries for 362 shares, on the basis of 2 for the males and 1 for the females. Over 20 beneficiaries were listed as of Turkish nationality, but "governmental procedures require that their shares be kept, until the matter of the properties of Syrians in Turkey and the Turks in Syria is resolved between the Turkish and Syrian governments."

What to do with the sons and daughters of the daughters' founder?

Considering that the original will only acknowledged the sons and daughters of the founder, without, however, accepting the sons and daughters of the daughters' founders as beneficiaries, the court rejected several petitions on behalf of the latter group.

The court estimated that the waqf's value was SP106,750, a figure that was approved by a court-appointed expert. There were two options to liquidate such waqf. The first would have been to divide the properties among the beneficiaries, that is to say, that the waqf would have been transformed as individualized private properties belonging to each one of the 237 beneficiaries. But the court noted that the waqf was indivisible, hence the second option of selling it in toto in auction, then divide the price among beneficiaries on a 2:1 basis. For most—but not all—beneficiaries (why?) the prices had been assigned either as SP791 for the males, or SP395.5 for the females. It remains uncertain, however, why some beneficiaries were "problematic" and had no compensation set for them. (Death? immigration? incomplete application, Turkish nationality?)

Let us consider another waqf dating from 1231/1815 registered at a sharia court in Aleppo. In this case the beneficiaries, males and females, would benefit equally on a 1:1 basis: "the males would not benefit anything extra from the females." At the time of the proposed liquidation they numbered 144, some of which had yet to prove their status in relation to the founder. For some reason the overall price of the properties had not been estimated by a court expert.

In line with the civil court system which was instituted in the 1870s with the nizami courts, the waqf courts came within a hierarchy where an appellate court, known as *tamyīz,* stood on the top. Considering that each case of waqf liquidation must be handled by a lower court, the appellants would seek a higher court only if they were unsatisfied with the lower ruling. Grievances were fairly common, but their sources were limited. The most common grievance was related to the eligibility of the beneficiaries: Who was eligible? As many of those waqfs originated in the Ottoman eighteenth or nineteenth centuries, the beneficiaries could have been in the hundreds; some were dead, others had left Syria permanently, while others had lost communication with their family roots. Consequently, drafting a "final" list of beneficiaries, all those who were eligible, still alive, in the country, and with a Syrian citizenship, proved a daunting task: the lists had to be revised from one ruling to another,

from an appeal to the next. Another related problem was the value of the properties. For the big waqfs in particular they were usually located in different "sections" (*maqāsim,* s. *maqsam*) of the city; they had to be assessed and evaluated by court-appointed experts; and in case the beneficiaries were in the hundreds the value of the properties—individually for each beneficiary—was not much.

The power of death over life

The notion of governmentality that we have proposed for the waqf system supplements the power shift, from sovereign to disciplinary power—how people are governed; the modalities of power in the forms of government. The fact that disciplinary power looks and feels anonymous indicates a particular form of governmentality; where the symbolic power of individuals matters less than their anonymous power; where the norm has become economic utilitarianism; and where liberalism signals efficient and globalized capitalism.

The waqf itself is a form of sovereignty. The sovereign here is no one else but the founder himself, as he symbolizes the power to create, institute, and block properties that belong to him or her for perpetuity. In parallel to the sovereign power of the sultan, which comes with a closed or open line of heirs, which gives life to his flock by withholding sovereign power to him only and no one else, and whose power presides even upon his death to his descendants, the sovereign power of the founder has that kind of attributes: it creates life out of (material *ʿayn*) properties which originally were not destined to survive to eternity; it links the properties as-a-whole to the founder himself and to his descendants, as he wishes to define them. It is therefore the properties themselves that would achieve the symbolic power attributed to them by the founder him(her)self. In modern times, with the bureaucratization of waqfs, and the annulation of the positions of mutawallis and nāẓirs, that kind of sovereignty and symbolization has been completely lost. Yet, and that's the crux of the matter, one cannot describe the loss of the principle of classical (Ottoman) sovereignty as a passage to disciplinary anonymous power, not even at the political institutional level. What we rather have is a political process of bureaucratization, an outcome of the separation of well-entrenched "feudal" élite, an non-politicized masses. The bureaucracy—Nasser and the Baath—entered to fill a political void, that gap between élites and the rest.

In one such case of a private family waqf, which went on liquidation in 1951, there were as many as 570 who "claimed" to be beneficiaries, based on the founder's will. The problem here is precisely that "claim": who made the claim? Was it made by the person him(her)self? Or did someone do it on their behalf? How many were still alive? How many did carry the Syrian citizenship? What if they were living in a foreign country, Arab or otherwise?

Such questions were primordial in the process of liquidation, considering that the majority of the cases that turn way up to the appellate court question previous rulings where more-than-what-it-should-have-been-beneficiaries have been "illegally" acknowledged. So how would the

court know who was eligible? Obviously, the founder's will was the crucial evidence; but then there may have been additional evidence, in particular from the mandate period, such as court evidence that some beneficiaries have been ruled out, and so on.

In this instance, the waqf originally dated from 1231/1815, where beneficiaries would benefit equally, between males and females. A ruling in 1345/1926, which was "irrevocable" (*qaṭᶜī*), reinstituted the waqf in terms of its properties using modern topographical methods instituted by the mandate. At the time of the liquidation lawsuit, in 1951, the 570 beneficiaries-claimants were reduced to 144 shares (*sahm,* pl. *ashum*), which implied that the majority had already been dismissed either de facto or de jure, particularly on matters of death, lack of heirs, and right to inherit. In its final ruling, which apparently sealed the case, the appellate court found that "some of the appellants did not carry the legal right of representation that would enable them to defend the persons who claim to be beneficiaries, and which were listed in the annex." Consequently, the court decided to add only one more beneficiary to the final reduced list, raising the shares to 145.

What is at stake in this brief history of the expropriation of the waqf in modern times is that it moved rapidly from a respect to what the waqf represented to the family and community to utter condescendence, as if the waqf all of a sudden became what hindered all assets of properties, whether public or private. Even the mandate, in spite of all official and unofficial attempts to dismember waqfs (albeit in much more muted methods than Algeria upon its annexation), was still conservative in respect to what was to come in 1949 and after. Consider, for example, Legislative Decree 31 in 1940, which stipulated that "It is illegal to sequestrate (seize, put on hold) movable or immovable properties from the charitable waqfs either from the mutawallis or other departments; or to seize them through legal or administrative action." Moreover, "The executive departments have no power to execute the rulings or decisions that emanated from court order against charitable waqfs." And, "The interested party must inform the prime minister apropos the rulings or decisions which have the level of irrevocability (*al-daraja al-qaṭᶜiyya*) and which must be executed, and which have been issued against the charitable waqfs as defined in article 1." The aim of such drastic measures was to stop as much as possible all court actions against attempts that would dismember charitable waqfs while transforming them into movable or immovable properties.

II. The expropriation of agrarian properties

It is well known that Syria and other Arab countries like Iraq and Egypt had to cut off the roots of their "big landowners" artificially, through various land and agrarian reforms, beginning in the late 1950s, with the unfortunate Union between Syria and Egypt. Iran under Reza Shah Pahlavi attempted to do the same but a bit later, in the so-called "white revolution" of 1961–62, which was an outcome of pressures from the Kennedy administration. In the Iranian case, however, the "agrarian reforms" had apparently substantially damaged the ownership of the Shiʿa clergy, the ulama class which in this instance did not live from state-owned waqf

properties, but from landed properties that were *personally* rather than collectively owned. Which may have led to the beginning of the rise of Khomeini from his exile in Iraq in the 1960s, and his coming to power in 1979. Turkey, however, did not artificially cut off its landowners, which represents a case of its own in middle east history, as the profitability of landed properties became gradually marginalized with the push towards industrialization in the 1940s and 1950s and later. Moreover, in the Turkish case, the military did not initiate any land reforms; their access to power was intermittent, bringing back civilian rule whenever military might proved inefficient or unpopular.

In sum, in the cases of Syria, Iraq, and Egypt, to name only some of those who went through agrarian reforms, the reforms were initiated by régimes backed by the military and by "populist" parties, hence power was seized by force, reversing decades of parliamentarianism and liberalism.

The scope of such reforms is well known, primarily to distribute property "fairly" among the landless and dispossessed peasants, by confiscating the large properties of the "old classes," which had inherited their estates from Ottoman times and the Mandate which was "soft" on ownership. The bigger aim, however, was not ownership per se, as much as the target was, indeed, the *class* of landowners, capitalists, manufacturers, and middle class professionals in general. The "old classes" survived for the most part from prebendal taxes (surtaxes, dues, and fees) and rent assignments, hence did not have deeds to the assigned properties. But the fact that they did not "own" these properties did not mean that they did not de facto "possess" them. Even before the 1858 Land Code, which did not authorize "possession" but only required registration for the right of usufruct, there was, indeed, de facto possession, as the prebendal assignments, which usually lasted for decades for a single family, became synonymous with possession and not simply usufruct, where the *raqaba,* "neck," was for no one else but his majesty the sultan. Those were the miri lands of the sultan, which the Mandate did not abolish, even though the fragmentation of the Empire created autonomous sovereign states, which in the case of Syria, amounted to a parliamentarian Republic, modeled after the French third republic. The point here is that by not abolishing the miri, and replacing the title with either state-owned public property, or else private property, the Mandate created an enormous confusion which still perseveres until today.

The point here is that the "old classes" became full-blown owners, whether their properties were registered as miri or milk. Some exploited their rents into trade and manufacturing, while others went into politics and became parliamentarians, cabinet ministers, or even prime ministers and presidents. It was that kind of class configuration, which in spite of the army imposing itself into politics since 1949, would only begin to lose momentum with the unfortunate Union with Egypt. The agrarian reforms gave it that final blow from which it never recovered.

Which social relations are in need of documentation when it comes to agrarian relations? The

emphasis here should be on "relations," and not simply "production." Production is inscribed in the peasant household, and agrarian relations since Ottoman times have been known for the weaknesses of their social bonds, as there is neither any civil nor political community to protect the interest of workers, their livelihood, property and family. In some ways they are no different from their urban counterparts, which for the most part are not organized into unions, lack any sense of autonomy, and end up "approached" by political parties (assuming there are ones that do not operate under the aegis of the state) for the sake of "representation." Thus, urban and rural workers, even though the two categories are kept separate, end up being bullied by "corporatist" endeavors of political parties or the state.

The state in Syria first imposed itself since the Union with Egypt as a tool to expropriate wealth holders. Expropriation implies an entire discourse which touches on the sovereignty of the nation in its struggle against colonialism and imperialism; that private property may represent a danger to society if not tamed with the higher virtues of socialism and freedom; that the economy of the nation should always operate within the framework of principled multi-year economic plans, known as strategic planning; and, last but not least, the nation, which operates within the framework of pan-Arabism and the Arab umma, is "guided" by the One (and only) Party, even though other parties may be "affiliated" to this Oneness. Like every discourse, there is an element of unsaid to it, and here the *non-dit* is essentially the class, ethnic, and religious configurations of the country which remain for the most part "hidden," as if their ultimate non-"resolution" would be thwarted by what the One Party has to offer. The Party would do what ultimately Ottomans and French were unable to do, adding to the vulnerability of an already explosive situation. Thus, it was already bad with the Ottoman *millet* system, but the French flared even worse by "investing" in some "minorities" against others, Alawites, Christians, Kurds, not to mention tribes and tribal factions, and others.

When the Baathist state in the mid-1960s pursued its polity of wealth expropriation of the big landowners, within the politics of the "agrarian reforms" which were inaugurated under the Union, it aimed at sapping manufacturing, industrial, and financial capital at the same time, with the knowledge that in an agrarian country like Syria, all such capitals are conspicuously tied together, like a child in his mother's womb. Soon, the "ideological" foundations of those same classes were also sapped, with education becoming for the most part public.

Until the severe drought of 2007–2010 Syria was auto-sufficient in its food production and the export of cotton, which on its own formed one third of all national exports. Strongly subvented and protected by the state (state farms, cooperatives, and loans advanced to needy peasants, not to mention the imposition of prices and limits imposed on some exports and imports), agriculture contributed to one fourth of the GDP (or GNP), while preoccupying, in relation to the agrarian food sector, one third of the active population. Agriculture had permitted maintaining half of the population in rural areas (52 percent in 2004). Amid the agrarian reforms in 1958, 1963, and 1966, which were unequally applied from one region to another (in the Jazira, which produces 70 percent of all grains, only one third of the lands

were concerned), the essential of agricultural production remained in private hands. The public sector, which for the most part consisted of public farms and cooperatives, was for all purposes practically moribund in 2000: weak production cycles, corruption, inability to create a rural "society" that would "integrate" tribal relations. In consequence the first measure of liberalization adopted by Bashshār al-Asad, once he came to power in June 2000, was to abolish the state farms and have their properties redistributed to the old landowners, workers, and employees (decision 83 in 16 December 2000).[2]

It goes without saying that the decline of Syrian agriculture precedes the drought of 2007–2010, primarily in the number of workers, which went from a high of 1.4 million active workers in 2004 to 800,000 in 2008. Which prompted a new law in 2004 which went into effect in 2007, and whose purpose was precisely to "renovate" investments by bypassing old contracts and encouraging new ones on short durations, leading to the expulsion of hundreds of tenant farmers and workers.

The agrarian sector was therefore in full crisis mode at least since 2000, as an outcome of the high parceling of properties, the lack of funds, state intervention, becoming tragic, and prompting humanitarian aid with the drought of 2007–2010 to the present. An estimated 100,000 families a year have been affected by the drought, or a million persons, half of which are from the province of Ḥasakeh, where half of the Kurdish population lives. This was made worse thanks to a decree promulgated in 2008 which freezes all land sales near the Turkish border, making it the largest migration movement in Syrian history, and one of the largest in the middle east, prior to the current civil war. Migrant moved for labor to places as diverse as Ṭarṭūs on the Mediterranean, and Darʿa in the south, the 100,000 plus town that sparked the civil war in March 2011.

We will follow here the view of some observers who noted how much the reforms introduced in 2000 contributed more in the parceling of agrarian properties, in combination with the forced planning in some sectors, and the near-impossibility of selling land near the Turkish border.

The first paragraph of Law 134 of 1958 boldly announces that the main objective of the new law was "to regulate the agrarian relations among the parties engaged in agricultural work, so that the land of the nation (*arḍ al-waṭan*) would be placed in value in a much more efficient way, and to establish equitable economic and social relations."

By contrast, Law 56 of 2004 (amended by Law 12 of 2011) abandons any reference to the *waṭan* to underscore economic development, *tanmiya,* which undeniably is a concession to a mixed

[2] Myriam Ababsa, "Crise agraire, crise foncière et sécheresse en Syrie (2000–2011)," in Élisabeth Longuenesse and Cyril Roussel, eds., *Développer en Syrie. Retour sur une expérience historique.* Les Cahiers de l'ifpo 08, Études contemporaines. Beirut: Presses de l'ifpo, 2014, 111–134.

market dominated by forms and practices of crony capitalism. Thus, the purpose of the new law according to the text itself, would be *"istithmār al-arḍ bi-ṣūra ṣāliḥa li-tanmiyat al-tharwa al-qawmiyya wa iqāmat ʿalāqāt iqtiṣādiyya wa ijtimāʿiyya ʿādila,"* which translates as "to invest in the land in a positive way, so that the national wealth develops, and to achieve an equitable and just economic and social relations."

It is well known that the agrarian reforms of 1958, 1963 and 1966 have much contributed at reducing the power of the large landowners, profiting in the meantime to the average peasants, which were susceptible at "endorsing" the two Asad régimes.

What needs to be investigated, however, is precisely all these categories of large landowners, middle class peasantry, and support of the régime. Regarding the latter, what are the mechanisms of support? What is an average peasant, and how did his status improve? The purpose of all this is to see if in all this process there is a "society" with politics and social bonds that is in formation. If we begin with a non-"society" in the 1950s and 1960s—in the sense in a lack of coherence of its fundamental elements (which leads to a society fabricated by the force of a political might, narrow in its scope, and poor in integration)—what was the Baath attempting to do in all those years?

The middle class of peasants loyal to the state thesis applies well to the Jazira, which on its own comprises half of the cultivated areas, and which left its "feudal" landlords practically intact. Note here that there was not at any point a "maximum" that would operate at a national level: the "optimum" ownerships, based solely on size, were tied to all sorts of factors including region, climate, and irrigation. In some areas like Jazira cadastral records, instituted by the Mandate, fell behind, a condition that contributed at the slowness of reform.

In 1958, on the eve of the agrarian reforms, landless peasants formed the bulk of the peasantry by a 60 percent margin, which fell down to 36 percent amid the three agrarian reforms combined, but then the variations among regions and provinces vary considerably. In Raqqa and Dayr al-Zor only 18.5 and 14.5 percent of all lands have been respectively expropriated, leading to a class of large "feudal" landowners who knew how to appropriate their entrepreneurial skills even when they were hit by expropriation. It is at this stage that the power relations between landlords, tenants, workers, and peasants must be thoroughly studied. What is the nature of this relationship? Is it personal and based on custom? Or is it juridical, based on court action? Or is it customary based on kin violence and the like?

While both the 1958 and 1963 laws have contributed towards a more equitable distribution of property among classes, in spite of the fact that the so-called "feudal" class managed to maintain itself and its privileges, what has often been overlooked is the kind of contracts and obligations that such laws have managed to impose on landlords, tenants, and workers. First of all, and for the first time, contracts had to be written down, and automatically renewed. Moreover, they could be inherited, hence maintained from father to son. Contracts could be

annulled or modified only through a judicial decision, hence requiring an explicit court order. Even though we are told that on average such laws have significantly improved the revenues and standard of living among peasants (again, with significant variations among regions and provinces), what social and economic historians fail to question is how such *written* contracts are structured, and how the writing itself has begun to shape matters differently, not only because it *fixed* obligations, but for other matters as well, for instance, in the kind of discourse which manages the political with the juridical and economic.

The new law of 2004, which has been amended in 2011, is fairly complex. Composed as it is of 167 paragraphs, the law permits landlords to annul tenancy contracts within three years, with weak indemnities which are calculated based on the number of years for which labor has been invested on the land in question.

One of the major consequences of this law was the loss of tenant workers of lands that they have been working on with their families and households for years, while at the same time lifting prices way up, a thousand times in some areas, like the coastal area of Banyās on the Mediterranean which suddenly saw price hikes from 3,000 liras on the square-meter to 30,000.

Such major shifts coincided with the dismantlement of state farms in 2000, the year the second Asad assumed power. Between 2001 and 2007, 38,650 ha of land have been distributed to 12,500 beneficiaries in the Jazira alone. Those were either old landlords which had been expropriated in the past, or tenant farmers, or else state employees which were on the verge of retirement and receiving their pension plans. But the numbers alone do not provide the complete picture. In private interviews people complain that they have not been informed of the law in due time to be able to prepare and compete. Let us note here that for the 12,500 beneficiaries it was not a case of transfer of property pure and simple, as it only consolidates a right of use for 10 years, after which the beneficiary may fully acquire the property; hence it remains utterly forbidden to lease or sell those lands. Still, farmers, workers, and others critiqued the state for misinformation, for privileging the few over the majority (including state employees who had knowledge of the law firsthand), for corruption, and the usual bureaucratic slowness. Overall, the dismantlement of state farms has reinforced the "feudal" nature of the big landowners, which in spite of half a century of reforms, did nonetheless manage to regain ground.

We now come to the next chapter which raises the issue of the Kurdish dilemma from Raqqa to Ḥasakeh and Qāmishli, that is, all the Jazira areas which coexist on the Syrian–Turkish border, and for which the issue of "Arab sovereignty" comes to mind. This is particularly true for the Ḥasakeh area which saw since 1974 the formation of public farms as a tool for the purpose of creating an "Arab belt" (*ḥizām ʿarabī*) at the Turkish frontier in an area with a majority of Kurdish population.

It was indeed in 1952 that the first decree (193) regarding imposed restrictions of property ownership at the Turkish frontier was promulgated. In order to limit what was thought of as Kurdish irredentism in the Jazira, the political chief of police at the time, Muḥammad Ṭālib Hilāl, created a zone of 15 by 350 km in which all property transactions were made difficult. An authorization was needed from the ministry of agriculture which accorded rights to Arab Syrians, Armenians, Chaldeans, Assyrians (who fled the Iraqi pogroms in 1932, amid the coup of Bakr Sidqī), but not to Kurds. Moreover, a census in August 1962 which reorganizes the Kurdish population deprives 120,000 Kurds of their Syrian nationality, which had been unable to prove their presence in Syria prior to 1945. Those were issued a red identity card marking them as "foreigners," *ajānib* (s. *ajnabī*), while their kids which were born and raised in Syria were classified as "hidden," *maktūmīn* (s. *maktūm*), which it goes without saying were excluded from property rights.

Syrian authorities had always made the claim that amid the 1958 land reforms, Kurdish tribes resettled in Syria, coming from Turkey. After the riots of April 2004 which began in a football match ceremony in Qāmishlī, then spread within one week to Ḥasakeh and Aleppo's predominantly northern Kurdish neighborhoods, president Asad promised 90,000 Kurds to receive full citizenship. The Kurds for their part claim the citizenship for a 150,000 *ajānib* and 75,000 *maktūmīn.* The latest promise from the Syrian presidency came on April 2011, amid the riots in Dar'a, whereby 100,000 Kurds were accorded the presidency out of 225,000 demanded by the Kurdish parties and human rights organizations affiliated to them.

III. The expropriation of industrial properties

When the Baath came to power in 1963–65 it proceeded through a broad program of nationalizations—the expropriation of private institutions for the public good—which touched on a wide range of institutions, from the industrial and manufacturing, to finance and education, not to mention its curtailment of the media outlets (printed, sound and visual). All of this came in relation to an ideological ethos that was in motto since the Egyptian Revolution of 1952, and also in conjunction with what the Union with Egypt in 1958–61 had established: agrarian reform; limitations on public freedom; excessive reliance on secret services; and the early stages of nationalizations.

In Arabic the term nationalization is referred to as *ta'mīm,* whose root verb is *amma,* to place oneself as the leader (*imām*) of a community (*qawm*); the *umma,* therefore, would become in this context the path (*ṭarīqa*) to be followed (through, say, the authority of an imam or a sufi master). Hence if nationalization implies in a modern context the nation as a total political being, or more accurately the nation-state, which assumes a full-fledged nationalism, the implication behind *ta'mīm* is not only that all properties go back in principle to the public good (the eminent domain), but that they ultimately represent the property of the umma. Nationalization carries therefore in its womb a grand ambition, that of giving the umma-as-nation, in its modern sense, what it fully deserves. Thus, instead of the endless cohorts of

private properties, nationalization renders to the umma its true source of wealth, to where it originally belongs, that is to say, to the nation-at-large, undivided as it were by the greed of private property, finance, education, and free speech.

A chapter on ta'mīm should probably begin with the union with Egypt, 1958–61, a forgotten episode in Syrian history—and for Egypt too. In effect, it was only towards the end, when the Union was living its last vestiges, that president Nasser opted for broad sweeping nationalization which touched on diverse territories, from the press to education, the financial and banking business, to manufacturing to trade. Thus, even though Nasser came to power in 1952, went at war with Israel, the British and French in 1956 for his nationalization of the Suez Canal, and had sweeping ambitions for the Arab world at large, the broad nationalizations that Egypt would see in the 1960s were in reality an outcome of the Union, in particular its last and most unfortunate year.

Akram Hourani, the outspoken Syrian house speaker for much of the 1950s and later, who was named the vice president of the Syrian province (*iqlīm*), prior to resigning in 1961 in protest for the "mismanagement" of the Union (which he kept arguing should have been "federal"), gave an astute assessment for the "debacle" of the nationalizations, which the Syrian parliament in Damascus had rejected and revoked as soon as they were announced in Cairo.[3]

First the banks were nationalized in February 1961 in both Egypt and Syria (4:2892). Hourani argues that the rationale was more political than economic, whereby the Syrian Abdulhamid Sarrāj, who was at the head of the intelligence services, was confused and confusing regarding such nationalization of the financial sector, due to the "loyalty" he has been receiving from the "regressive" "rightist" groups in Syria—what Hourani dubs as the feudal remnants of society and their fellow capitalists—for his indefatigable negative attitude towards the leftist progressive forces (4:2893), an alignment that goes back to the coup of Adib Shishakli. In this scenario, the "reactionary" "right" endorsed brutality against the progressive left on the condition that its assets remain private. Nationalization broke that kind of quid pro quo, if not between the "right" and Nasser, at least with Nasser's top men in Syria.

More important in this respect were the nationalizations of July 1961, which ultimately brought down the union. The Damascus coup that followed the nationalizations described them as "decisions which on the surface seek mercy while at bottom only promote suffering." (4:2894)

For our purposes here what is important is to realize the differences in the constitution of manufacturing institutions between Egypt and Syria:

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[3] Akram Ḥourānī, *Mudhakkarāt,* 4 vol., Cairo: Maṭbaᶜat Madbūlī, 2000; all page numbers in this section refer to the text.

> All the companies that were nationalized in Syria were owned by Syrians, and were instituted from their own efforts and capitals, notwithstanding the fact that some of such capitals came from the outside, whose owners were encouraged to invest it in Syria itself… A lot of the shares of those companies were owned by small investors; add to this that in Syria it was common for women to buy shares, for instance, all those women who were only housewives and did not work outside their homes; some of the shares of companies were from the savings of such women.
>
> On the other hand, Syria had at the time not a single foreign company, for the simple reason that foreign companies (the company of the electricity of Damascus, the company of the water resources of Aleppo, the railway company, the tobacco company, etc.) had already all been nationalized and became state property since 1950, two years after Syria's independence. In similar vein, the Bank of Syria and Lebanon (the bank that produces the Syrian currency) was nationalized, having been a French bank in 1956, two years before the union. (4:2894–95)

Hourani goes on to say that in Egypt the situation was entirely different, as foreign capital was essential for the survival of manufacturing and financial institutions. (4:2895)

What I would like to account for in this section are the unacknowledged processes that stood behind each act of *ta'mīm,* namely, all that paperwork that would be needed once the government decided to take action on a private institution for the benefit of the public good. Financial and legal experts had to proceed with estimates, and while engineering experts assessed the technology, judges had to proceed with the final closing of the property and its reverting to the public good. That was a lot of work that would eventually preoccupy experts of sorts for the decades to come. (Strange as it may seem, some of those "estimates" have still not been "closed." The issue of "closure" is indeed here problematic, considering that many of the original owners never agreed on a transfer of property to the state in the first place.) Some of those *ta'mīm* cases, like the case below, even though the property has been nationalized a long time ago, with the original owners losing all control as early as 1965, is technically speaking, not over yet: the owners had never given their consent either on the assessment or on the transfer of ownership to the state. They have not been coerced either, in the sense that they neither have been forced to sign papers whose content they've disagreed with, nor have they been forced to give what they did not want. Yet, all the signs of duress were also there. To begin with, the state took hold of the property as soon as it was declared a public holding—by presidential decree—whose wealth was now to be managed solely by the state. Second of all, the legal proceedings proceeded months later, when the owners had lost total control of their factory and assets. In sum, in everything that would follow, and which we'll detail in this chapter, the owners were placed at every juncture in a state of fait accompli, to the point that they were left with the only option to deny the truthfulness of statements made on their behalf.

In a meeting with the owners in Beirut (where they have been residing since the *ta'mīm* of 1965) in winter 2013 and summer 2014, when the Syrian civil war was in its third year with a huge death toll, they reminded me that as far as they are concerned they have never *officially* approved to the procedures that were to follow the *ta'mīm* of 1965. They were given all kinds of estimates as to the value of the properties that were nationalized, had judges and lawyers appointed on their behalf, were granted compensations, and so on, but they never signed any legal document that would legalize the transfer of properties from their own family estate to that of the state. Hence from their viewpoint, there is nothing that has been legally transferred to the state, and all property seizures were strictly speaking (stricto sensu) illegal. Which means that they have the legal right (or advantage) to reclaim their properties back through legal court action. With the sprawling civil war, and the possibility of the fall of the Baathist régime, one of the owners said to me that, "Why not?, we could go to court and reclaim our properties back! We would be in a similar situation to all those East Germans who went to court amid Germany's reunification only to reclaim properties that were unjustly removed from them under communism."

What the owner told me in Beirut in 2014 was not far from the truth. When I was visiting professor at Aleppo University in 2003–05, there were rumors that the state was going for a final settlement regarding the *ta'mīmāt* of the 1960s. They would either provide the owners with monetary compensation, or else they would give them their properties back. This is because the state knew all too well that the procedural handlings in the 1960s and 70s were, to say the least, not perfectly legal, and the owners were placed in a state of fait accompli at every juncture.

The current state of the owners is therefore not that much displaced: they are not daydreaming, as their narration is well into its place. In effect, when we look closely at the process detailed below, we realize that the whole *ta'mīm* process and its various financial and judicial procedures were set in motion since 1963–65 from the vintage viewpoint of the state and its operatives. Once the presidential decree and legislation were there, the properties were seized immediately, placed into public use and sealed in red ink. The owners could neither appeal the decision as such, nor appeal any procedure within the process. Some had hoped that with the coming of the "rectification movement" in the 1970s that their pleas would be taken into consideration, to no avail. Instead, they were sucked into additional procedures; some were offered de facto compensations that "were not worth it": "they did a reassessment of all taxes and fees (property, municipality, and so-called "capitalist gains") retroactively," one of the owners told me, "went back to our bookkeeping records since the 50s, and reassessed all taxes accordingly." "They therefore claimed from us much more than we legally owed the treasury as income taxes, and deducted all that from the value of the property, as their so-called experts had valued it. They therefore paid us peanuts, nothing of value really. We refused such preposterous compensations. The whole process was fake, no value in it at all. But in the end, because we rejected all compromises, refused the masquerading compensations, did not sign any transfer document that would have legalized

the whole operation, we think we are safer now, and we will eventually, with a new régime in place, reclaim our properties that were illegally and unjustly seized from us."

The manufacturing institution in question was known as a *maḥlajat quṭn,* a ginning mill that purified locally or regionally or nationally produced cotton, purchased from individual farmers and producers, either for local textile production or else for exportation. The family's patriarch was originally from Idlib, born at a time when the Ottoman Empire just got its first constitution in 1876. He married early when he was in his late teens to avoid military conscription, which was imposed by the Ottomans in the wake of the Tanzimat, and which would have taken him away for at least five years. His life would have changed forever, but he was not interested in such venues. He rather rapidly developed a talent for trade, managing services between Idlib, Aleppo, Beirut, and Jerusalem. Later, he added ateliers that would hire small batches of workers to his business to clean cotton for textiles. The tools were manual and elementary wheels, to which, during the French Mandate, were added mechanized electrical machines. He would buy lands, mostly with olive plantations, in the Idlib countryside whenever he did well in business. In 1936 the sudden devaluation of the Franc, hence the lira, in relation to gold halved all his debts, which were all set in Syrian currency, while he had set aside all his reserves in gold. His debts to merchants in Beirut and elsewhere were covered bills and promissory notes (*kimbiyāla,* pl. *kimbiyālāt*) on behalf of the Banque de la Syrie et du Liban. His sons took over and expanded the business. They were the ones who did the work for the ginning mill that was to be nationalized in 1965. They purchased the land by the time Syria became independent, created a 50-percent partnership with the mighty *Khumāsiyya* in Damascus (Diyab, Khuja, Dusuqi, Rabbat, Qudsi), and by the early 1950s the manufacture was at its full potential. The family, including its patriarch, moved to Aleppo in 1954, once they had completed the building in a new residential area that they would ultimately occupy in its entirety. With the nationalizations of 1965, the family moved to Beirut where it ran a real estate business, leaving behind its expertise in cotton and textiles, to which it never came back.

In its issue dated 4 May 1965, the *Thawra* daily newspaper, which has been since then state-owned, heralded on its front-page that "the revolution in a bold magnificent step puts an end to corruption and abuse, with its announcement that the exports of grains and cotton, and 57 ginning mills, have all been nationalized." And it added in a jubilant mode: "The socialist mode (*nahj*) is well planned (*marsūm*), as it puts the hand of the people on the sector of external commerce and trade. Thus, 75 percent of our production is now the property of the people." Finally, "25 individuals used to make millions in profits, through illegal forged transactions, giving our country a bad reputation outside." At the time Amin Hafiz was president, with the dubious title of head of the presidential council, head of the prime minister's council, and head of the army and chief of staff, all combined into "one."

It remains unclear whether the two brothers, and their Khumāsiyya associates were among the "25 individuals" who made millions in profits, but what is certain is that they were among

the 57 owners of manufactures that cleaned cotton, which represented at the time half of the agricultural sector. To wit, the initial purpose was not apparently the mills, as the aim was originally to control agricultural exports, in particular grains and cotton, the two main commodities, so the mills came as an afterthought: the cotton had to be cleansed prior to being exported, so the mills had to be state-owned too.

First came the legislative decree number 76, which was based on the temporary constitution, and which required that the state would control the exports of all kinds of grains (wheat, barley, flour, and affiliated products) and cotton, and cotton seeds. Notice that the state would control only the exports, not the production per se, which was left to the peasant, even though, ultimately, the peasants were placed under strained conditions, as they were imposed uncompetitive prices; cooperatives were formed that would give loans to strained peasants. In sum, the peasant world was never placed under state tutelage the way the Chinese peasantry was under Mao's communism; only pricing and exports were state supervised, but that was enough to create a strained uncompetitive peasantry, as it was handicapped by all kinds of constraints.

The above decree was associated with decree 77, promulgated the same day, and which called for the nationalization of the ginning mills, 57 in total, which became state property with all their buildings and equipment, including peripheral non-built areas. The value of land and equipment would revert to nominal shares, which could be freely traded, on behalf of the state with a 3-percent interest for a 15-year period. The then heads of the mills would lose their positions, but all workers and technicians and other employees would be kept at their current positions, if they wish to do so. The minister of economy had the right, whenever he felt that it would be importunate to do so, to merge two or more of the mills together. All of the mills would work under the consortium of the committee for the trading of cotton, which would be responsible for both production and exports.

The distribution of the mills was as follows: 30 in Aleppo; 17 in Hama; 3 in Idlib; 3 in Hims; 1 in Dayr al-Zor; 2 in Raqqa; 1 in Latakia. Out of the 30 in Aleppo, 15 belonged to Christian families, even though the percentage of Christians at the national level did not exceed the 10-percent margin. Still in Aleppo, the highest estimate between land and equipment was SP2,303,306, a mill belonging to Ilyas Rafiᶜ and sons; the lowest went for SP43,429, a mill for Kamil Khayyāṭa and associates. Most of the estimates were below the one-million range, with only eight making it above that mark. Overall, therefore, the nationalizations have hit a manufacturing industry which was nascent but doing well, one of the few prosperous areas left by the Mandate. Nevertheless, even by the standards of the time, it was not a big industry that was worth nationalizing. For one thing, in terms of employment, most employees were seasonal, who were hired whenever needed, in particular when the cotton plantations were ripe, and the cotton was ready for cleaning. Which means that it was not an industry, in spite of its capital, that needed labor around the year. In an interview with one of the Idlib owners, I was told that by 1966, just one year after the *ta'mīm,* the number of workers doubled, but the

production declined. An English memo, dated May 17, 1965, drafted by the state-owned "The Cotton Marketing Organization," which seems an ad hoc organization formed in wake of the nationalizations, promised the unnamed clients abroad that we "will do all [we] can to meet your satisfactions in delivering the cotton you have been receiving in the past, and will devote the most care to make [our] deliveries to you according to your demands." Moreover, the memo urged those clients to inform the organization of the contracts to be met, an indication that the state found it nearly impossible to track down all those contracts with private firms, prior to the sudden *ta'mīm:* "We will be grateful if you can inform us about your contracts which you have already signed with the ex-Syrian exporters for the season 1965–1966 in order to give them our attention." The question here is why such contracts were not forwarded to the state organization from the exporters themselves. In hindsight, and judging from fragmented documentary evidence, it must have been the lack of trust between the state authorities who were working on the assessments and the (previous) owners that prompted the owners not to reveal such contracts. Revealing them would have probably provided the state with data on the extent of business of each firm, a step that may have touch on taxation estimates or claims of tax evasion of sorts. Be that as it may, the memo concluded with a promise that "the cotton will be delivered as it used to be in the past, in order to meet your satisfaction." At least the state admitted, through one of its organizations, that the quality of exported cotton was high, hence the question that begs itself, Why the nationalization if the majority of those private firms were doing well, made quality products, were funded by local capitals from the savings of middle class people and various partnerships, and manifested little financial handicaps, if at all?

Second of all, the entire industry was made of modest *local* capital, mostly urban non-landowning families, which made their fortunes from liberal professions under the Mandate, with a percentage of Christians far above their national average. The *ta'mīm* therefore killed a nascent and still vulnerable savoir-faire that was essential for the economy, without, however, replacing it with anything more competitive or better skilled. Truth to be told, with shrinking budgets and overstaffed manufactures, skills declined rather than flourished.

How was the mill estimated when it was nationalized in May 1965?

In terms of capital the mill was a joint venture between the Damascus based Trading and Industrial United Company, known as the Khumāsiyya, and the two brothers, which we'll refer to as Abdulrahman and Bahjat. While the former contributed for SP600,000, the latter deposited SP200,000 each for a total of a million.

In terms of equipment the mill was valued at 573,410.92 and its neighboring olive mill (press) was estimated at 57,015.90, for a total of 630,426.82. Next comes the category of building and lands: the mill's buildings went for 736,536.71; those of the press for 68,062; the mill's land value was for 68,030, and the press for 16,140. The grand total for lands and equipment was therefore at 888,768.71 liras.

Next was the section of *istihlāk,* the equipment maintenance. Thus, while the consumption of the mill was estimated at 497,418.93 liras, that of the press was for 19,259.90; hence the total for that category was 516,678.83 liras. To this was added a category of land maintenance for 112,280.70, out of a maintenance total of 628,959.53 liras. [Are those figures for istihlāk or intāj? If it's "consumption," what is it that we're talking about exactly? It seems that the figures above make sense for a one-year production cycle for mill, press, and land, the active capital in three categories, which have been added to the dead capital of land and equipment, for both mill and press.]

The other element was the assessment of all kinds of dues: unpaid taxes, fees, wages, and debts to individuals or the state. If the assessments were completed rather early, within a year or two of the takeover, the ones regarding "debts" in all their varieties came rather late, by the mid-70s, at the time of Asad's "rectification movement." The two owners, who were in a partnership with the Damascus Khumāsiyya, which was officially dissolved in 1963, had to settle alleged "debts" both to the latter and to the state.

creditor	Abdulrahman + Bahjat	Abdulrahman[4]	Bahjat
amount that the two owners allegedly owed	liras	liras	
Khumāsiyya	237,908.75	11,474.70	
māliyya for income tax			24,867.20

Once we deduct the alleged "debts" from the original assessments on property, including land, buildings, and equipment, we get the following estimates.

Original estimate on properties	Abdurrahman's "debts"	Abdurrahman's credit	Bahjat	Bahjat's final credit
486,800	486,800 original credit minus 11,474.70 + 237,908.75 ÷ 2 = 356,370 rounded off to 356,350 (final credit)	7,127 nominal shares with a 3 percent interest	377,877.66 original credit minus 24,867.20 + 237,908.75 ÷ 2 = 234,056.09 rounded to 234,050	4,681 shares

[4] It seems that Abdulrahman made his investments in solo on his own behalf, and in partnership with his brother.

That was in 1976. A year later, the committee, headed by judge Saad Kawakibi, revised its estimates one more time. Now Bahjat was credited for only 120 shares, while Abdurrahman was credited for 1,910. The crux of the matter was nothing else but the tax income, which was "reassessed" retroactively, not only for the year 1964–65 that preceded the takeover, but to previous years as well.

Abdurrahman appealed to the ministry of finance as soon as he received the new estimates. In a rebuttal that he received from the ministry in mid-1978, the finance officials took at heart the appellant claims that "the capitalist gains (*arbāḥ ra'smāliyya*) that were claimed were in fact fictitious (*wahmiyya*) that never materialized." The crux of the matter here, and the subject of the contentious dispute, was what constituted a "gain" (*ribḥ*) under such conditions? The appellant had noted that the building, when it received its first completion in 1954, was estimated at 161,000 liras, while the 1965 estimate pushed the figure up to 1,784,400, even though there has not been any substantial increase in the value of the land in the area until 1970; the increase, adds the appellant, was due to new buildings, facilities, and equipment that were added since 1954. Another contention was appended to the memo regarding the value of such equipment which we need not get into here. The main point for our purposes is that "gain" was *not* understood by the state authorities (the commission that handled the nationalizations and the finance ministry) as stricto sensu the "profit" on "income" that was made over a certain period of time. What the authorities understood by "profit" was much broader, as it encompassed all the adjustments to property values (including land, buildings, and equipment) that were made over a decade, between 1954 and 1965. In sum, the difference between the respective property values (in the broad sense of the term) and the assessments of 1954 and 1965 were calculated as "profit," hence all of a sudden taxed as "income tax." Those were the "capitalist gains" in the official jargon. Thus, to wit, Abdurrahman and Bahjat, who for a decade had been diligently paying their "income tax," all of a sudden found themselves in a situation where "income" in its post-ta'mīm connotation meant something else, even entirely different from what they had assumed in all their work in common with their father and the Khumāsiyya since the 1930s. Now "income" meant all alleged "profits" made on "dead capital," that is land, building, and equipment. Those were now considered as "profits" to be added as "income" and taxed accordingly for the simple reason that their value had increased over the years. Thus, not only the owners had lost their properties, but were taxed for the "profit"-as-value-increase that those properties had allegedly accumulated in a decade.

It was only in 1966 that a decree explained how to proceed with legislative decree 77, a year after the nationalizations.

What we need to understand is what a *total* estimation implies in this context; and, second of all, how the owners, which now had lost all properties, should be indemnified: there was the value of their assets, on the one hand, and what they owed the state in terms of taxes and

wages and other "consumptions." Since the owners could not contest the legitimacy of the ta'mīm or istimlāk, they were left with the thorny issue of compensation. What is it exactly that they should be compensated for, and based on what estimates?

Decree 581 of 1966 supposedly clarifies such issues. The estimates, we are told, should include all properties and equipment. (Considering that equipment is generally that dead capital that dies down progressively over the years, how is, for instance, a ten-year old machine to be estimated? Based on its purchased value, actual value, of after-use-value?) Comes first the *mawjūdāt,* what is to be found, what is already there as property in terms of land and equipment, the dead capital. Another main component are the *maṭālīb* (s. *maṭlab*), the requirements. Those essentially consisted of all the wages of workers and employees in terms of monthly, daily, or hourly salaries, bonuses, or additional compensations, pension plans, or retirement pensions. All this should be calculated up to the day of seizure of the properties by the state authorities. Another element of the "requirements" were the electricity, telephone, water, and heating bills, and other utilities, from January 1st up to the seizure. Finally, were the taxes and fees. Article 5 specifies that what is understood by compensation was the original assessment minus all the expenses, as detailed above. (A detailed tabled appendix values "consumption" (*istihlāk*), that is how much a "property" would deteriorate from year to year, in percentages ranging from a mere 3 percent on the buildings themselves, up to 15 percent on electric equipment and cars, and a 100 percent on stationaries and printouts. For example, an electric wheel designed to clean the cotton would lose 15 percent of its value annually; in seven years it would have "covered" all of its purchased value, hence would receive no compensation if it had been around for eight or more years. The text, however, is silent on what would happen to buildings and equipment whose value had already reached a "zero point" at the time of the seizure: would they stay onsite for further use, even though they would receive no compensation? Or would the owners be allowed to reclaim them, if they wished to do so?)

What happened to the value of all those assessments? Article 14 specifies that the total value would be divided into bonds each worth 50 liras, which would be "nominal" (*ismiyyah*) on behalf of the state for 15 years with a 3 percent annual interest. Such bonds, which were eligible for exchange, were "nominally" worth 50 liras each, which implies that their "real" value of exchange could have been above or below such value. The purpose of such bonds was to cover the expenses of property seizures, serving as the prime fund (or as capital) for the "general committee for the milling and marketing of cotton."

IV. The expropriation of landed properties

Our purpose in this study is to demonstrate how property is fully integrated into the social and symbolic order of society. By this we mean that the value of property in a particular social constellation has meaning only in relation to a symbolic order articulated through language. **Property is structured like a language** means that whatever symbolic value people associate

with property, it is structured by means of the linguistic components that make language in a particular society possible. For example, the notion of "private" property implies an understanding of property in a particular way, say, one which favors an individual over the group, with an emphasis on "freedom" of choice and decision making. Such notion, therefore, is rooted, as everything else, in the symbolisms of language and its constitutive parts. That to say, the meaning would not stand on its own in relation to a "signified real," which is somehow just out there like a thing-in-itself, but is rather situated with a differentiated set of meanings, which would derive their meanings in relation to one another. It is, indeed, that kind of differential use of language that counts—signifiers that make sense in relation to other signifiers. That property is structured like a language also implies that notions of property come in relation to a society at a particular historical juncture; hence a genealogy of concepts is possible.

We now come to another period and another kind of documents—documents related to istimlāk under the Baath of the 1990s and beyond. As for the other periods, probably beginning with the 1970s, the confiscation of private properties with the alleged purpose of transforming them into public projects for the sake of the common good, was excessive. There was that **suspicion of private property** that developed in particular with the second Baath of the rectification movement. Although the civil code of 1949 remained very much unaltered, it was a combination of presidential decrees, laws, and parliamentary legislation, which by and large made private property suspicious. In the previous section of this study we examined a case history of the 1965 nationalizations of industrial properties, which had already set the record for the policy of suspicion. However, there was never a concerted effort to seize landed properties in the way the leading industrial properties were seized in 1965. In its stead, the suspicion towards private property was nurtured piecemeal, for example, by establishing strong requirements to limit the transfer of properties, whether rural or urban: one of the requirements was that once the property was sold, it could not be sold for a second time as it was, but only if it was built upon, hence transferred in a modified form. The point here is that, as we have seen in section 1 on the dissolution of waqfs, the state aggressively intervenes to **"limit" private property.** How so? Why "limitation" should be an aim, rather than, say, policies of "expanding" private property?

The case that we are discussing in this section involves the istimlāk of landed properties containing olive plantations in Idlib in 1999–2000 belonging to a single extended family, that is, even though the properties carried different family names, the latter were all associated together through intermarriages of sorts, where one family prevailed. Since owners under such circumstances cannot challenge the act of seizure itself and its legal (or political) principles, they are only left to procedural matters. That is to say, they cannot challenge the legality of the seizure itself—for instance, its possible unconstitutionality—but only procedural matters: procedures in the istimlāk law itself; which law specifically (since there are several); the value of the istimlāk, and the options open for compensation, cash or property. Such claims are generally not handled in local civil courts, but at the upper level of

the Damascus-based administrative courts. In effect, the Syrian system has inherited from its French counterpart the Napoleonic principle that citizens in the age of the Republic need to be "protected" by courts where they could directly sue the state itself, in case of grievance on a civil matter. In this instance, since the "book of istimlāk" comes directly from the office of the prime minister, challenging the istimlāk even on the tiniest procedural matters would require an administrative lawsuit against the prime minister himself as legal person. Other matters that bypass the prime minister may be handled in local civil courts.

Before we delve into the case we need to recall that in the last couple decades, since Asad's "rectification movement," there has been two istimlāk laws, the second of which was supposed to "rectify" the excesses of the former: Law 26 in 2000 was supposed to addresses major shortcoming of Law 60 in 1979. It goes without saying that for every expropriation an indemnity is offered, the amount of which is determined by expertise. Obviously, owners whose properties have been seized have had every opportunity to grieve the amount that was offered as compensation. Up to 2000, owners have routinely complained in court and elsewhere that besides the unjust istimlāk which seems unwarranted, the ad hoc values were too low, far below the market price. Moreover, the practice of marking a property before it is effectively seized as "eligible (*qābilah*) for istimlāk," years before its seizure, lowers its price considerably. Owners are therefore caught in a catch-22 situation: they're neither able to sell at market value, nor do they get a fair price once it is seized. Some entrepreneurs are known to fish around for properties that are marked, offering "acceptable" prices, slightly over that of their would-be istimlāk value; they would then gamble, through "good connections," or court action at the administrative level, for a possible freeze of the istimlāk. But, whatever the case, the original owners tend to be the big losers. Would Law 26 in 2000 change the perspective?

Without going through all the articles of the law, let us concentrate on what difference the 1979 and 2000 laws would make—from the perspective of the owners. By 2000 the new law makes it possible to receive property rather than the usual indemnity. Those who had a property confiscated for the sake of public project (which must be determined "in detail" in advance) can "purchase" up to 40 percent of that property in the same maqsam–"unit" where the property is situated. The owner is here "purchasing" property with the same cash amount that he was supposed to receive in the first place; the 40 percent, however, is attached not to value but to the area that was seized (the two, should, however, be nominally of equal value). Moreover, the 40 percent under consideration is the *gross* area, prior to the net surface, after all the necessary elements, from pavements to roads and public parks, have been cleared out. Concretely, therefore, experts tend to agree that the owner would get no more than 12 to 18 percent of his seized property, either as value or size, which in principle should amount to roughly the same. In principle, therefore, such "property compensation" *could* take place within the same maqsam where the property was originally seized, as required in Law 26, even though as the case below will point out, when that proves not feasible (no more lots are available; or else the public project under consideration consumes too much space, so that the 12 to 18 percent margin of leftovers would not apply here), the owner would then be given the

option for another maqsam. For the case below, I was told by the owner back in 2007, that "They've proposed to us two lots at the outskirts of Idlib as a fait accompli, and realized immediately that they're not worth it, that we'll be stuck forever in properties without much value. We therefore fought a battle with the engineers of the municipality to be given that opportunity for another location (maqsam), which they finally grudgingly approved. That was a couple more years of lost time until we finally settled." Settlement here means that, once the administrative lawsuit and all appeals are over, the owner would acknowledge the seizure, that is, hand in the properties to the municipality for their public project, and in return receive the cadastral pages for the lots he was awarded. It took over 13 years for our case here to unfold from the time the owner was informed that his properties were seized.

There are additional hurdles which we need not get into detail here. One of them has to do with what is a legible maqsam: there is a minimum of 900–1000 square meters stipulation for a property to be legally declared as property, that is, to receive its own cadastral page and be recorded as such. Which means that owners must declare some form of "partnership" among one another if they receive properties as compensation below that margin, which is very difficult to do in practice. Suppose, for example, that the seized property is worth 5,000 square meters, which averaged at 15 percent compensation, would give the owner to claim a property worth 750 square meters as compensation, which is slightly below the legal margin to declare it an independent property. In the case below, the owners were offered two maqsams, one of them, because below the legal margin, was with an *imposed* "partner" whom at the time of this writing his/her name was still unknown to them. Such fait accompli are therefore quite common, to say the least.

Urban conglomerations fall within a planning known as the *mukhaṭṭaṭ tanẓīmī,* the plan that would delineate the borders of the city from its countryside. Thus, whatever falls within the plan is habitable; the municipality has that duty to define, demarcate, organize and allocate in each habitable zone what is public (roads, pavements and parks) from the private. What is therefore outside the plan is in principle subject to other laws, those of agrarian properties, where the built areas are to be limited to the minimum (farms and warehouses).

Once a zone is situated within the plan, the municipality must proceed with what is known as *farz wa tajnīb,* the process of demarcating each property on its own from others, and determining the private–public areas. In an aberration that goes back to the French mandate, rural properties are generally labeled as miri, whereby inheritance rules do not follow the sharia (1:1 instead of the 1:2). However, once the rural property is integrated within the urban plan, owners have the right to make the change to milk; or to divide a commonly-owned *shuyūᶜ* into individual lots. In the case below, the properties were all registered decades ago, since their inception, as miri, although this would not have made much difference had they been milk, since none of the istimlāk rules would have benefited any of the owners.

To its many detractors, Law 60 of 1979 considerably slowed down the process of property

allocation, if it did not freeze it completely, encouraging people to go "illicit" on their own with whatever means they had. Herein lies a major cause of the sudden expansion of illicit zones since the 1980s in Damascus and Aleppo in particular, as both owners and administrative units had their hands tied because of the law. Law 26 of 2000 was supposed to address such issues.

In the lawsuit under consideration, the crux of the matter was the transition between the two laws of 1979 and 2000. The plaintiff complained that their properties were seized at the very end of 1999, right at the moment when the country was moving from one istimlāk law to another. They argued that the municipality, which apparently had knowledge that a new law, just passed in parliament, would be published soon, hastened the istimlāk by December 1999, for the simple reason that the old harsh law of 1979 would be much in their favor. The plaintiffs, who had sent their plea to the administrative court in Damascus, obviously thought that the 2000 law was in their favor, as it gave them a better compensation in the form of landed properties—roughly 18 percent of what was seized from them—while the 1979 law would have squeezed them with a meager material compensation.

The attorney in this case was representative of his four daughters, which owned two properties, consisting of olive tree plantations, as *shuyūʿ,* which means that the properties were jointly owned, without a proper allocation for each daughter, which is fairly common in rural areas. The crux of the lawsuit argues that the decision of the istimlāk, which came directly from the prime minister's office, and whose purpose was to benefit the common good in public projects, was dated November 2000, which therefore must be within the jurisdiction of the 2000 law, even though the text was only made official on December 2000. That is to say, although the istimlāk took place the year before Law 26 was made public in the official journal, the istimlāk must still be subject to the new law and not the defunct Law 60 of 1979.

Let us now proceed with the main arguments. First of all, the time framework between the request of seizure and the promotion of the new istimlāk law.

In his plea to the administrative court in Damascus, the solicitor, acting on his own behalf, noted that the purpose of his lawsuit was to subjugate the three properties under consideration from the istimlāk law of 1979 to that of the new 2000 law. Addressed to the prime minister, the minister of habitation, and the head of the municipality of Idlib, the plea explains the seizure of properties as unlawful. To wit, it was not the seizure as such that was challenged, that would have necessitated another logic and modus operandi, but rather the subjugation of the seizure to the old law rather than the new one. In other words, the municipality, unexpectedly caught between two istimlāk laws, opted for the older one, for no other reason but it was more beneficial for its purposes.

The pleaders who owned the three properties under dispute, which consisted of olive plantations, noted that the office of the prime minister in Damascus had issued a decree with

a formal request to confiscate the properties on November 8, 2000, with the purpose of using them for the public good—the eminent domain—(*al-nafᶜ al-ᶜāmm*), based on Law 60 of 1979. The point here is that Law 60 was at the time under debate in parliament for its full revision, what became Law 26 of December 2000. Hence the pleaders argued that the Idlib municipality went on with their istimlāk only 28 days before the new law was drafted, with the full knowledge that a new text would be available by the year's end. Moreover, and that's another crucial point, the owners-pleaders had not been informed of the prime minister's decree, nor have they been informed of any matter related to the confiscated lands. In other words, for unstated reasons, a copy of the decree, which should have been either mailed to the owners-pleaders or else delivered by hand (as is often the case when no reliable address is available), did not take place. It remains to be seen, however, how the pleaders were effectively notified of the status of their properties: by what means exactly, and how to explain the lateness in notification, assuming it did happen at later stage?

In their statement to the administrative court the owners-plaintiffs claim that they had *heard* from mouth to ear in the following year, in 2001, that their *three* properties had been confiscated in a *single* decree emanating from the prime minister's office. "We thought that they had confiscated our properties based on the new Law 26, so we headed to the cadastral office thinking that was the case, but were surprised that the properties had not been marked yet by any sign indicating their new seized status (*ishārat istimlāk*). The rumors, however, had already spread around. Upon investigation, we realized that there was indeed a decree from the prime minister number 5349 requesting the seizure of all three properties, based on Law 60, prior to its amendment with Law 26. Moreover, the city's council had already proceeded with plans of partition, planning, and value estimation."

To sum up, therefore, the plaintiffs did not argue that the seizure of all three properties was illegal per se. The illegality, if any, stems from the procedures of seizure themselves, which consisted of three procedural errors: first, the owners were not informed in writing; no one had told them anything, and it was by hearsay (rumor) that they've mobilized and decided to verify the status of their properties at the cadastral office. Second, at the cadaster, the properties had not been marked yet for seizure. Third, notwithstanding the first two procedural errors, a decree of seizure did exist, emanating from the prime minister.

In additional arguments, the plaintiffs argued that, first of all, the city council acted *as if* the properties had been seized, even though their owners were never *officially* informed, nor has there been any indication of seized status at the cadaster. Second of all, the plaintiffs retorted, why apply the old istimlāk law rather than the new one?

It is on this second issue that the crux of the case revolves, namely, regarding the differences between the two laws. Here they refer to a text by Samir Ismail, which was published in *al-Muḥāmūn* in 1981, regarding conflicts that could emanate between old and new laws. The crux of Ismail's arguments is in relation to the "benefits" of applying the new law, even on cases

that precede the law. First of all, it goes without saying that any new law should be better adapted to societal conditions, otherwise, there would be no new law: what would be the purpose of a new law that would be worse off that the previous one which it is replacing? What would be the purpose of all the legislative effort if the new laws have less value than the previous ones? A new law, once made public, should therefore be enacted on all cases at hand, for the simple reason that legislation generally goes forward rather than backward.

Second of all, a civil legal system should in principle assume a systemic character at its core, hence the plethora of laws and decrees on a single matter, say, istimlāk, only brings confusion to judges, lawyers, and users at large. The last word should always be for the new law, which de facto abrogates the previous ones.

What is it then that the plaintiffs are requesting in their appeal to the prime minister?

First, the plaintiffs mention the "organizational plan" of the city, known as the *mukhaṭṭaṭ al-tanẓīmī.* As each city comes with its own "plan," its urban area is defined in relation to its surrounding rural areas. The plan would accordingly change on a yearly basis with the increased need for urban areas, for the construction that is needed as more people move into cities, not to mention the population growth of those who already reside there. As urban plans need to accommodate to population growth, surrounding rural areas at the vicinity of the city would gradually be integrated within the plan. Prices would receive an adjustment accordingly. A great deal of istimlāk strategies hinge therefore on that fundamental (hidden) link between the integration of new properties in the plan and their immediate seizure. As it turns out, quite often it's a question of strategy: to keep the price low, the request for seizure must take place within a time framework that matches the integration of rural properties within the plan.

What is of interest here is what does Law 26/2000 bring to urban planning. It is usually argued that the defunct Law 60/1979 has produced since the 1980s an urban crisis, which is mostly visible in the slum-illegal-neighborhoods of the *ᶜashwā'iyyāt,* as scores of habitats in peripheral zones have been designed and built by the users themselves. The outright result has been the catastrophic expansion of such zones, with pell-mell forms of living, most of which prove insecure and poorly constructed. It should be noted, and that's the main point, that much of this habitat, principally in congested cities like Aleppo and Damascus, remains illegal, at least from the viewpoint of the state and its bureaucracy. I've discussed elsewhere what this illegality implies, from the vintage viewpoints of the users themselves and that of the state as well.[5] Users have that inherent tendency to legalize-the-illegal. That is to say, even though the illegal neighborhoods have generally not been subject to partition (*farz* and

[5] Zouhair Ghazzal, "Shared Social and Juridical Meanings as Observed in an Aleppo 'Marginal' Neighborhood," in Myriam Ababsa, Baudouin Dupret, Eric Denis, eds., *Public Housing and Urban Land Tenure in the Middle East,* Cairo: American University of Cairo Press, 2012, 169–202.

taḥdīd), users tend to legalize on their own, through court procedures, their own transactions, principally contracts of sale and lease. It is indeed that combination of elements, between documents that have been drafted by the users themselves, outside the court system, only to be legalized later by a judge though a court of law, that constitutes the hallmark of the practice of legalizing-the-illegal.

Law 60/1979 was too rigid in that it demarcated each urban area in terms of the "legal zone," as defined by the "plan," which was valid for construction, in relation to the surrounding agrarian area, which would not fit for construction. Thus, once a zone becomes integrated within the plan, and the assimilated properties have been marked as such at the cadaster, the urban authorities, beginning with the municipality, would, if they have not already done so, proceed with partition. Partition implies that all properties that have been assimilated into the plan must be demarcated in relation to one another, their borders well established in relation to one another and to public outlets, such as pavements, parks, and other public projects. Partition and demarcation may have been completed by the urban authorities prior to the expropriation of the properties in the general organizational plan, but in case they haven't, the law would generally grant a probation (say, six months to one year) period whereby both *farz* and *tajnīb* must have been completed.

What we therefore need to understand is where the practices of istimlāk would fit within the expropriation of properties within the plan and their eventual partition, in case this has not been already done.

Law 26/2000 was supposed to not only to help organize urban areas, by legalizing "overdue" planning and partitions, but also by being fairer to those whose properties have been seized for the collective good. What also needs to be understood is the interlink between those two positions of the Law, namely, that desire to improve urban planning by integrating the areas that had been de facto urbanized, the *ᶜashwā'iyyāt,* or the *amākin al-mukhālafāt al-jamāᶜiyya,* or the *manāṭiq al-sakan al-ᶜashwā'ī,* as they are variously called in semi-official writings, on the one hand, and by giving more options to those whose properties had been seized. It is, indeed, in those other possibilities that the Kawakibi plea resides, that is to say, to go beyond the simple and simplified compensation schemes that were imposed on the owners in the defunct Law 60/1979.

The perniciousness of Law 60/1979 could be detected in article 1, which has been abrogated in 2000. With the new law, it is the very notion of the "zones of urban expansion" (*manāṭiq al-tawassuᶜ al-sakanī*) that has been expanded. Considering that the main problem were all those areas at the peripheries of cities that had been designed by the inhabitants themselves, without prior planning and partition on the part of the official authorities, Law 26/2000 addresses them indirectly, since even if such zones had not been included in the general plan, they could eventually be, in order to be subjected to planning and partition.

Planning, according to art. 6 of both Law 60/1979 and Law 26/2000, involves that the public authorities undergo thorough research of all the technical, artistic, and financial aspects of the proposed projects, that is, the projects for which the properties have been seized in the first place for the sake of the public good (eminent domain). If the government or its agents has the right to expropriate private property for public use, pace an indemnity, then what are the projects at hand? Should the projects be known beforehand, that is, before the expropriation takes place? The research that should be performed—in principle, beforehand—on what would ultimately become public property for the general good, should involve the securitization of all kinds of public utilities, from sewage facilities, water and electricity, telecommunications, roads and pavements, parks, lighting, and the like. In the assessment of the general cost, such utilities must all be totaled with the cost of the expropriation of properties. As to the value of the seized properties "they should be considered agrarian, whether effectively devoted for agriculture or not; hence their value at the time of expropriation should not exceed tenfold the value of their production." (art. 3 of 60/1979 & 26/2000) It should be noted that the waqfs of various confessions are not subject to confiscation (art. 2).

What is most relevant for our cases here, however, is article 5, which divides the expropriated properties into three categories, with the first solely devoted to non-commercial use, that is, private homes. (The third category is devoted to commercial settings.) Within that category, the expropriating party—the state—has the right to sell no more than 60 percent of those to public housing and cooperatives (*jamᶜiyyāt sakaniyya*); while the remainder 40 percent could be purchased by no one else but those landowners whose properties have been expropriated. Herein lies the significance of the lawsuits under examination: the owners-plaintiffs have something at stake in their request to have Law 26/2000 applied to their expropriated properties, as they would have a choice between accepting confiscation-for-cash at a price determined under article 3, or else they would be eligible under the new Law to dent within the 40 percent margin. In practice, however, things turn out more complicated. For one thing, the expropriated properties must be first assessed and valued as agrarian properties, hence not on what would amount as their "urban value." Once assessed, and there is an agreement over pricing, the next step would be either to receive payments in full cash, or else to opt for the 40 percent option. The latter means that the owners, whose properties have been de facto valued below their "urban value," are entitled to buy, within the 40 percent of leftover housing properties, properties worth the estimated value of their confiscated value.[6] Because the "rural value" is de facto less than the "urban value," landowners, even if they have been granted that unique privilege to purchase, are still operating with a loss. Moreover, there is a common problem as to that 40-percent margin of leftovers, namely, that there may not be any leftover left: that is to say, all the properties within that margins have already been purchased once the turn of the lucky landowner comes through. In that case, as we'll see in detail later, the only

[6] In principle, it should make no difference whether the 40-percent margin is calculated on the basis of its monetary value or its size. However, such claim remains uncertain in the absence of concrete data.

option is to go to another lot of confiscated properties, or *maqsam,* and look for alternatives. In our case above, the Kawakibis, considering that their administrative case had dragged for nearly a decade, could not be compensated within the 40 percent margin in the same maqsam that was confiscated from them. They were therefore forced to shop elsewhere and the municipality offered them maqsams which they judged far below their expectations, meaning that they were situated at the outskirts of Idlib in "dangerous" areas that look more like slums for the lower classes than anything respectable. After negotiations with the engineers of the municipality and their own intendants that lasted for over two years, they were finally granted in spring 2013 two very decent maqsams in areas of value, as their intendant told me. And the intendant confided that, considering that they all live away, and with a civil war that could last forever, I recommended to them that they sell immediately. The prices are now (summer 2013) really good, in spite of all that violence. But, I said, wouldn't the devaluation of the lira make them think twice? (At the time the lira had peaked a hundred pounds to the dollar.) As the lira is declining, prices are changing, which means going up accordingly. So the irony is that the Kawakibis did win their case, after a fierce and unprecedented battle with the Damascus administrative court, setting a precedent for Law 26/2000, only to find themselves in the middle of an uncontrollable civil war.

The implications of Law 26/2000

This law expands the urban zones under the plan so as to include not only the areas that are already under the plan, hence have been fully partitioned, but also all areas without planning yet, and that would-be partitioned. This last category is particularly important, due to the fact that it sets different deadlines for both the official authorities and the owners to work out partition plans in order to proceed with the planned projects. There are two dates at stake here: the enactment (promulgation) of the new law, which happens to be in 2000, and the enactment of the planning for the urban area in question. The deadline for completing the planning is six months after the closest date. Let's say that a plan for a certain zone has been approved in June 2013, then the deadline for the second step—known as *tajmīl,* beautification, which is a form of organization, *tanẓīm*—would be December 2013. Beautification is apparently a requirement of Law 9/1974, which seems to involve a process of enacting the planning, that is, to work out concretely what has been proposed in the planning on paper. Likewise, if the zone in question has no plan set for it upon the promulgation of the 2000 Law, then the deadline is set either six months after the law or else once the plan is ready for enactment. In either case, once the planning is complete, and the official authorities have not yet enacted their plan, the owners would have the sole right to enact the plan within three years of the deadline. The key point here is that once all deadlines are over, then "all properties that the administration did not work a plan for, or that their owners did not partition either on their own behalf, would be de facto considered comprised within the zones of urban expansion, hence subject to art. 2 of this law—istimlāk." (art. 2–2) The law therefore explicitly opens up non-partitioned urban zones, comprised within the general plan, to istimlāk. It is as if over the years, in particular since the 1970s, when the powers of the

patrimonial bureaucratic state have vastly increased, large urban zones have begun to look like leftovers of various incompatible laws, presidential decrees, and poor governmental and parliamentary legislation, not to mention an open suspicion towards what private property represents for the middle class. The real culprit here is not simply the istimlāk laws since the 1970s, but also laws that would prohibit the movement of property from one owner to another, or the division of a property among several owners, due mainly to size requirements.

Muhammad ʿAdli Darāwu, an astute observer of the istimlāk laws, has noted (syria-news.com on 03/23/2010) that "when we follow what is going on right now in a city like Aleppo, we realize that its city council narrows down Law 26/2000 to an understanding that everything that is comprised within the general plan, but has remained for whatever reason non-partitioned, *must* be, according to the Law, confiscated—mustamlak." The Law seems, indeed, to make non-partitioned properties, which have not been subjected to planning within the deadlines set by the law, *necessarily* eligible for istimlāk—they must be confiscated, and made public property for the general good.

When we consider Law 26/2000 in conjunction with Law 9/1974, which specifically aims at urban planning, we realize that all kinds of conflicts could emanate on the side of the original landowners.

First of all, Law 26/2000 gives landowners whose properties have been confiscated the right to "buy them back" within the 40-percent margin set by the law, that is to say, either within a 40 percent of the original area or else the estimated value (indexed on the land in relation to its agricultural produce); which in practice, after the deduction of all utilities, such as roads and pavements, would amount to a mere 12 to 18 percent margin at most, which may create problems of registering such properties in the cadaster due mainly to size limitations: they're too small to be approved. The landowners, after going through all the hurdles of confiscation, law suits, appeals, and the final purchase, would now have to find a way either to buy each other's properties, or else to accept others as partners in what would become a joint property.

Suppose, for example, that the confiscated property was originally 5,000 square-meters, at 15 percent the owner would have the right to buy no more than 750 square-meters, which would be below the 900–1,000 meters set as minimum by the law for the new property to become legalized. Which would necessarily prompt several landowners to come together, act as partners, in order to meet the dubious registration requirements.

Moreover, various laws and regulations which have been enacted since the 1970s have set as their purpose to severely limit all land transactions, so that land would not be used as a commodity for speculation. Thus, if the original owner (prior to the law's enactment) has a right to sell, the second owner would be dispossessed of such right, according to Law 3/1976, which prohibits the open commercialization of landed properties, *qānūn manᶜ al-ittijār bi-l-arāḍī.* The second owner would have no choice but either to build on his own, or else to do so

with partners that he does not know. To elaborate, the law gives no option to "second owners" but to request building permits within a three-year period. In effect, both law 14/1974 and 59/1979 (*qānūn iᶜmār al-ᶜaraṣāt,* courtyards) unequivocally require that the request of building permits and the beginning of the work must be within a three-year period after the sale. Otherwise, the property would be sold in public auction, with the municipal council engrossing 25 percent of the total, in addition to a 10 percent penalty for each year of delay after the three-year ultimatum.

In sum: there is a problem with making private property, as an open source for commercial transactions, which could be freely valued, legitimate. There are all kinds of hurdles that would make such a claim difficult, if not impossible to realize. Once we begin with that suspicion towards private property, urban or rural, we realize that all the hurdles that have been placed towards its limitation (that is, the limitation of its circulation, and its replacement, whenever possible, by public state-owned property) are of a juridical and political nature. There was, first, the political will, since the 1970s, to reduce the circulation of private property, that is, its use as source of investment for financial speculation. Considering that in a society which not only lacks any viable stock, bond, and treasuries markets, but where only a minority of users have banking and saving accounts, land as "safe" value has been severely hampered in various laws, legislations, and presidential decrees.

Consequently, new laws are enacted to address previous misfortunes, such as Law 33/2008. What is striking with this text is that, rather than addressing the real problem, which is half a century old, it provides us with a catalogue of the problems that have engulfed the phenomenon of private property. The broad purpose of this law, as stated in the introduction, is to "fix (*tathbīt*) the ownership of built properties," and the fragments of non-built properties in housing complexes and the like.

Even though the law in its essence aims at organizing those urban zones that have managed for decades to live outside official regulations, hence are into that awkward status of the legalized-illegal—illegally acquired zones that have been de facto legalized by their users—the term *ᶜashwāʾiyyāt* or its equivalents has been avoided in the law's articles. In art. 3 we are told that the zones that would be demarcated for the purposes of this article would be so thanks to a decision from the prime minister's office, based on recommendations from the ministers of agriculture and that of local administration and the environment. Art. 4 notes that once the areas have been delimited as required in the previous article, they should then be declared areas of public utility (*al-nafᶜ al-ᶜāmm*), which de facto places them at the mercy of istimlāk Law 26/2000. Once we're into public domains, which have been declared as such for the purpose of serving the public good, whether for housing or commercial purposes, there are all kinds of deadlines that need to be observed, at least from the moment a property has been declared public, up to partitioning and planning. Otherwise, the private users themselves may be granted the right to proceed with the partitioning and planning on their own behalf.

Once we go beyond such preliminary formalities we realize that the text of the law itself unwittingly documents all the other formalities that have contributed to a decline of private property, a fortiori in the countryside. Once a property has been included in the general plan, there is a long bureaucratic process to make it eligible for construction, whether housing or commercial.

First and foremost comes the requirements of partition, *farz,* the removal of *shuyūᶜ,* if any, the correction of all errors of documentation in the cadastral registers. Moreover, some properties may require more cadastral work, for instance, if their status is miri it should be changed to milk, in such a way "that it would not be revoked by any authority later" (art. 9–a–1). All of this should lead to the finalized plans of partitioning, *farz, taḥdīd* and *tajnīb,* all of which would clearly delimit properties in the cadastral registers, as required in Law 186/1926, which was the first post-Ottoman law to rethink property in terms of a modern topographical system. Overall, the Law recognizes that users have concrete property rights known as *ḥuqūq ᶜayniyya,* which gives them to right to demand a material compensation, *badal naqdī,* in case of expropriation for the sake of a public project. All of the above look good on paper, but in practice, bureaucratic slowness, the incompatibilities and loopholes among the various texts of the law, promulgated for the most part as "amendments" to one another, and then the sheer corruption within the system, and the fear of "inappropriate" expropriation (not to mention the dread of the sign of expropriation) make it so hard to keep up with one's property. Add to all this the risk that one's property would be seized by other users, non-related to any state agency, particularly in hungry urban agglomerations like Aleppo and Damascus. One concrete example would here suffice to make my point. Suppose I own an 800-meter land integrated into the city's general plan with a partner, and our partnership requires us that we share all benefits equally. Suppose that we decide, after a ten-year common ownership, to divide our property in two equal parts and register it at the cadaster as such: the law would make such step illegal for the simple reason that the registration of a property below the 500-meter limit is illegal. Suppose further that we decide to sell it: here, again, we'll be faced with further legal hurdles, considering that our lucky potential buyer would be faced with a three-year deadline to built on the said property; otherwise he would face seizure and the selling of the property in public auction.

We're now ready to move to our second case. An Idlib lawyer by the name of Ibrahim Mirjāneh has filed a similar lawsuit in 2001 on his own behalf at the administrative court than his colleague Kawakibi.

Ibrahim owned one property which had olive plantations which was confiscated at the same time as that of Kawakibi. Ibrahim inaugurated his plea with a brief recapitulation as to what the defunct istimlāk Law 60/1979 had done to housing and commercial properties: an extensive damage caused by the large seizure of properties for the public good, while the authorities lacked the means of planning, partition, and the badal payments for their owners,

which led to housing crises as witnessed in the likes of slum neighborhoods. Moreover, the law prohibited landowners, whose properties were included within the general plan, to plan and partition on their own, as if the public authorities were unable to do so for whatever reason.

The timetable for the seizure of Ibrahim's property goes on as follows:

8 November 2000	Official decision to seize the property, emanating from the prime minister's office.
11 December 2000	The President of the Republic promulgates Law 26/2000 to replace Law 60/1979.
17 January 2001	The seizure of the property is confirmed through a sign (*ishārat istimlāk*) at the cadastral register.
28 January 2001	Text of istimlāk Law 26/2000 is published in the Journal Officiel. Article 8 makes it mandatory that the application of the law effectively begins with its publication, on 11 December 2000; hence the abrogation of Law 60/1979 is effective at that same date. The lawyer argued that the old law would not apply anymore for the seizures of November 2000.

Simply looking at the chronology of events between November 2000 and January 2001 we can see what the lawyer, acting on his own behalf, was up to. Like his colleague Kawakibi, Ibrahim did challenge the *right* of the istimlāk. What he did challenge, however, was the right to apply old Law 60/1979, whilst keeping the newly promulgated Law 26/2000 at bay. Even though the arguments here are not that dissimilar to those of Kawakibi, it is worth noting them one more time.

1. Law 26/2000 did not entirely abrogate Law 60/1979, but only modify some of its main articles, in particular articles 1 and 2. Law 26/2000 also brought to life Law 9/1974 which organizes the status of properties in urban zones within the general plan.
2. Due to a de facto recognition of Law 9/1974, Law 26/2000 gives authority to the Idlib municipal council to plan and partition within a six-month period, after which private users themselves would be vested with that same authority.
3. Various legal sources underscore the point that in case of a conflict between an old text and its new counterpart, the source should always be at the benefit of the latter.
4. When Law 26/2000 was promulgated and enacted in December 2000, the cadaster had not yet marked the property in question as "seized." That was done a couple of

months later. When the request for "marking" finally came through on January 2001 it was done so on the basis of Law 60/1979.

The cases unfolded at a surprising speed in favor of the plaintiffs in 2002, even though it took to 2010 for all parties to settle.

The decision of the administrative court did not wait for long. In June 2002 the three-panel judge committee argued that Idlib's municipality council should reconsider the istimlāk within Law 26/2000. The arguments were overall no different from those propounded by the likes of Kawakibi and Mirjāneh.

Idlib's rebuttal, emanating from its municipal council was quick to come. Addressed to the Damascus administrative court, and dated August 2002, it argued that the cadastral pages of the disputed properties were marked for the purpose of istimlāk as early as 1999, hence since 2000 all preparatory work for transferring the properties for public use had already begun, prior to the prime minister's decision to seize the properties on November 2000. All of this was done with the spirit of Law 60/1979, which was the only law effective back then. In its final argument, the council retorted that "the new Law 26/2000 became only effective since its inception on 11 December 2000, and has no retroactive effect on previous istimlāk decisions."

The table below shows some of the seized properties, which in light of the lawsuit, were reverted to new Law 26/2000, which gives the opportunity for a 40-percent "but-back" option, minus all the expenses for planning, partition, and infrastructure.

Amer	Ahmad	Abd	Aliya	property	original	istimlāk	rest
			1,200	1394	4,929	2,129	2,800
600	600			1413	3,845	1,160	2,685
		600	600	1395	9,083	9,083	
		600	600	1414	9,853	9,853	
600	600			1411	17,167	2,800	14,367
600	600			1412	12,225	12,225	
					57,102	37,250	19,852

The following table details for the same family the value of the seized properties. Prior to 2000 the owners had only one option, namely, to accept the istimlāk price that was imposed on them, which tended to be low. They could have, of course, appealed, but such measures rarely did lead to a better price. In wake of Law 26/2000, the landowners had better choices—and better price assessments. One such option, which we have examined at length, is the buying-back of what amounts to 40 percent of the confiscated property. The other option is cash payment, which has become more lucrative with the new law, considering that the

municipality, in order to avoid the 40-percent option, lured the owners with good payments. Such is the case here: for all expropriated properties the owners opted for cash payments. (Even though all fours owners had family partners, mostly brothers, sisters, and cousins, with whom they shared the properties, which are here unaccounted for, we have kept the owners at four to maintain consistency between the tabulated data and for the sake of simplicity.) Hence istimlāk portions and their price values relate only to the same four owners in the two tables above and below, while the original *shared* property size reflects the totality owned by *all* owners. Note that Aliya and Abd were married when the properties were seized, while Ahmad and Amer were their only two sons.

owners	property	original	istimlāk	rest	price	total
Ahmad	1412		3,056		365,098	
Ahmad	1413		290	2,685	34,391	
Ahmad	1411	17,167	700	14,367	83,738	483,227
Amer	1412	12,225	3,056		365,098	
Amer	1413	3,845	290	1,413	34,391	
Amer	1411		700		83,738	483,227
Aliya	1394	4,929	1,064	2,800	127,341	
Aliya	1414		2,963		294,668	
Aliya	1395	9,083	2,271		271,640	293,649
Abd	1414	9,853	2,463		294,668	
Abd	1395		2,271		271,640	566,308
Total			18,624	19,582		2,226,411

Those were istimlāk values and prices for the years 2000–10, when Law 60/1979 had been appended (amended) by 26/2000. The owners had therefore two options: either receive a cash indemnity, or else for the same value opt for the 40-percent buy-back. They decided to receive the indemnity whenever they judged the payment was good enough, avoiding the bureaucratic hurdles of a buy-back. As the case below illustrates, differences in pricing became so lucrative between Law 60/1979 and 26/2000 that the owners opted for cash payments directly, even though few other options were accessible.

To illustrate this point, let us look at a single property, consisting solely of olive plantations, numbered 1411 in the Idlib cadaster, and which has been expropriated for the sake of public projects in the area, amid its inclusion in the general plan.

The original size of the property, prior to any istimlāk, was 17,167 square-meters. The first istimlāk, which predated Law 26/2000, took 2,800 meters off the property at a price of SP120 for the meter. Out of the 14,367 meters that were left, a second istimlāk, now set within the

new law, takes off an additional 7,525 meters at a price of SP2,320, leaving the property in its current state with 6,842 meters. The value of the second istimlāk was therefore estimated at SP17,458,000, which was shared among four owners (paternal cousins) at SP4,364,500 each.

When they went to the bank to receive their payments, the four owners realized that the municipality was into a couple of errors. Two of them were granted SP4,825,156, with an unexplained increase of SP460,656 each. The third one was only given SP4,101,382, SP263,118 less than the estimated price, while the fourth did not receive anything. The error in the third stemmed from the fact that his share was wrongly calculated at 510 shares instead of the 600 that he owned. (2,400 shares represents 100 percent.) Ultimately, it took a couple of months for the municipality to correct all such errors.

The table below summarizes what has been seized from the above owners.

owner	total istimlāk	property 1413	1411	1412
Amer	4,046	290	700	3,056
Ahmad	4,046	290	700	3,056
Aliya		property 1414	1395	1394
	5,797	2,462	2,271	1,046
Abdulrahman		1414	1395	
	4,733	2,462	2,271	
Total	18,622			

The table below summarizes the istimlāk for the decade 2000–10 for the entire family, eight members, which shared the ownership as *mushtarak* rather than *mushāᶜ,* or *shuyūᶜ,* that is, all properties were joint ownership whereby each member knew exactly the number of shares (percentages) that s/he owned, though no one could dispense with their property on their own, for the simple fact that there is no topographical delimitation (*farz*) of the joint shares.

owners	property	total istimlāk	each
Ahmad, Amer, Zuhayr, Ziyad	1413	1,160	290
id.	1411	2,800	700
id.	1412	12,225	3,056
Aliya, Aida	1394	2,129	1,064
Abd, Aliya, Bahjat, Aida	1395	9,083	2,271

id.	1414	9,853	2,462

Let us come back now to the lawsuits that we have seen spanning over the transitional period between the old and new istimlāk laws.

The lawsuit, which was initiated by Kawakibi in 2001, finds its final resolution in 2011, when Idlib's municipal majlis approved for the three owners the subjugation of their confiscated properties in 2000 under Law 26/2000, based on the final ruling of the Damascus administrative court on August 2008.

The three owners, Bahjat, Abdulrahman and Aliya, had two of their properties (1393–1395) partially expropriated as could be seen from the tables above. The seized area amounted to a first section of 875 square-meters, with an estimated price of SP1,586,310, which entitled them to a *maqsam* where their properties were located. But, as the aforementioned maqsam would not be enough to give them the 40-percent buying option, they were entitled to an additional maqsam with a value of SP1,663,852, in another location to be determined by the municipal council.

The owner's intendant told me in summer 2013 that ultimately both maqsams had to be sought out outside the original istimlāk area, considering that the latter had been already fully partitioned and sold by 2011. When he initiated his contacts with the municipality in 2011, they've made a proposal of maqsams, which according to him, were in areas that "were not worth it," that is, were at the city's peripheries, in a far lower standard than the original istimlāk: "My landlords owned lands in the best area of Idlib, and now they're giving us that kind of shit!" After two years of negotiations with the engineers at the municipality, he finally settled in early 2013: "They finally approved two maqsams in a very decent location. One of the maqsams goes for 875 meters and is totally owned solo by my bosses. The other is roughly equal to the first, but unfortunately, they have a partner sharing it with them."

—So why impose a "partner" on them? Why not give them the maqsam in solo, like the other one?
—The second maqsam is known as a *faḍlah,* a residue of an istimlāk, where the remaining properties could not simply be allocated to individual users and buyers, due to the minimum required—500 meters—to register the property individually.
—So now they have a "partner" which they don't even know, and know nothing about. Considering that they live outside the country, this should make things even worse for them.
—I've recommended that they sell immediately. They would thus avoid all kinds of transactions fees.
—There are people ready to buy at a good price when the country is at war, with the daily violence?
—Of course! When there is violence, we stay at home. Otherwise, it's business as usual. The state employees receive their salaries regularly, without much delays; the courts are

functioning, so are the other institutions.
—But with the dollar near 100 liras [in summer 2013], your bosses who are outside the country would not receive a great price for their two maqsams.
—Prices naturally change with the devaluation of the lira. They obviously won't remain the same. I received very good price quotes from individual buyers, but my bosses in Beirut are very reluctant. They prefer to keep their wealth as property rather than cash. But, I think, that's an error of judgment, in particular in a situation like this.

Since then I've learned from one of the owner, whom I had met in Beirut at Christmas 2013, that the remaining properties had all their trees pulled out: it's cold weather out there and people have nothing to warm up with. Heat is more important than olive or olive-oil for that matter.

Second of all, I was not aware at the time, when I spoke to the intendant over the phone from Beirut in summer 2013, of the three-year deadline, once the property is purchased. Would the new owners be subjugated to that crucial deadline?

Registering the two maqsams would be a long process. Since the owners are now located in Beirut, they would have first of all to sign forms at a notary office that would grant their Idlib intendant all powers to proceed with a double transfer of properties. The documents would then need approval from the Lebanese ministries of justice and external affairs, prior to a final approval from the Syrian Embassy in Beirut. The same papers would then need a final round of approval, this time from various bureaucratic instances in Damascus, prior to their final stop in Idlib, where the whole process had originated.

Once all this is done, what next? Let us assume that the intendant got all those papers, with all their stamps of approval, safely in his hand, which, all by itself, is already an achievement. His role now would consist, first of all, at approving the transfer of properties: the owners through their intendant must give approval of all properties that have been confiscated to be transferred to the municipality as public properties for the public good; second of all, the municipality, in turn, must acknowledge the new properties purchased within the 40-percent buyout plan to the owners. The owners should now be the sole possessors of the two maqsams that they had been legally purchased under the new istimlāk plan.

In light of what we have already stated above, those would be newly purchased properties, which once they receive their cadastral page, should in principle abide by the three-year deadline: that is to say, they should be used for building purposes, otherwise, the property could be confiscated and auctioned. It remains unclear whether that would apply in this case.

Moreover, the civil war notwithstanding, it remains a question of opinion as to whether it was worth for the owner to go through a ten-year hustle to subject their properties to the new updated istimlāk law of 2000 rather than accept a low cash payment in conjunction with the

old law. Did they really benefit? Was all that wait (and the legal expenses) worth it?

If we want to push our analysis even further, we need to question the longtime practice, which goes back to Ottoman times, of the benefits of collective family ownership, whether under the rubric of *shuyūᶜ* or otherwise. Ultimately, it boils down to a combination of family collective practices in conjunction with state practices of property seizures for the public projects, both of which have their own downsides when it comes to the preservation of private property.

V. Conclusion

We have discussed four episodes. The first is regarding the dissolution of waqfs amid the passing of a law into that effect in 1949. The problems of dissolution are multifold and need to be examined separately and in toto. Chief among them is that the family waqf must be clearly delineated, which in the post-Ottoman French system required topographic maps attached to the lawsuit. Once the delineation was approved by a court of law, specifically designed for the dissolution of waqfs, the next step would be to determine who were the *legitimate* beneficiaries. As the lists could be fairly big, even for a medium-sized waqf, the courts, which did most of the work in the 1950s, prior to the union with Egypt, proceeded by downsizing the lists prepared by the mutasallims and nazirs; then they would add all those who were originally excluded but then successfully petitioned the court for inclusion. The original lists were obviously based on the will of the founder, which could be Ottoman and over two hundred years old. Many of the waqfs dated from the 18th and 19th centuries, which considerably increased the number of beneficiaries, hence to downsize the court must verify those ineligible, for instance, all the dead. Since Hanafi waqfs were not commanded to follow the inheritance rules of the *farā'iḍ,* there could be either direct "equality" among all beneficiaries, males and females, or else causes of inequality could take various forms, for example, the sons and daughters of the first-generation females (the daughters of the founders) would not be eligible. It was, indeed, such clauses that at times gave the courts a hard time to settle. Finally, there was that last most crucial step: to assess the fragmented waqf's portfolio in its totality, on the basis that it must be declared for sale in public auction in toto. It remains unclear whether the auction was open only to public governmental institutions or whether private investors were able to participate. In the final analysis, the proposed price would be divided on all legitimate beneficiaries either on a 1:1 or 1:2 basis.

There was therefore a grammar of waqfs that needs to be apprehended. The waqf as "protector" of the family; the family's patrimony being contained in a portfolio of properties which were not necessarily contiguous; a parallelism that needs to be drawn between wealth (as surplus), patrimony, and property. But the biggest question remained, however, was the **viability of the waqf as a financial institution**: considering that from the first generation to the next, the number of beneficiaries would keep growing, while the will of the founder would remain the same, how would it possible to make "sound" financial investments in, say, a period of one century. Let us call the whole enterprise of managing waqfs one of

governmentality: that would include not only procedures of management (finance, istibdāl, marṣad, and so on), and the distribution of the rent among beneficiaries, but also the representation and the taking care of the property as an operation commanded by the founder for generations to come. The question that needs to be addressed is the following: how to explain for the post-Ottoman post-mandate period that **urgency among the secular élites to dissolve all family waqfs**; and in addition to that, public waqfs were provided more leeway to "dissolve" by other means? At one level, all of this seems fairly obvious—that waqfs have become a burden for the economy; in particular the real estate business; but in reality such answer would need more scrutiny. **Did the logic of waqfs inherit itself in private property?**

To elaborate, the seizure of private property by the state would take different forms, which would all amount to a single concept of forfeiture. In section 1, we've analyzed properties that were seized, placed on auction for public institutions only, and whose proceeds would be distributed among beneficiaries, but for the sake of what exactly? Was it because the properties blocked as waqf were not marketable as other properties would be? On what basis should the state be able to take possession of your property? Let us note that whatever the mode of expropriation, the decisions are invariably situated on the top, hence there was no movement from below that structured such seizures, providing mechanisms and opinions on the statuses of private and public properties. For example, in the seizure of properties examined in section 1, the decision to dissolve private waqfs was coordinated between Husni Zaʿīm, the coup's leader, and his minister of justice, Asʿad Gorani. Unsurprisingly, the opposition came from major Hanafi jurists of the likes of Mustafa Sibaʿi, who at the time was heading the Brotherhood, and Mustafa Zarqā, both of which pointed to the "illegality" of such actions of expropriation. Indeed, such programs amounted more to actions of forfeiture than expropriation per se, as if those who were deprived of their properties were penalized for wrongdoing, which remained undefined. That is to say, as the seizures amounted more to acts of forfeiture for an undefined wrongdoing than an expropriation for the public good, they should have been placed under the principle of penal rather than civil law. Families lost therefore all of a sudden, in short notice, their waqf properties, with indemnities imposed by the state. Thus, although conflicts among beneficiaries and appeals were handled by civil courts enacted specifically for that purpose, it goes without saying that the beneficiaries were much limited in their options even at the appellate level. As the court would declare that the totality of the waqf's portfolio was indivisible—that it could not be divided into its individualized components for sale—it must be sold in toto for a sum determined by a court's expert. I did not see cases where the amount was contested, though there may have been cases like this, but what provoked most of the appeals—the bulk of the court's efforts—were indeed conflicts among beneficiaries, more specifically, individuals who thought they *were* beneficiaries, versus others who did not want them to be there.

What such procedures lack, however, is a "civil right for property," at which point an individual would initiate a lawsuit for an alleged trespassing or illegal seizure by the state. In

the four sections in this study the state would initiate an expropriation for the simple reason that a law was passed into that effect: end of private waqfs, istimlāk, or else nationalization of industrial firms, and in all such instances, those who had their properties seized were unable to plea against an authoritarian expropriation. Thus, although the constitution protects the principle of private property, the mechanisms for protection are not there, as they remain undefined by law. Those who have their properties seized can only defend themselves, through court action, only on procedural matters—the modalities rather the *principles* behind the action of seizure. Consequently, not only there is not much that would directly challenge the principles of seizure(its legality), but more importantly perhaps, such expropriation looks more like civil forfeitures whereby owners were dispossessed for an undetermined public good as if they did something wrong in the eyes of the law. This is particularly true in the nationalizations of the 1960s: the industrialists and others who were dispossessed were accused of belonging to a "bourgeois culture," promoting their own interests instead of those of the nation (umma) as a whole, or at "disrupting the socialist order and economy."

The tangled nature of the process involves looking at property in relation to its mode of governance—or governmentality. As owners find their own modalities of governance, those tend to be trespassed by the higher ideals of the state-umma, which would either find such properties remnants of a bygone past (waqfs), or belonging to a colonial bourgeois era (nationalization of industrial properties), or else that properties must be expropriated for the sake of a public good. Between two modes of governance—the private and public—there is very little in common, as if the latter incessantly trespasses over the undeclared rights of the former, as if the state proceeds like in old Ottoman times by sultanic writ.