
Contestation and Mutual Adjustment: The Process of Controlling Land in Yajouz, Jordan

Omar M. Razzaz

For the past two decades, land in Yajouz has been the locus of fierce contestation between the government of Jordan, the Bani Hasan tribe, and new settlers. Today, Yajouz is a peripheral urban settlement deemed illegal by the government. Three main factors have contributed to the making of Yajouz in its present form: (1) the *contested* nature of claims to land; (2) the *plurality* of control mechanisms and ordering of the social and the geographical space, allowing the land market to develop as a semi-autonomous social field; (3) the process of mutual *adjustment* between state organs and the Yajouz social field, defining the security of tenure among settlers and the social functioning of law. I argue that the Yajouz market does not manifest a traditional phenomenon giving way to modernity; it is rather a modern phenomenon itself shaping and being shaped by the daily functioning of law. In this case, conflicting claims to resources have been catalysts for the development of a semi-autonomous social field, which in turn has engaged state organs in a process of mutual adjustment.

Popular urban settlements have received considerable attention within the urban studies literature in the past three decades. Called “informal,” “illegal,” “irregular,” “spontaneous,” “self-help,” “low income,” and “squatter,” such settlements have been so named with explicit or implicit connotations about their legal status, often being seen as existing “outside” the realm of governmental law and state intervention. As a result, very few studies have investigated the day-to-day interaction between these settlements and governmental legal systems. For the most part, the “legality” of a settlement has been reduced to compliance with, or deviance from, the letter of the law. Such an approach tells us very little about the actual property relationships and security of landholders in these settlements and results in simplistic representations of the function of law in society.

In this article, I use a legal pluralism framework to explore the transformation and security of landholding in Yajouz, Jordan, a peripheral urban settlement deemed illegal by the government.

Address correspondence to Omar M. Razzaz, 27 Spencer Avenue, Somerville, MA 02144; E-Mail: ORAZZAZ@WORLDBANK.ORG.

Land in Yajouz falls within the historical tribal domain of the Bani Hasan, one of the largest tribes in Jordan, but is registered as “state property.” Over the years, the ownership of land has been contested between the state, Bani Hasan members, and incoming settlers from surrounding areas. Policymakers and analysts have often portrayed disputes over land between the state and tribes in Jordan as resulting from the superimposition of “modern” *concepts* of private and public ownership on “traditional” land tenure systems.¹ This article questions such statements by examining the narratives and claims made by the Bani Hasan as well as their actions to address newly arising opportunities, interests, and grievances.

I first examine the theoretical debate within legal pluralism on the forms of interaction between governmental and nongovernmental legal systems. Second, I propose an analytical framework by which to approach the case of Yajouz. Third, I examine the case of Yajouz, focusing on the interaction between various state organs and Yajouz residents. Finally, I conclude with remarks on the analytical relevance of the Yajouz case to the debate on the relationship between governmental and nongovernmental legal systems.

Theoretical Debates

Popular Settlements and the Law

A growing number of studies are focusing on the relationship (or lack of it) between governmental law and popular settlements (see Karst et al. 1973; Doebele 1977; Santos 1977; Conn [1968]; Perdomo & Nikken 1982; Sobreira 1986; Azuela 1987; Fass 1989; Hoffman 1990). Various analysts, however, have differed in their assessment of the meaning and function of law in these settlements. Hardoy and Satterthwaite (1987:6), for example, describe Third World cities as divided into “legal” and “illegal” parts with a “gap” separating the two. As a result of this separation, “most poor people have little faith in laws. Many may know little or nothing about existing laws” (*ibid.*, p. 32).

Although the poor may know little about the *letter* of the law, they are often conscious of its *function*. Several studies seem to provide such evidence. Treating squatter settlements in Mexico, Azuela (1987:523) emphasizes the connections, instead of the gap, between squatters and the law: “despite the fact that low income settlements are in some way illegal, or rather because of this, law becomes a real issue which influences the strategies of

¹ See, e.g., section on Jordan in U.S. Agency for International Development 1991. For a good discussion of parallel arguments made in the Latin American context, see Perlman 1976.

the social agents involved, thus shaping social relations and, in some cases, the very structure of urban space.”

Still others argue that while law does matter, it is neither a necessary nor a sufficient condition for establishing settlements and gaining security of tenure. Doebele (1978:111), for example, argues that “while tenure is generally considered a legal category, it is, just as fundamentally, a matter of the state of mind of the persons concerned.” What, however, determines settlers’ “state of mind” regarding their security of tenure? In his analysis of Brazilian favelas, Santos (1977) points to legal pluralism. He argues:

We are thus in the presence of interclass legal pluralism. . . . In this instance class conflict is characterized by mutual avoidance (latent confrontation) and adaptation. . . . Both legal systems are based on respect for the substantive principle of private property. . . . [The unofficial legal system] achieves its informality, subtlety, and flexibility through selective borrowing from the official legal system. Thus although they occupy different positions along a continuum of formalism, they can be said to share the same legal ideology and to be culturally homogeneous. (P. 89)

In a later article, Santos (1987:289) captures the “porosity” of plural legal orders: “We live in a time of porous legality or of legal porosity, of multiple networks of legal orders forcing us to constant transitions and trespassings.”

Increasingly, therefore, analysts are observing the connections rather than the “gap” between the regulation of popular settlements and the law. As I show in the next section, however, these connections do not imply an all-encompassing and omnipresent law but a law that operates within a plurality of ordering mechanisms.

Governmental Law within Legal Pluralism

Within legal pluralism, people interact to governmental law not as atomistic subjects but as members of groups and communities with varying capabilities of making rules that complement or undermine governmental law. There is less agreement within legal pluralism literature, however, on the *terms* of such interaction.

One common trend in the literature is to acknowledge legal plurality but assert that “unofficial” systems are *subordinate* to the “official” system. This theme is nowhere more evident than in Hooker’s (1975:4) description of legal plurality, in which:

the national legal system is politically superior, to the extent of being able to abolish the indigenous system[s] [W]here there is a clash of obligation . . . the rules of the national system will prevail and any allowance made for the indigenous system will be made on the premisses and in the forms required by the national system.

Thus, according to Hooker, if plurality exists, it is because the state *allows* it to and because it serves some state interests.²

Far from being subordinate, according to Black (1976), alternative forms of social control are *complementary* to law. Law, together with other forms of social control, act to maintain social order: “the quantity of law increases as the quantity of social control of . . . [social groups] decreases, and vice versa” (p. 6). As a result, Black’s theory of law predicts “more law in societies where other social control is comparatively weak” (*ibid.*).³

Unlike Hooker’s portrayal of domination/subordination or Black’s portrayal of complementarity, Ruffini’s (1978) portrayal is of the relationship between government law and other forms of social control as one of *conflict*. He describes the Sardinian shepherd as someone who is “trapped in a dilemma, a conflict between radically opposed systems of values and behavior [the Italian legal system and the Sard shepherds system] so that conformity to one will cause him to suffer the negative sanctions of the other” (p. 224).

In his *Anthropology of Law*, Pospisil (1971) attempts to define a hierarchical structure through which legal systems interact. It is not entirely clear from Pospisil’s work, however, what this hierarchy entails in terms of power relations. Pospisil’s explanation of the relationship sheds little helpful light. On the one hand, he claims that every subgroup is regulated by its “own” legal system and that these legal systems could have provisions that are in conflict with each other. On the other hand, he describes a “hierarchy” of “legal levels” that reflects the “degree of inclusiveness” of these legal systems (p. 107).

Pospisil’s hierarchy of legal systems works well when *authority* itself is hierarchical and legitimate across legal systems. However, when the domain of authority of “legal systems” and their legitimacy are contested, then the notion of an all-encompassing pyramidal hierarchy and legal levels becomes misleading. That is, a “legal system” that is recognized and condoned by governmental law as a legal entity (such as the firm or the church) is quite distinct from a “legal system” that is not recognized as a legal entity (neighborhood), or even considered illegal by its very existence (such as the gang). These various “systems” do not occupy positions along a hierarchical continuum. In fact, we can say that the *raison d’être* of a gang is its ability to operate outside Pospisil’s hierarchical pyramid of authority.

² Such a conception of the relationship, however, is not a significant departure from legal centralism which places all power of social ordering within the domain of the state (see Griffiths 1986).

³ But Black’s theory of law does not address the possibility of adverse relations between governmental law and other forms of social control. Such adversarial relations are not an anomaly. As the Yajouz case will show adversarial relations are common around issues of rights and access to resources.

The various forms of interaction among actors in Yajouz do not lend themselves to static characterizations of domination/subordination, complementarity, conflict, or hierarchy. Indeed, all the above characterizations empirically exist in Yajouz, but they vary over time and across issues making any one characterization a misleading snapshot of a panoramic and ongoing process.

An analytical framework that captures well the dynamic and plural process in Yajouz is Moore's (1978) semi-autonomous social field. A semi-autonomous social field (SASF) is a network of social relations that:

can generate rules and customs and symbols internally, but that . . . is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (P. 55)

Social fields are semi-autonomous not only because they are affected by forces of "the larger social matrix" but also because they can mobilize such forces in their interest: "[P]eople arrange their immediate situations . . . by exploiting the indeterminacies in the situation . . . or by reinterpreting or redefining the rules or relationships. They use whatever areas there are of inconsistency, contradiction, conflict, ambiguity, or open areas that are normatively indeterminate to achieve immediate situational ends" (p. 50). Three aspects of Yajouz make it a special breed of SASF.

First, Yajouz as a social field brings together buyers and sellers of land who have no long-standing multiplex relations and no long history of transactions. Indeed, Yajouz is a social field *in the making*, drawing on existing rulemaking and enforcement mechanisms of surrounding social fields, but also developing distinct rules, inducement mechanisms, and dispute processing forums to address risks and opportunities that had not existed before. This aspect of Yajouz allows the examining of the *formation* of a social field, how rules and mechanisms are created, maintained, and modified.

Second, the Yajouz social field is constituted through a problematic relation with governmental law and state enforcement mechanisms. Its rules, regulations, and enforcement mechanisms challenge the domain of government regulation and authority. Its operations are seen by public officials as "illegal." Furthermore, its normative content challenges official narratives of justice, law, and order and lends legitimacy to residents' actions through narratives about the supremacy of noncompliance to "unjust" governmental law and action. This aspect of Yajouz calls

for a better understanding of group noncompliance with governmental law and how it is justified and perpetuated.

Third, the Yajouz social field's *raison d'être* is the establishment of a land market: securing the control, transfer, and development of land legally owned by the state but claimed by residents. Unlike illegal markets that are hard to detect because of the elusiveness of buyers, sellers, and the commodity itself (such as illicit drugs and foreign currency), illegal land markets are much more exposed: illegally subdivided and sold land can be easily detected and buyers (more accurately users) can be easily identified. The openness of the process brings into question the nature and the limits of law enforcement and efficacy of various forms of government intervention.

An Analytical Framework

The Yajouz land market invokes three theoretical issues rarely treated in tandem: the control of contested resources; group noncompliance with governmental laws and regulations; and the creation, maintenance, and modification of a SASF. A resource over which property rights are not clearly defined could become contested once the resource appreciates in value (Feeny 1988; Barzel 1989). To control effectively a resource contested by other groups, a group would need institutional arrangements which are capable of appropriating, using, and exchanging the resource or its products within the group itself (Ostrom 1990), as well as circumscribing similar attempts by other contending groups. When the resource being contested is publicly owned or regulated through governmental law, *noncompliance* could become a central and defining feature of the institutional arrangements of the contesting group.

Neither *protest* nor *deviance* are sufficient conditions for noncompliance. Groups organizing to protest a certain law or a governmental action or policy can be said to be part of a social movement.⁴ They aim to apply enough pressure to induce *the state* to introduce, change, or retain elements of governance. That is, an effective protest movement is one that induces the state policy and action to change (or not change) in some desirable way. A "noncompliant" social field, however, is capable not only of protesting governmental rules and regulations but also of providing *relief* for members from these rules and regulations. Similarly, noncompliance cannot be reduced to deviance. A driver exceeding the speed limit on the highway and "getting away with it," while deviating from the law, is not necessarily taking part in an attempt to preempt or replace the law or its en-

⁴ Castells (1983:305) defines an urban social movement as "a collective conscious action aimed at the transformation of the institutionalized urban meaning against the logic, interest, and values of the dominant class."

forcement. Migdal (1988:31) clearly captures the distinction: "Noncompliance . . . is not simply personal deviance or criminality or corruption; rather, it is an indication of a more fundamental conflict over which organizations in society, the state or others, should make these rules." In other words, a noncompliant group is distinct in its ability to generate rules contradicting *and* preempting some governmental laws, while still complementing and upholding others. Indeed, it is a noncompliant *semi-autonomous* social field.

Social fields do not develop overnight, nor can they, in their totality, be premeditated. They develop over time in response to groups' needs, grievances, or interests. It is individual and group *action* which can occur overnight or be premeditated. Repeated actions by individuals and transactions between individuals make it feasible for standard practices, procedures, and networks to develop into institutional arrangements that facilitate and reduce the costs of actions and transactions (Williamson 1985).

Going back to my example of exceeding the speed limit: a driver's *action* of exceeding the speed limit could be seen as an isolated violation. When that driver repeats his or her action, however, along with a whole segment of highway drivers, the isolated action becomes an illegal practice. When these drivers start identifying states and highways where speed enforcement is lax, when they develop tips on "how to avoid a speeding ticket," when they start colluding with one another (flashing their lights at oncoming cars as a sign of police radar ahead), when they invest in radar detectors and CB radios to communicate with one another, they are investing time, energy, and capital to protect and promote their illegal practice, challenging governmental control over a contested domain (the highway), and undermining enforcement of governmental laws. It is important to note that this is not such a far-fetched scenario: many commercial truckers come quite close to it. These truckers have developed elaborate arrangements to undermine enforcement of speed limits, weight limits, and maximum allowed driving hours. They are also selective of which laws and regulations to violate and which to abide by and uphold. They represent a vivid example of a noncompliant SASF.

Thus, a noncompliant SASF, defining new relations, and generating internal rules and inducement mechanisms can arise to advance new interests, to protect existing interests from perceived threats, or to further promote existing interests as new opportunities arise. An important aspect of a noncompliant SASF, however, is not only that it manages to "carve out" areas of ordering within the domain of government law but also that it often prompts authorities to reconsider their laws, their sanctions, and their methods of enforcement. The dynamic process through which government authorities and noncompliant SASFs

readjust and react to each other becomes a defining feature of what constitutes governmental laws, regulations, and enforcement mechanisms, as well as what constitutes SASFs.

I show in the following sections how Yajouz, as a noncompliant SASF, has developed to address the contestation of land and to respond to several risks and opportunities facing tribal members and seekers of affordable housing. The particular arrangements, rules, and enforcement mechanisms developed and/or invoked, however, are partly determined through a mutual adjustment and readjustment process in which the various state organs as well as Yajouz residents are engaged.

The fieldwork for this article was conducted during the summers of 1987, 1988, 1989, and 1990. The fieldwork included a structured survey of 237 residents of Yajouz; a series of interviews with officials, tribal members, and settlers; an analysis of land sale contracts (*hujjas*); and documentation of several land dispute cases, some of which involved courts.

In what follows, I examine the case of Yajouz. I first identify the historical and normative forces that led to the making of Yajouz. Then I examine the interaction between Yajouz as a social field and various state organs.

Background to the Conflict in Yajouz: A Social Field in the Making

Yajouz⁵ is located within the northern limits of the town of Ruseifa, a medium-sized town northeast of Amman, the capital, and southwest of Zarqa, the second largest city in Jordan. A major artery crosses Yajouz, connecting it directly to both Amman and Zarqa (see map shown in Fig. 1).

The roots of struggle over land in Yajouz can be traced to the colonial era. The British, keen on creating a modern agricultural tax base, started actively dismantling the traditional tribal land tenure system (*musha'*), and replacing it by a private freehold system with clearly defined individual land titles. This individually based land tenure system, it was hoped, would increase security, improve agricultural productivity, and therefore generate tax revenue for the newly created government (which was then fully subsidized by the British).

Thus, the focus of the British, and later the Jordanian government, was on agricultural land. The most fertile areas in the country were given priority for settlement of rights and registration of title. For semidesert and desert land, the British were less interested in dismantling the *musha'* tenure system. Most of these areas were registered as state land, with the common understand-

⁵ Yajouz is not the official name of the site but the name of the main artery that passes through the site. The site is officially referred to as "Utl ez-Zarqa war-Ruseifa," or the uncultivated land of Zarqa and Ruseifa (two adjacent towns).

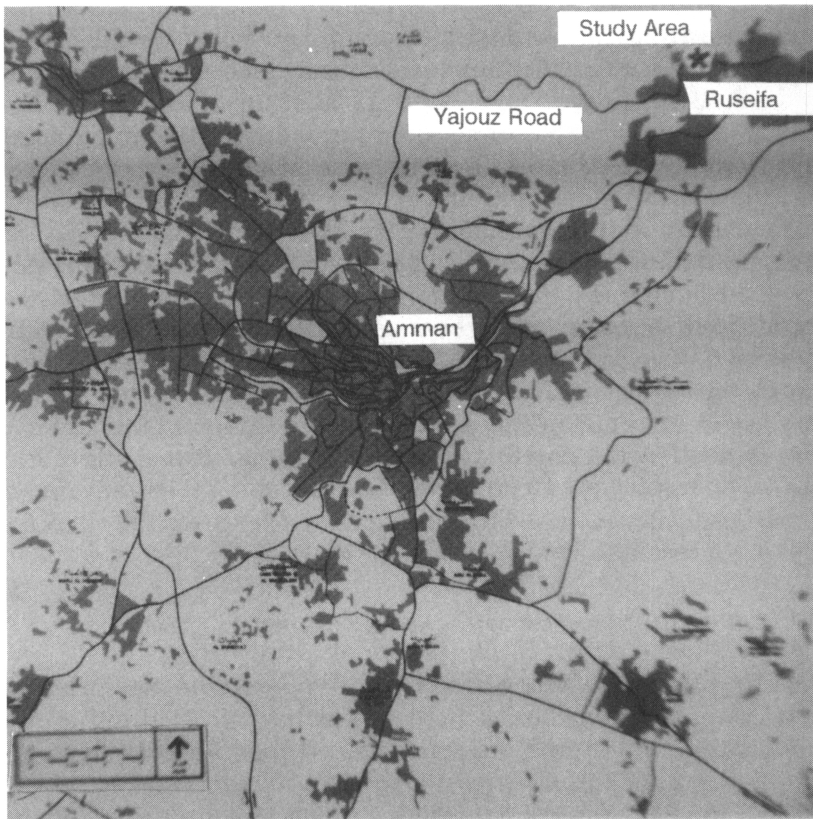


Figure 1. Map of Greater Amman, Ruseifa, and Yajouz (Study Area)

ing that tribes claiming these areas as their domain could inhabit it, use it for herding or scant cultivation, and even register it formally and obtain individual land titles if they cultivated it for three consecutive years. Many tribal groups refused to register their lands fearing excessive fees and taxation.

Yajouz, then, a desolate semidesert land within the domain of the Bani Hasan tribe (one of the largest tribes in Jordan), remained registered as state land and was used by tribal members with little or no conflict over its legal status. This changed, however, in the late 1960s as proximity to urban centers, rather than agricultural productivity, became the principal attribute of land.

Market Conditions

The late 1960s and early 1970s brought significant socioeconomic changes to the country. The exodus of hundreds of thousands of Palestinians after the 1967 war with Israel and the oil boom of 1973 transformed the country from a weak agricultural economy to a booming service economy.

The result of this boom was rapid urban growth, accompanied by increased social stratification and spatial segregation. Areas west of Amman municipality were inaccessible to lower- and middle-income groups. About 90% of the areas annexed by the municipality were zoned as upper-income residential plots and were beyond the means of middle- or lower-income groups. Access to housing or land for lower-income groups became more difficult than ever before. A 1979 study found that about 40% of the population of Amman lived at densities of 4–5 persons per room and that it was very common to find 10 people living in one room. Such cases were concentrated in the eastern parts of Amman, mainly in Palestinian refugee camps. This overcrowding in the eastern parts, combined with rising standards of living among families of migrants in the Gulf, translated into pent-up demand for affordable residential land. Yajouz, with its strategic location to major employment centers in Amman and Zarqa, became a prime target for settlement by middle- and lower-income groups seeking affordable land.

Conflicting Claims to Resources: Seeds of Community Self-Help

The traditional holders of land in Yajouz, the Bani Hasan, were eager to capitalize on the boom by formally registering the land, subdividing it into residential plots, obtaining individual titles, and selling to migrants returning from the Gulf or households escaping the overcrowded and exorbitant urban areas. Members of the tribe applied to the Land and Survey Department to initiate what they thought would be a routine process of land registration. To their surprise, they were turned down. The lack of political clout of the Bani Hasan in the government, as well as the desire among several public officials to maintain control over the area, rendered their attempts to officially own the land in Yajouz (as well as other areas) fruitless.

The Bani Hasan, however, were not about to concede their perceived rights to the land. Using Hirschman's (1970) terminology, the Bani Hasan had used both "voice" and "loyalty" unsuccessfully, and at least some of them were about to try "exit" for a change. I documented isolated cases in the early 1970s of Bani Hasan members illegally subdividing small plots of land along the Yajouz road and selling them to new settlers priced out of the formal housing market in nearby cities.

At the time, no public service or infrastructure existed in Yajouz. Yajouz's ambiguous legal situation, in addition to its sparse population, was enough to dissuade water and electricity agencies from offering their services to the area. Lack of water, electricity, public transportation, and schools were among the major deterrents to locating in Yajouz. By 1977, however, several tribal members purchased private electric generators and started

selling electricity to neighboring houses. As for water, private water tank trucks started reaching houses on gravel and dirt roads cleared by residents. Neighborhoods close to water mains were able to obtain piped water through illegal hookups.

Despite its inadequacy, this limited level of services provided residents with their basic needs and allowed them to survive in Yajouz. They thus acquired the means to establish themselves there and, as we will see later, the minimum autonomy needed for asserting their possession of the land. Thus, what had started as a routine and legal attempt to register land developed into self-help action by some members of the Bani Hasan that ranged from the subdivision and sale of what is legally public land to the provision of basic services in the area. A noncompliant SASF, bringing together and regulating the relationship between the Bani Hasan members and newcomers, was in the making.

Conflicting Narratives

Although the incongruence between the state's *de jure* ownership rights and Bani Hasan's *de facto* use rights had existed for decades, it was not until the land attained a market value that the right to sell became an issue. During the late 1970s and early 1980s, a sharp increase in land prices in the country as a whole as well as in Yajouz pitted the state and Bani Hasan against each other in a bitter conflict to assert their control over land in Yajouz. Emerging from the conflict were conflicting narratives about justice, law, and order.

In an interview, the head of the Department of Lands and Surveys insisted that the Bani Hasan requests for land registration were denied because they had failed to meet the legal requirements, which included cultivating the land for three consecutive years. He claimed that when the settlement of land rights was carried out in the area in the 1950s, no Bani Hassan claimed the land officially. To him, the Bani Hasan claims could only be attributed to "greed" and not to inherent historical rights. The department periodically published warnings in the newspapers to potential buyers that such land sales are invalid since the legal owner is the state.

Naturally, members of the Bani Hasan viewed things very differently. An elder showed me agricultural tax receipts levied from the Bani Hasan for cultivating land in Yajouz area dating back to 1949 and 1954. He said, however, that "no one in his right mind cultivated the same plot for three consecutive years. The soil was so poor that we had to leave a plot fallow for at least three years after each time we cultivate it . . . ; mostly, however, we used [Yajouz] as pasture for our cattle."

But the conflict between the Bani Hasan and the state cannot be reduced to legal technicalities. A sense of betrayal and distrust

has characterized the attitude of the Bani Hasan toward the state since the British Mandate of Jordan (see Razzaz 1991). A well-known Bani Hasan elder reflected the persistence of this attitude toward the state: "Every promise they [officials] made to us, they broke. They are a bunch of crooks who grew very greedy. They figure Bani Hasan land is easy to grab, and once they grab it in the name of the state, somehow it ends up appearing as their private ownership."

Another member defended the Bani Hasan's right to illegally subdivide and sell the land. He said: "How come all the valuable agricultural land in the west has been registered to its legitimate owners who are now making millions from selling it as urban land, while we here are denied the right to register land we already own."

"Islam tells us," another member commented, "if an unjust father treats his sons differently, feeding one and starving the other, the hungry son is permitted to seize his share, even if he has to steal it from his unjust father to survive. This is all we are doing."

The historical dimension of the conflict was well expressed by a shaykh of the Bani Hasan: "Before there was a state, there was us [the tribes]. Before the state had rights, the tribe had rights. Before the state had land, the tribe had land. If they [officials] want us to respect state rights, they have to respect ours."

Thus, by redefining historical references and benchmarks, Bani Hasan claims to the land could be seen as undisputable. These particular interpretations of Islam, history, tribal tradition, and justice (Razzaz 1991) represent the Bani Hasan as the underdogs relentlessly defending their rights in a system fraught with injustice and corruption. Such interpretations and narratives also allow the Bani Hasan a margin of normative autonomy which legitimizes their claims to land and shields and justifies their strategies of redress even though they are labeled "illegal" by the state.

The State Takes Action

The early 1980s saw heightened tensions between the central government and the Bani Hasan tribe. With land prices rising sharply, neither the Bani Hasan nor the government was willing to back off and concede their claims to the area. It had also become clear to government officials that mere warnings and threats would not bring the Yajouz land market to a halt. Drastic action was required.

Establishing CPSP, the Coercive Arm of the State

To put an end to further settlement on state land, the Board of Ministers, in a 1980 meeting,⁶ established the Committee for Protecting State Property (CPSP), which was charged with “protecting state owned land and maintaining law and order on those lands.” It was composed of representatives of several state agencies⁷ with an enforcement arm represented by a field patrol and a bulldozer under the command of a police officer. Among the committee’s first objectives was to fence off and prevent building on certain parcels within Yajouz that were designated for certain public uses. But this put the patrol in direct confrontation with members of the Bani Hasan.

In 1983, the Prime Minister of Jordan made several public statements to the effect that the Bani Hasan’s “abuse” and “usurpation” of state property would not be tolerated. When Bani Hasan members continued to sell land in the area, in July 1993 he ordered the armed security forces to fence some already inhabited areas and evict the Bani Hasan settlers and demolish their houses. The reverberations of the campaign came as a shock to the government: members of Bani Hasan took to arms to prevent armed security from demolishing their homes. There were reports of security agents shot and military vehicles burned. Dozens of men from Bani Hasan were rounded up and imprisoned. More than once, fellow tribal members rioted before the prison. More arrests were made.

Although the conflict itself was limited, it came as a blow to the government’s sense of control over the use of coercive power. High officials realized that tribal loyalty to the regime could not be taken for granted, and the confrontation brought to the surface a tense regime-tribe relationship previously concealed under state public rhetoric of internal solidarity and unity and under private rhetoric of an omnipotent and invincible regime.

King Hussein of Jordan quickly moved to mend the rift: the Prime Minister was asked to resign, a new one was appointed, and a member of Bani Hasan was appointed as the Minister of Youth as a reward for his “constructive efforts in resolving the conflict.” However, the conflict was not fully resolved: the new government made it clear that despite its attempts to reconciliation, it would not concede the issue of state control over the disputed land. Similarly, the Bani Hasan members refused to relinquish their claims to gain formal rights to the land.

Soon, the CPSP patrol was back roaming the area, with clear instructions to demolish any structure under construction. The

⁶ Board of Ministers Resolution No. 463, 16 Nov. 1980.

⁷ The governor’s office, the municipality, the Department of Lands and Surveys, the Security Service, and the Police Department.

criterion for demolition was the condition of the roof: if the roof was already installed, the structure was to be left intact, but if the structure was still unroofed, it was to be demolished. Enforcement was quite effective for several months: demolition, fines, and detention were systematically carried out. By 1984, the land market and construction activity in Yajouz came to a standstill (see Figs. 2–4). Potential buyers became increasingly cautious, and very few landowners dared to build.

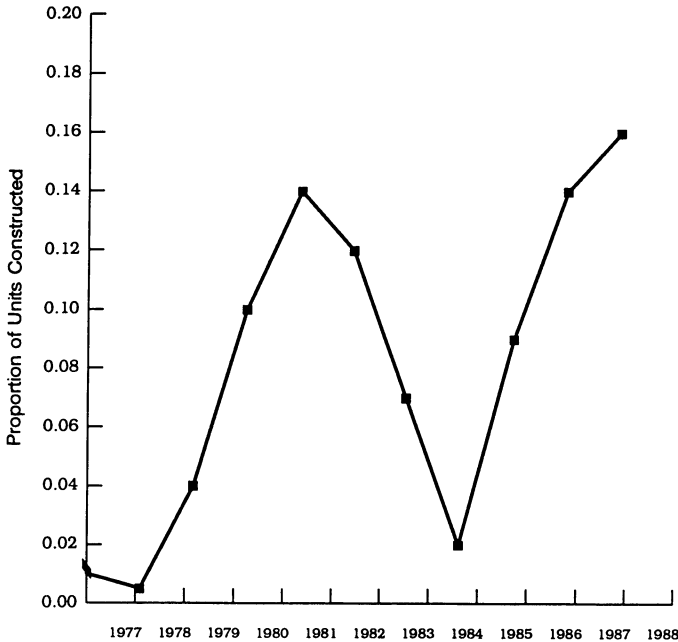


Figure 2. Housing starts in Yajouz. *Source:* Survey of Yajouz, summer 1989.

By modifying its strategy from sanctioning the Bani Hasan tribe (the supply side of the Yajouz market) to sanctioning individual builders of houses (the demand side of the market), the state managed to shift the locus of the conflict to the weaker element in Yajouz: the loosely knit, politically and economically vulnerable newcomers. It was also successful, though indirectly, at curtailing the illegal land market, thus asserting its control.

As can be seen from the figures, however, the lull in the market was not long-lived. Starting in 1985, housing starts, land transactions, and land prices were all on the rise again. The complex process of market recovery in Yajouz can be seen as the outcome of series of adjustments and readjustments in response to new needs, opportunities, and uncertainties. These adjustments became possible through the maturation of procedures, networks, and organizational arrangements among tribal members and new settlers in Yajouz. As a noncompliant SASF, these actors were

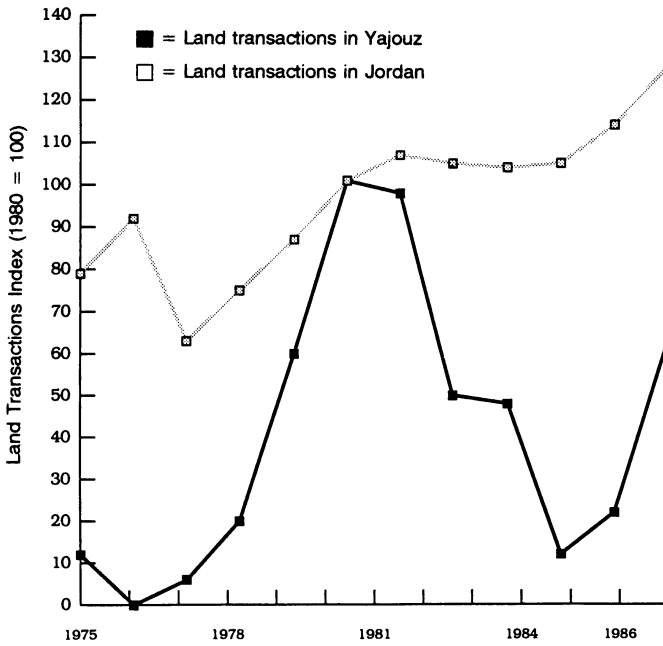


Figure 3. Trend in land transactions in Yajouz compared with the national level in Jordan. *Source:* Department of Lands and Surveys, Annual Reports; Survey of Yajouz, summer 1989.

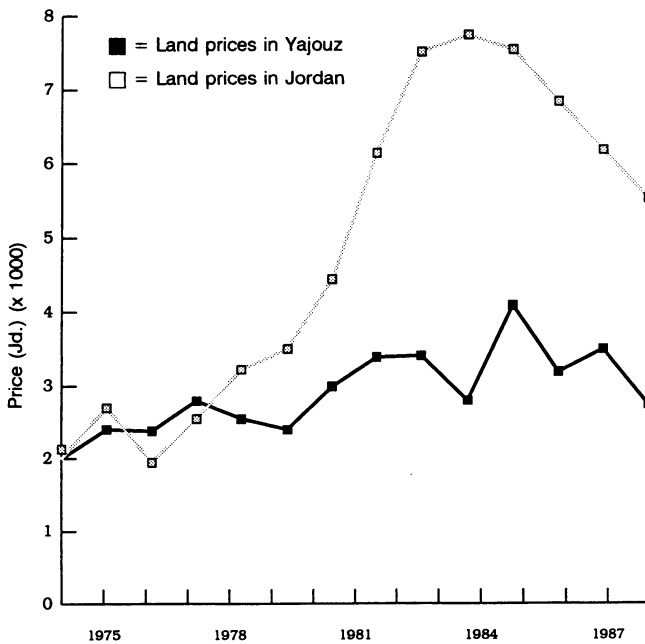


Figure 4. Trend in land prices in Yajouz compared with the national level in Jordan. *Source:* Department of Lands and Surveys, Annual Reports; Survey of Yajouz, summer 1989.

afforded partial and gradual relief from actions by the CPSP, at least until the state, in turn, encountered these adjustments by its own series of modified rules, regulations, and CPSP enforcement practices.

In the next section, I examine the relational property contracts and arrangements in Yajouz that have made possible the creation, development, and adaptation of a noncompliant social field.

Yajouz: The Building Blocks

Community Clustering and Emerging Roles

In one of my visits to Yajouz, I was searching for the house of a man involved in a dispute I had been investigating. Yajouz had no street names, no house numbers, and very few landmarks. All I knew was the man's name and that he lived north of Yajouz road. I asked a grocer whose shop was on the main road if he knew the man. He said, "Is he from Hebron? . . . his family name sounds like he is. Most of the [people from Hebron] (*khalayleh*) live up on that hill. You should ask over there." Indeed, once I reached the hill, I was immediately shown to his house.

The man I was visiting explained: "It is important to know who your neighbors are, a good and trusted neighbor can save lots of headaches in the future. . . . One bad neighbor is like a bad tomato, he could ruin the life of everybody around."

He gave as an example how everyone in the neighborhood pitched in to get a contractor to cover the winter-muddied road with gravel. He said, "If our hearts were not together, this would have never happened."

It turns out that Yajouz has several kinship and place-of-origin-based neighborhoods. These emerging clusters, however, are quite permeable and interlinked. A "Hebron" community has many non-Hebron households from other Palestinian towns as well as Bani Hasan and Da'ja tribal households. Indeed, some neighborhoods cannot be identified by kinship or town of origin, as no single group constitutes a majority. Nonetheless, the *attempt* by settlers to have some influence or control over their surroundings by attracting others with a common background is evident.

Two main roles in the community are vital in facilitating the creation of such clusters as well as creating links across clusters for dispute prevention and containment. The first is that of the early settler who acts as a *wasta* ("go-between"), arranging deals between the tribal holders of land, on the one hand, and relatives and townsmen seeking to move to the area, on the other. Buying land through the *wasta* minimizes the "lack of information" problem in such a market. The second significant role is that of the tribal landowner with a reputation of honest dealing

(*mu'azib*) (“host”). In an interview with one of the tribal members considered *mu'azibs*, he boasted that none of the land sales made by his family⁸ had been abrogated. He attributed it to the honest dealings and their earnest efforts to resolve any problems by making sure the buyer is satisfied. He said, “When a dissatisfied buyer comes back to me asking to annul the sale, I don’t even ask for reasons. I return his money and take back my land.”

Although there is some exaggeration about the lengths to which sellers are willing to accommodate buyers, there is no question that by making such claims, tribal members try hard to allay any fear or hesitation on the part of buyers.⁹

A tribal member I interviewed insisted that most disputes over land transactions could be avoided if buyers approached “reputable members of the community.” He mentioned as an example of a bad strategy those who choose a suitable plot first and then seek out its owner. In Yajouz, it is more important to find a trustworthy *mu'azib* or *wasta* first and find a suitable plot later.

A distinct and local meaning has evolved over time for the roles of *mu'azib* and *wasta*. These are no longer generic and loosely defined “hosts” and “go-betweens” (as they are understood throughout the country). Through repeated transactions, accepted practices, and the creation of social networks, these roles have acquired a new meaning specific to land transactions. By facilitating land transactions and contributing to dispute prevention and containment, these roles were vital to the “semi-autonomy” of Yajouz from external intervention.

Contractual Relations

In the process of establishing an illegal land market in Yajouz, not only have community roles had to develop to address new needs, risks, and opportunities, but land sales contracts had to acquire a new role and meaning. Over time, the land sales contract (*hujja*) has acquired new meanings, new functions, and new conditions that had never been part of the “traditional” *hujja*.

Historically, a land sales contract or a *hujja* was the only document required for land transaction between buyers and sellers in the region. The Ottoman reforms (*tanzimat*), however, and later on, British laws required that a title deed (*sanad*) be obtained along with the *hujja*.

⁸ “Family” here refers to the extended family, which is a subsection of a clan, which in turn is a subsection of the Bani Hassan tribe.

⁹ This “confidence-building” approach is not significantly different from those used in highly developed markets. The “satisfaction guaranteed or your money back” slogan aims to allay buyers’ concerns about switching to a new product.

Today, the use of *hujja* for land transactions without transferring the title and obtaining a *sanad* is deemed illegal in Jordan.¹⁰ In Yajouz, however, the *hujja* continues to be used as the only document for transferring the possession of the land.

While formal sales contracts in Jordan represent discrete transactions, the *hujja* in Yajouz has increasingly become an ongoing relational contract. A tribal member explained:

We do not think of a *hujja* as a regular sales contract. It is more like a marriage contract, binding both the buyer and seller for good. I am expected to intervene whenever there is any dispute over the ownership of any piece of land that I had sold. . . . In some cases I am called upon to reestablish the boundaries, in others I am called upon to identify the person who bought the land and paid me for it. . . . If I stop performing this role, I would be reneging my commitment in the *hujja*, and people will have no trust in me, I wouldn't be able to sell.

Thus, the tribal seller is a lifetime guarantor of the buyers' possession of the land. This is almost always explicitly mentioned in *hujjas*: "the seller is responsible for the protection of the buyer against the intrusion of tribal members and adjacent neighbors." Modifications of this provision, however, started appearing after 1977: "with the exception of the state" was added to the provision, absolving the seller from protecting the buyer against demolition or appropriation of land by the state. By the mid-1980s, almost all *hujjas* examined included this distinction.¹¹ This change came at a time when the state had stepped up its policing of the area in an attempt to prevent further expansion of settlements.

Thus, the *hujja*, in its content and function, has not been a "continuation" of a traditional or customary practice. Rather, it has evolved to address changing conditions and to reflect realistic obligations between contracting parties.

In form, the *hujja* has increasingly resembled official sale contracts: two witnesses are required to sign the *hujja* as well as the buyer and seller. Increasingly, standardized *hujja* "forms" in which specific information can be included (such as names, dates, location, etc.) are sold in the market. In some cases, a

¹⁰ However, a *hujja* (proof) is a legally adequate means of transferring ownership in areas where rights to land had not been settled and registered by the Land and Survey Department. In contrast, for land that has been settled, land transactions require the registration of the transaction at the Land Registry Department and obtaining a title deed. Yajouz is registered as state property. Therefore, the *hujja* is null from a legal point of view.

¹¹ Examining the terms of contract in *hujjas* dating between 1970 and 1988, I found that none of the *hujjas* written before 1977 had a provision for state intervention, be it demolition, fines, eviction, or appropriation. The first *hujja* I examined with an explicit provision absolving the seller from any responsibility toward the buyer in case of state intervention was dated in 1977. About 60% of *hujjas* dated between 1977 and 1983 had an explicit provision absolving the seller from responsibility in case of state intervention. And almost all *hujjas* dated after 1983 had an explicit provision absolving the seller from responsibility in case of state intervention. In all, I reviewed 93 *hujjas*.

hujja is handwritten on paper with the state emblem on top, with the wording and arrangement of text resembling official contracts. Sometimes official stamps indicating that a fee has been paid for an administrative documents are added to the hujja (see Fig. 5). All these elements—the standard form, the state logo, and the stamps—add an aura of officialdom to the ratification process. The inclusion of such symbols in the ratification process “is aimed at investing transactions with a load of normativity which will increase the security of contractual relationships” (Santos 1977:51).¹²

The hujja asserts the legitimacy of land transactions in Yajouz in more than one way. First, it spells out in a functional way the mutual obligations of the buyer and seller and serves as a reference for future disputes. Second, by using the traditional term “hujja” for land sale contracts instead of the generic legal term “*‘aqd*,” the contracting parties invoke the historical legitimacy of this form of contract, while at the same time appealing for official recognition by endowing the hujja with the symbols of legitimacy of the modern contract.

In content, the only “traditional” aspect of the “hujja” is the term itself. As with the emerging community roles of mu’azib and wasta, the hujja is essentially a “modern” response to new needs, opportunities, and risks posed by the market and the conflict with the state. As I show in the next section, however, the Yajouz community is not self-contained within its own institutional arrangements but can selectively appeal to and invoke rules and enforcement mechanisms from a wider context. I also examine how the threat of invoking official intervention acts as a deterrent to internal strife and strengthens local arrangements.¹³

Threatening to Invoke State Coercive Power

The presence of state coercive power not only influences power relations between state organs and Yajouz residents but also influences power relations among residents themselves. I asked a new buyer in the area why he thought the tribal seller was going to fulfill his obligations made in the hujja. The buyer said: “The last thing tribesmen want . . . is for me to go complaining to the governor or the police. They know that the authorities are looking for excuses to clamp down on them.”

There is no doubt that this is true. On every visit I made to the governor’s office or the Department of Lands and Surveys, I

¹² In his brilliant study of a squatter settlement in Rio de Janeiro, Santos (1977) examines the role of the typed document, witnesses, stamps, etc. Describing the role of the typed document, he states, “[t]he keyboard of the typewriter extracts from the white paper a legal fetish in much the same way that the chisel extracts a statue from stone” (p. 47).

¹³ For an in-depth examination of dispute processing, disputing forums, and the involvement of the state in processing private disputes in Yajouz, see Razzaz 1991.



Figure 5. A contract (“hujja”) using Ministry of Communication stationery. The upper right-hand corner reads “The Hashemite Kingdom of Jordan.” The crossed-out print reads “Ministry of Communication” followed by phone numbers and addresses. The handwritten headings read “In the name of God the Beneficent, the Merciful/ Proof (hujja) of Land Sale.”

was confronted with a barrage of anecdotes proving that the tribes in the area are involved in all sorts of cheating, fraud, and usurpation of state land. The situation was always described as chaotic, a “grave threat to law and order,” a “potentially explosive situation where disputes between neighbors, heirs, and con-

testing claimants, could turn bloody and set the place on fire.” These portrayals of “lawlessness” and chaos serve to justify the sometimes harsh measures used by authorities in clamping down on the residents “in defense of law and order and the public interest.”

Such a campaign to undermine the tribes’ control over land provided land sellers with a real deterrent to cheating.¹⁴ In fact, it seems to have contributed to an “offensive” of good will in which tribal members and families compete to prove their worthiness as dependable parties to deal with. This suggests that external coercive power triggered by local complaints can unintentionally serve to strengthen local obligations and arrangements.

Threatening to Resort to Courts

Going to court over property is largely a last resort used when all else fails. “Litigation over property is not very common in Yajouz,” a lawyer said, “but it is on the rise.” People in the area tend to agree. A shopkeeper who was suing his seller said: “I never knew I could bring someone to court over land in Yajouz. We were always warned by the government that if we buy land through a *hujja* and without proper registration the sale would be unrecognized by the government and would have no legal value.”¹⁵ However, people have become aware that despite the “illegality” of the transaction, there are avenues for restitution available, especially in cases of *hujja* abrogation and obtaining injunctions against encroachment. In fact, many lawyers seeking clients have been promising restitution in return for 10% of the damages collected as their legal fee.

A series of Supreme Court decisions during the late 1970s and early 1980s have helped enhance the legal positions of buyers with regard to sellers in these settlements (Razzaz 1991). These shifts in the buyer’s legal status, as well as increased awareness of the legal options available, seem to have a significantly influenced the outcome of disputes processed outside courts. As one settler put it: “Previously, when a seller was stubborn and refused to negotiate, he would say pejoratively: Sue me in court why don’t you. Now he would have to think twice before saying that.” Thus, it is not only through litigation but through the *threat* of litigation and the relative power of disputants that the outcomes of some disputes are determined.

These examples of the invocation of state coercive power and courts suggest that it is not the degree of autonomy that necessar-

¹⁴ The most common problem during the early stages was that of tribal members repeatedly selling the same plot of land to different persons.

¹⁵ The Lands and Surveys Department periodically published messages in the daily newspaper warning citizens of the risk of buying land without obtaining a proper title through the Department.

ily defines the success of a social field at regulating its own affairs. Rather, it is the degree to which actors within the social field can invoke both internal *and* external rules and enforcement mechanisms to keep internal rule-breakers in check. That is, *semi*-autonomy is not necessarily a vulnerability that a social field has to put up with but is potentially a “ticket” to utilize institutional arrangements of the government and other SASFs.

In the noncompliant SASF of Yajouz, many arrangements are constituted by and adjusted to governmental law and enforcement. The following section attempts to capture the dynamic process of mutual adjustment between Yajouz actors and state organs.

Mutual Adjustment: The Struggle to Control the Land

Manipulating Legal Ambiguity and Evading Enforcement

As mentioned above, the government’s policy of “preventing new expansion” was translated into an active strategy of demolishing dwellings still under construction and leaving intact those that were finished. The criterion for a “finished” house was the roof: if a permanent roof had not yet been installed, the structure would be demolished.¹⁶

This “roof” criterion prompted settlers to adjust their building technology to cut down on the time it takes to install the roof. By using wooden scaffolding to support the concrete roof, the construction period was cut from about two weeks to two days (Razzaz 1991).¹⁷ This adjustment in the building technology was vital since the patrol was off duty Thursdays afternoons and Fridays, the official weekend in Jordan. These days gradually turned into the busiest workdays in Yajouz:

On the weekends of the summer of 1986, Yajouz looked like one whole construction site. Trucks hauling concrete, steel, blocks roaming up and down the main street and into the dusty side roads. Each construction site was a hive of construction workers carrying materials, digging the earth, setting reinforcement, hammering the scaffolding, pouring concrete. There was a deadline that everyone trying to build a home has to meet: in-

¹⁶ This criterion was not in strict compliance with any modern Jordanian law, which calls for evicting usurpers of public land and returning the property to its original physical condition at the usurper’s expense (see, e.g., Law No. 14, 1961, art. 6). However, the Ottoman laws (*al majallah*), which are mostly predicated on *shari’a* (Islamic law), recognize *prescriptive* rights: those rights are based on the ability to possess and demonstrate *revivication* (*ihia*) of land. While cultivation, permanent construction, renting, or collecting rent have traditionally been considered as methods of reviving land, putting up a tent or a temporary shelter has not.

¹⁷ Within two days, builders would excavate and pour concrete foundations, columns, beams, build the scaffolding to hold up the roof, pour the concrete roof, and build the outer concrete walls.

stalling the roof before Saturday morning, when the patrol visit is anticipated.

One construction sites was a 50-square-meter structure with 10 people working on it. The owner of the site, Abu Khalaf, a 65-year-old man, was working diligently with his 5 sons and 4 hired workers. If the roof was not ready to be installed by Friday evening, Abu Khalaf risked losing his investment, which was already about JD 1,000 (US\$1,500), imprisonment, and additional fines. There was little time to spare.

In another construction location, I talked to an informal contractor. He said the owner of the site was a schoolteacher, who was not there because he had evening classes but would take part in the construction all Friday (weekend). Despite the owner's absence, the construction work was advancing as quickly as on other sites. The contractor explained that he had as much stake in finishing over the weekend as did the owner of the site; otherwise he would run the risk of a delay of a week or even more. A contractor building for someone with no legal title to land and caught by the patrol would be imprisoned and forced to pay a bail of JD 2,000 before being released. He would also have to sign a pledge not to accept any construction jobs on state land. The contractor I talked to had already been jailed once.

In another location close to the main street, a concrete structure was rising from behind a 2-meter-high earth mound. I was told that if the road overlooks the building site, settlers may bring in several truckloads of earth to form a mound that conceals the building activity by obstructing the view from the road. This gives builders the opportunity to move in all the building materials and prepare the foundations during weekdays without being spotted by the patrol.

In effect, this meant that the state patrol could leave Yajouz on a Thursday afternoon to come back on a Saturday morning to find "finished" houses that had not existed two days before. And that is exactly what began to happen.

Also, despite the high risk of demolition by the CPSP, settlers began to use permanent construction materials (cement blocks, concrete structures) instead of the cheap temporary materials one might expect in a settlement lacking secure tenure. As it turned out, building quality also related to the patrol's demolition guidelines: makeshift structures were demolished regardless of the roof criterion. As a result, settlers had learned that building with durable materials, while involving the risk of demolition and loss of investment, gave a significantly better chance of evading reprisals by the CPSP patrol.

Understanding the loopholes and ambiguities in regulations, and the limits to enforcement of these regulation is one thing; disseminating this information among future builders and adjusting construction practices and methods is another. The latter re-

quires the use of community networks to disseminate information about enforcement as well as strategies for circumventing such enforcement. Such information traveled within kin groups and neighbors but also across groups after mosque prayers, during social events, and in local markets and tea and coffee houses.

Protecting the Possession of Vacant Land

Undeveloped and unattended land is hard to protect in a contested settlement such as Yajouz. Such land is vulnerable to appropriation by the state or encroachment by neighbors. Settlers, however, have managed to maintain possession of vacant plots through symbolic or partial development: some settlers have built small, unfinished rooms. Although these rooms often stood bare and uninhabited, they testified to the holders' claim to the land. Other settlers have purchased larger-than-needed plots, fenced them, and built their dwellings on part of the plots, leaving the rest for future subdivision. One settler in the area who has applied this strategy commented on the pleasant layout of his estate: "If you plan ahead, you can have a house, a beautiful yard for the kids to play . . . and when hard times hit, you can always sell off the yard to someone you trust is going to be a good neighbor (*ibn halal*)."

Evidence from the area shows that many settlers "plan ahead." Those who bought plots larger than 500 square meters often built the house on one side of the plot to maintain the option of subdividing the plot in the future.¹⁸

Such a procedure, while only allowing for small-scale land holdings (the largest plot in the survey area was 3,000 square meters), enabled the better-off settlers to acquire larger plots and maintain the option of later subdividing them and, at the same time, minimize the risk of losing the land to the state or to private individuals.

Just as settlers were able to adjust and arrange their practices and utilize their networks to respond to intervention by state organs, state organs were also able to readjust their own forms of intervention. In the following sections, I trace this dialectical process of adjustment, undermining adjustment, and readjustment by state organs.

Readjustment in State Enforcement Mechanisms

In 1987, faced by the continued proliferation of dwellings in Yajouz, the governor allowed the patrol more discretion in carrying out demolition and imposing imprisonment and fines even if roofs had been installed. The patrol started appearing occasion-

¹⁸ About 50% of the plots purchased are larger than 500 square meters and therefore can be subdivided and sold.

ally on weekends. Many of the newly roofed buildings were demolished. Some were partially demolished. In many cases, settlers had to risk their own lives (or felt they did) to protect their investments.

On a Sunday morning I was following the state patrol and a bulldozer that was roaming up and down the narrow unpaved roads branching from Yajouz Road. They came to a stop next to a construction site: a reinforced concrete skeleton with the roof slab installed but still held up by scaffolding. The owner of the structure and about 10 family members were still working at the site. A police officer stepped out of the state van, and the settler, an older man, walked up to him. The officer informed him that he was illegally building on state land and in effect “stealing public property,” a punishable crime under the law. The man swiftly responded to the “stealing” charge by producing the *hujja* which proved he had paid for the land, but the officer took no notice of it. Then the officer gave orders to the bulldozer to demolish the structure.

The settler and his family pleaded and bargained with the officer, but he seemed unyielding. At one point, as the bulldozer moved toward the structure, some of the boys in the family climbed up the structure and others ran inside it, at which point the bulldozer stopped again. Finally, the officer offered a compromise: If the family stepped out of the structure, he would only have one side column “kicked” by the bulldozer with minimal damage, but if the boys kept running inside the structure every time the bulldozer moved, he would leave but come back later and totally demolish the structure when the family was not around. The family stepped out, and the bulldozer “kicked” the side column, breaking the concrete cover and exposing bent steel bars.

In other cases, settlers were less fortunate; they faced full demolition. Some of them, mostly those better off, were able to rebuild, but others were not: A grocer pointed toward a pile of rubble and told me that a soldier sold his wife’s jewelry and a pickup truck to finance the land purchase and the construction of a room. The patrol spotted the construction in its final stage and demolished the structure. The grocer commented: “The poor soul had no money to rebuild; he left the site and I’ve never seen him since.”

Tens of demolished structures in different areas of Yajouz were a constant reminder of the hazards involved.

In spite of these continuous reminders, settlers knew that the pattern of enforcement was far from uniform. Rather, it was often capricious or cyclical. As enforcement increased, building activity slowed down; when it dropped off, building resumed. But why, one might ask, is the patrol incapable of absolute and sustained enforcement, although the law provides harsh sanc-

tions.¹⁹ The answer lies partly in understanding the limits of law enforcement: Full implementation of the law would be politically unfeasible, threatening of confrontations like those of 1983. But beyond the political constraints, as I discuss below, there are practical constraints to full enforcement.

Scale of Enforcement

Not only is the contested land vast (100,000 dunums—25,000 acres—including Yajouz and other areas) but the number of construction sites, especially during the summer, is too much for a single patrol to deal with. Furthermore, the patrol's access to the bulldozer was limited, for the latter belonged to the municipality and was often needed for public work.

A police officer heading the patrol had no illusions that the patrol could halt the construction activity. He said, "The building that is going on these days is simply overwhelming for us to control. The most we could do is to discourage people from building by setting an example of those we do punish."

Furthermore, there is a clear discrepancy between the proportion of settlers who are subjected to demolition (41%) and of those who were detained (7%).²⁰ This, I was told, resulted from the limited capacity of the judicial and enforcement system to process these cases. The patrol member said that when the police station or the public property court was flooded with offenders, the authorities instructed the patrol officer not to arrest additional offenders.

Corruption, Dissent, and Plural State Organs' Agenda

While members of the patrol emphasized the overwhelming scale of violations as the cause for lax enforcement, settlers of Yajouz often talk of corruption among members of the patrol. The patrol's increased discretion provided it with leverage and authority to enforce the rules selectively and with a wide range of punishments, including fines, imprisonment, and demolition ranging from partial to complete.

This discretion created ample opportunities for corruption and bribery. Rumors circulated that many well-to-do settlers paid off patrol members to leave their property alone. To minimize the payoffs, the governor ordered that patrol members be rotated every two to three months.

The rotation strategy resulted in cyclical levels of enforcement. A settler commented:

¹⁹ Usurpation of state land is punishable by jail, fine, or both; by immediate eviction "without consideration to any claims of possession" by the usurper; and by returning the property to its original physical condition at the usurper's expense. Law No. 14, 1991, art. 5 (see also amendments).

²⁰ Survey of Yajouz, summer 1989.

Every time a new rotation of patrol members comes to Yajouz, builders are cautious. . . . It all depends on the police officer heading the patrol: some of them are mean. They go on demolition rampages without hesitation. Even members of their patrol fear them. Others understand our plight and try to avoid demolition as much as they can. And others are in it for the money. They act tough at the beginning, they refuse small payoffs, then somebody offers them a hefty bribe which they accept . . . so they try to set their price, so to speak. . . . The latest patrol has done something new though, they are measuring floor areas and charging JD 2 per square meter bribe. . . . These stories travel fast so that people can act accordingly.

In one case, a local building contractor secured profit-sharing agreements with consecutive patrols and guaranteed settlers a “demolition-free” building process if he was hired to do the job.

Thus, while lack of discretion limited the patrol’s ability to circumvent settlers’ attempts to elude the enforcement system, increasing the patrol’s discretion increased the patrol’s leverage and, therefore, the possibility of corruption.

In addition to corruption, there were signs of dissent within the patrol on ethical and moral grounds. Many appointed patrol members refused to carry out orders of demolition and demanded to be transferred to a clerical job instead. I talked to a local government employee who had asked to be transferred less than a week after he began serving with the patrol. He said:

I left the patrol because on the first incident of demolition I witnessed, I sided with the settlers instead of the police officer, he reported me, and I requested a transfer. . . . See, the King’s famous motto is “Let’s build this country, let’s serve this nation.”²¹ I do not see the patrol contributing to either. . . . It is us not [the decisionmakers] who have to face the people. They make clear-cut decisions, and we are expected to follow, but they don’t see the misery and anguish these decisions bring about. . . . Many of my colleagues in the patrol are not pleased either. . . . Some think of it as another job, others think that their being there actually helps since they can be more lenient toward the settlers.

By all accounts, the patrol’s efforts to enforce state property rights were far from consistent. Sometimes they seemed capricious and arbitrary, at other times cyclical. While the scale of violations discussed above makes full enforcement untenable, and corruption and dissent create loopholes, lack of official consensus over the nature and extent of enforcement introduces yet more volatility in enforcement. A patrol member commented:

Sure, enforcement has to do with the composition of the patrol, but it has to do with the instructions we get from the governor too. . . . The instructions depend on which high-ranking

²¹ The King’s statement has become a motto that often appears on the walls of public offices, in the media, and on national monuments.

official is rebuking our governor for his handling of the settlements issue on a certain day. If he is rebuked for being too lenient, the next day we get orders to tighten up enforcement. If he is rebuked for being too harsh, the next day we get orders to have symbolic presence. The problem is, he gets rebuked very frequently, and by high officials who do not think alike.

Under such conditions, the portrayal of the state as a monolithic entity with clear and internally consistent agenda could not be further from reality. Both bureaucrats and community members in Yajouz seem to understand well the plurality and inconsistency of state agenda, and they behave accordingly.

The idea that noncompliance can simply be checked through “tougher enforcement” ignores the difference between group noncompliance and isolated violations of law. Enforcing laws and regulations brings into play a set of dynamic institutional arrangements that can modify and adjust rules and practices and subvert enforcement attempts. This is not to say that *no* measure of enforcement can possibly reduce noncompliance—an overwhelming use of coercive force probably would. Such use of force, however, itself could delegitimize governments and the rule of law, especially when noncompliance is seen as a legitimate expression. More common, however, are dynamic scenarios with cycles of noncompliance, high enforcement, decreased noncompliance, low enforcement, increased noncompliance, and so on.

Attempts to Legalize Yajouz: The Breakdown of Long-Term Plans

In the early 1980s, and in recognition of the vast areas of de facto settlements in Yajouz, a government committee developed a plan that would culminate in the provision of metered water and electricity and the regularization of Yajouz. The planned sequence was as follows: the Department of Lands and Surveys would demarcate plots; settlers would pay a portion of the market price (*badal mithl*)²² and obtain legal title; the municipality would inspect the buildings and issue occupancy permits (*ithin ishghal*);²³ and finally, service agencies would provide water and electricity. Each step in the plan was predicated on the one preceding it.

During the implementation stage, however, the plan stalled. There was little progress by the Department of Lands and Surveys over time; few settlers were paying to obtain titles (less than 5% by 1989); the municipality could not issue occupancy permits to settlers who did not yet legally own their plots; and service agencies could not connect water or electricity to settlers.

²² *Badal mithl*, meaning “equivalent,” generally refers to the market value of land. Payments would usually range from 50% to 100% of the market value.

²³ This permit is issued by the municipality once a building is inspected and is found to meet the building and zoning regulations. Buildings in Yajouz, lacking legal tenure, did not qualify for such permits.

With the breakdown of the process, water and electricity agencies pushed to connect settlers without waiting for an occupancy permit. The Electricity Company (a parastate enterprise) provided connections in some areas where settlers were willing to pay the full cost of installation. The Water Department (a public agency) complained that settlers were illegally connecting to the water main anyway and they might as well be charged.

In 1986, as a way to get the process moving, the Ruseifa municipality started issuing Yajouz settlers a “pre-permit”—a document issued after a structure had been inspected verifying that it is not located in the path of a planned street and that it is structurally stable. While the occupancy permit required that settlers obtain a legal title to the land, the pre-permit did not.

This administrative fiction of issuing a pre-permit rather than an occupancy permit enabled the water and electricity departments to start providing hookups to dwellings whose occupants were willing to pay connection fees.²⁴ And while municipality employees insisted that the pre-permit was not an alternative to the occupancy permit, the latter was of little value to settlers once services were delivered.

By the early 1990s, almost all dwellings in Yajouz had obtained the pre-permit along with piped water, electricity, and municipal services. Fewer than 10%, however, had paid the dues for the land or obtained a legal title. Yajouz representatives have been actively lobbying to have their lands registered to them free of charge. There is increasing evidence that this will be the likely outcome.

Conclusion

The roots of the Yajouz land conflict can be traced back to the British mandate period during which much pastoral land within tribal domains was registered as state land. The conflict, however, did not emerge until the 1970s when a sharp increase in urban land value brought to the surface the various interests and conflicting claims to land. Members of the Bani Hasan tribe claimed the land had been historically part of its tribal domain and wanted to cash in on the real estate boom. Lower- and middle-income urban groups sought the land for its location and affordability (because of its clouded title). The state legally owned the land, but the trade-off between use of coercive power and legitimacy prevented state officials from acting definitively to enforce state rights. This relative impasse heralded a struggle for

²⁴ The Electricity Company (a parastate enterprise) was offered land by a tribal member to locate its generator. A *hujja* was written, and a structure to house the generator was built. Later that year, the CPSP fined the Electricity Company for “usurpation” of state land (information from a letter of protest by the company addressed to the CPSP and the Lands and Survey Department).

the control of the land that has lingered for almost two decades. Although unique in many ways, the Yajouz case offers some insights that might be instrumental in other contexts.

Residential land transactions started in Yajouz in the early 1970s as isolated incidents, responding to individual needs and market opportunities. Had land been registered to tribal members at the time, in all likelihood Yajouz would have been just another middle-income suburb with little to distinguish its real estate market or physical layout. In the absence of state recognition of tribal rights to the land, and in the face of pent-up demand for affordable land, illegal land sales increased. Some of the newcomers and reputed tribal members assumed new roles in providing the necessary information, assurance, and dispute prevention and containment mechanism. Hujjas were modified to address current needs and uncertainties. Thus, while actors drew on existing norms, social networks, and rulemaking and enforcement mechanisms, they had to modify some, reinterpret others, and create new arrangements that addressed specific needs and opportunities. In other words, Yajouz was a semi-autonomous social field in the making.

Indeed, Yajouz came into existence in response to, more than anything else, contemporary threats of dispossession, opportunities for profit, and basic needs for housing. While the particular rules and practices developed partly in response to market dynamics and the needs of land buyers and sellers, they also were constituted through interaction with state organs enforcing laws and regulations. This aspect makes noncompliance a defining attribute of the institutional arrangements of Yajouz. Noncompliance, as I apply the concept here, cannot be reduced to *deviance* from governmental laws and regulations. While deviance implies a particular mode of behavior in violation of the hegemonic legal order, noncompliance signifies the *organizational capacity* of a SASF to provide a degree of relief to its members in the face of coercive power and intervention by state organs. Further, the Yajouz case suggests that the effectiveness of noncompliance is determined only partially by the degree of autonomy (the more autonomous, the more noncompliant). Somewhat different, and even more important, seems to be the degree of *resourcefulness* in selectively invoking alternative rules and enforcement mechanisms, including those of the state, to protect existing entitlements, promote interests, as well as curb internal misuse and abuse by individual members. Deviance, therefore, becomes one of many possible manifestations of the relationship between a noncompliant SASF and the state.

An appreciation of the dynamic nature of the noncompliant SASF is essential for a better understanding of the predicament of law enforcement. While the short-term impact of state intervention in the early 1980s was to curtail the activity of the Yajouz

land market (Figs. 2–4), the long-term impact was the adjustment of practices and networks to circumvent enforcement measures and, hence, cause the market to rebound. The rebounding Yajouz land market, however, was a somewhat *different* market in its practices, transactions, and contractual arrangements. The inability of the state to eradicate the market, however, is not proof that the state is irrelevant, but rather that the state is not the only active player in a field of passive subjects.

Unlike isolated acts of individual deviance, noncompliant SASFs tend to be more resilient, to have greater capacity to adjust. As a result, enforcement becomes only partly a matter of quantity and more a matter of catching up and readjusting strategies for enforcement. A close examination of the dynamics of enforcement in this case reveals not a “consistent” enforcement policy, but rather a constantly changing policy responding to changes on the ground and to the mosaic of agenda within enforcement ranks and legislative and executive organs. The resulting process is one of mutual adjustment in practices on both sides.

The Yajouz case suggests that the process of mutual adjustment is not limited to the realm of daily practices and strategies but also extends to the content of governmental law itself. Pointing to the dynamic nature of customary law, Unger (1976:49) argued: “There is a point at which deviations from the rule remake the rule itself. Thus, every act leads a double life: it constitutes conformity or disobedience to custom at the same time that it becomes part of the social process by which custom is defined.” While Unger was referring to customary law and not codified law, the Yajouz case suggests that it is true as well for governmental law if the latter is understood in terms of its social interpretation and function. State officials’ eventual recognition of *de facto* control of land in Yajouz and steps taken to legitimize such control were in flagrant contradiction to the written law stating that “usurpation of public land shall be ejected and investment removed at usurper’s expense.” The process of mutual adjustment has, therefore, contributed to the formation as well as the transformation of both the social field and governmental law.

Finally, examining the process of mutual adjustment in contexts such as that of Yajouz is important for dispelling a common misconception—that conflicts between communities (such as Yajouz) and the state should be conceived in terms of tradition giving way to modernity. Instead, mutual adjustment allows us to approach Yajouz as essentially a “modern” response to an equally “modern” phenomenon: the nation state actively seeking to control the allocation of resources in society by bestowing legitimacy on certain social claims while rendering others illegitimate.

References

- Azuela de la Cueva, Antonio (1987) "Low Income Settlements and the Law in Mexico City," 11 *International J. of Urban & Regional Research* 522.
- Barzel, Yoram (1989) *Economic Analysis of Property Rights*, New York: Cambridge Univ. Press.
- Benda-Beckmann, Franz V. (1985) "Some Comparative Generalizations about the Differential Use of State and Folk Institutions of Dispute Settlement," in A. Allott & G. R. Woodman, eds., *People's Law and State Law: The Bellagio Papers*. Cinnaminson, NJ: Foris.
- (1988) "Comment on Merry," 22 *Law & Society Rev.* 897.
- Black, Donald J. (1976) *The Behavior of Law*. London: Academic Press.
- Burman, Sandra B., & Barbara E. Harrell-Bond, eds. (1979) *The Imposition of Law*. New York: Academic Press.
- Castells, Manuel (1988) "Squatters and the State in Latin America," in J. Gugler, ed., *The Urbanization of the Third World*. New York: Oxford Univ. Press.
- (1983) *The City and the Grassroots*, Berkeley: Univ. of California Press.
- Collier, David (1976) *Squatters and Oligarchs: Authoritarian Rule and Policy Change in Peru*. Baltimore: Johns Hopkins Univ. Press.
- Conn, S. [1968] "The Squatters' Rights of Favelados." Unpublished manuscript.
- Cotto, Lillian (1989) "Land Invasion and State Responses in Puerto Rico: 1968–1976." Ph.D. diss., Rutgers, the State Univ. of New Jersey.
- Doebele, William A. (1977) "The Private Market and Low Income Urbanization: The 'Pirate' Subdivisions of Bogotá," 25 *American J. of Comparative Law* 531.
- (1978) "Selected Issues in Urban Land Tenure," *Urban Land Policies: Issues and Opportunities*. Washington, DC: World Bank.
- Fass, Simon M. (1990) "Land Tenure and Informal Housing Processes in Haiti." Presented at 32d Annual Conference of Association of Collegiate Schools of Planning, Austin, TX.
- Feeny, David (1988) "The Development of Property Rights in Land: A Comparative Study," in R. H. Bates, ed., *Toward a Political Economy of Development: A Rational Choice Perspective*. Berkeley: Univ. California Press.
- Griffiths, John (1986) "What Is Legal Pluralism?" 24 (1) *J. of Legal Pluralism* 1.
- Hardoy, J., & D. Satterthwaite (1987) "The Legal and the Illegal City" in L. Rodwin, ed., *Shelter, Settlement, and Development*. Boston: Allen & Unwin.
- Hirschman, Albert O. (1970) *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard Univ. Press.
- Hooker, M. B. (1975) *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws*. Oxford: Clarendon Press.
- Karst, Kenneth L., Murray L. Schwartz, & Audrey J. Schwartz (1973) *The Evolution of law in the Barrios of Caracas*. Los Angeles: Latin American Center, Univ. of California.
- Merry, Sally Engle (1988) "Legal Pluralism," 22 *Law & Society Rev.* 869.
- Migdal, Joel S. (1988) *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*, Princeton, NJ: Princeton Univ. Press.
- Moore, Sally Falk (1978) *Law as Process: An Anthropological Approach*. Boston: Routledge & Kegan Paul.
- Ostrom, Elinor (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*. New York: Cambridge Univ. Press.
- Perdomo, Rogelio Pérez, & Pedro Nikken (1982) "The Law and Home Ownership in the Barrios of Caracas," in A. Gillbert, J. Hardoy, & R. Ramirez, eds., *Urbanization in Contemporary Latin America*. New York: John Wiley.
- Perlman, J. (1976) *The Myth of Marginality: Urban Poverty and Politics in Rio de Janeiro* (Berkeley: Univ. of California Press).
- Pospisil, Leopold (1971) *Anthropology of Law*. London: Harper & Row.

- Razzaz, Omar M. (1991) "Law, Urban Land Tenure, and Property Disputes in Contested Settlements: The Case of Jordan." Ph.D. diss., Harvard Univ.
- Ruffini, Julio L. (1978) "Disputing over Livestock in Sardinia," in L. Nader & H. F. Todd, Jr., eds., *The Disputing Process: Law in Ten Societies*. New York: Columbia Univ. Press.
- Santos, Bonaventura da Sousa (1977) "The Law of the Oppressed: the Construction and Reproduction of Legality in Pasargada," 12 *Law & Society Rev.* 5.
- (1987) "Law: A Map of Misreading: Toward a Postmodern Conception of Law," 14 *J. of Law & Society* 279.
- Sobreira de Moura, A. S. (1986) "Legalization of Urban Land and Changes: Case Studies in Recife, Brazil" (Ph.D. diss., University of Wisconsin-Madison).
- Unger, Roberto Mangabeira (1976) *Law in Modern Society: Toward a Criticism of Social Theory*. New York: Free Press.
- U.S. Agency for International Development (1991) 2 *Regularizing the Informal Land Development Process*. Washington, DC: GPO.
- Williamson, Oliver E. (1985) *The Economic Institutions of Capitalism*. New York: Free Press.
- Ziadeh, Farhat J. (1979) *Property Law in the Arab World*. London: Graham & Trotman Ltd.