Settlement of Title in the Galilee; Dowson’s Colonial Guiding Principles

The judicial process of ‘settlement of title,’ or ‘land settlement,’ constituted the core of British land regime reform in Mandate Palestine. This process, which relied on topographical and cadastral survey, exact mapping and extensive judicial investigation of land rights aimed at identifying an owner for every parcel of land in the country.¹ British reformers sought to transform the traditional usufruct rights of the indigenous, majority Arab population and the minority population of European Jewish settlers into rights of ownership.² They believed that the resulting security of title, in concert with comprehensive agricultural tax reform, would improve the position of small Palestinian Arab peasant farmers and revitalize Palestine’s agriculture-based economy.³

Sir Ernest Dowson was the British land expert whose theoretical ideas regarding land administration laid the foundation for the Mandate Government’s land regime reform in Palestine. His reforms were initiated in the 1920s and implemented up to the end of Mandatory rule in 1948. The state of Israel retained the statutory and procedural basis for land settlement used during the Mandate, and Dowson has therefore been regarded as something of a ‘founding father’ with regard to Israeli settlement of title. However, as legal geographer Benjamin Forest points out, it is imperative to “...address not only historical developments that affect legal decisions, but seek to understand the meaning of legal texts and actions within a particular historical and geographical context.”⁴ In this case, the 1948 war and the establishment of the state of Israel resulted in a completely different historical and geographical context for land settlement. As a result, the engineers of land settlement in Israel abandoned decisive elements of Dowson’s guiding principles, particularly in the case of land claimed by the Palestinian Arabs who became citizens of the state after 1948.

The premise of this article is that comprehension of changes in the principles underlying Israeli land settlement after 1948—or, more accu-
rately, after 1954—enables us to better understand the transformation of the process as a whole, its motivations and impact, and the way it was carried out. Which of Dowson’s principles did Israeli land settlement officials espouse? Did they, too, regard assisting small-scale Arab farmers in transforming their rights of usufruct into secure ownership as an important goal of land settlement? If not, then what were the considerations that motivated the “Special Operation of Land Settlement” undertaken in the predominantly Arab regions of northern Israel during this period? The first section of this article identifies a number of Dowson’s guiding principles, as expressed in the plethora of written material that he produced during and after his service in Palestine. Subsequent sections focus on the principles adopted by the engineers of Israeli settlement of title in northern Israel during the 1950s and 1960s, and compare them to the Mandatory foundation established by Dowson. The differences between Mandatory and Israeli land settlement, it will be argued, are indicative of the differences between the two regimes’ respective overall land policy goals.

SIR ERNEST DOWSON’S GUIDING PRINCIPLES IN PALESTINE

Dowson began his career in the colonies as an assistant engineer with the Egyptian Delta Light Railways at the age of 22, and three years later, in 1900, he was appointed to the Survey of Egypt. Much has been written about the next half-century, during which he faithfully served British colonial interests, earning the reputation of a land reform expert. During his 23 years in Egypt, he served as Director-General of Surveys, Under-Secretary of State for Finance, Financial Advisor to the Egyptian Government and Chairman of a commission on land registration reform. From 1923 onward, he provided land reform advice for a large number of colonial territories, including Palestine, Trans-Jordan, Iraq, Zanzibar, Uganda, the Gold Coast, Kenya and Singapore. His work in Palestine (1923–1927) was the most in-depth and hands-on, as well as the most relevant to our present discussion. Luckily for us, Dowson produced an abundance of lengthy, comprehensive reports on Palestine’s land system and his reform program, as well as shorter analyses and letters to colleagues on various aspects of his work. This material allows us to identify four major principles that guided Dowson in his reform efforts.

As a lifetime servant of British colonial interests, the most prominent principle guiding Dowson’s work in Palestine was a solid belief in the supe-
riority of western culture in general, and western concepts of land tenure and land administration in particular. Like many servants of British (and other) colonial interests, Dowson identified a ‘civilizing’ element in his work, and regarded his efforts as not only serving the colonial government and settlers in question, but the indigenous population as well. In his eyes, it was “the intention of the British Government and people, having set their hand to the plough as mandatories of the civilized world, to establish ‘The Land of Three Faiths’ as a stable and self-sufficing political entity . . .”⁷ He regarded the intensive cultivation of a capitalist agricultural economy as superior to traditional communal forms of tribal and village landholdings, and western concepts of fixed-private land ownership as superior to communal arrangements based on land-use rights. Accordingly, he reserved harsh criticism for indigenous elements of Palestine’s land system that he regarded as especially inefficient, such as Mushā land tenure (a system that governed the holding and periodic redistribution of collective village agricultural lands) and Waqf Ghayir Sahih (Sultanic Waqf, or Mirī land whose state revenues were allocated to pious purposes or foundations). He also advocated replacing the tithe (A’ashār) and the House and Land (Werko) tax with one agricultural land tax.⁸

Dowson’s overall goal appears to have been the transformation of any given ‘native’ agricultural economy into what he perceived to be a healthy agricultural economy, for the good of both the population and the government. In the case of Palestine, he regarded a comprehensive, simple, fail-safe system of recording land rights as the basis of good administration, agricultural development and efficient taxation, and believed in the use of sweeping reform in order to achieve these goals. This meant implementing a centrally coordinated program of topographical and cadastral survey, mapping, and settlement of title to every parcel of land in the country. The result would be the replacement of Palestine’s land system with one that was more in line with the western concepts that Dowson regarded as evolutionarily superior:

“The Torrens principle of basing record and passage of real rights on the indestructible, immovable and readily definable unit of land instead of on the ephemeral, mobile and indifferently definable unit of humanity who temporarily enjoys rights over it is winning its way surely throughout the world, and neither its superiority nor its simplicity are seriously contested anywhere. Indeed its superiority primarily resides in its simplicity, which enables the unlettered farmer readily to comprehend and assimilate its working.”⁹

A second principle underlying Dowson’s reforms was the procure-
ment of ‘revolution’ through ‘evolution’ by employing concepts, names and arrangements familiar to the indigenous population whenever possible within the context of reform. One reason for this approach was to avoid alienating the indigenous population, in order both to secure their cooperation and enable them to enjoy what he regarded as the benefits of the new system. He believed that “a new land law need not and should not be revolutionary . . . So far as possible familiar forms would doubtless be retained and familiar names be perpetuated. The initial reception of reform is admittedly largely governed by the manner of its presentation; its manner is appreciated more slowly.”¹⁰

Another factor explaining this approach was the Mandate government’s policy of preserving the pre-war legal status-quo in Palestine by retaining the “Ottoman law in-force” as of November 1914. Still, it must be kept in mind that British colonial officials and legal administrators made significant changes to land law (and law in general) in Palestine through interpretation, modification and the addition of new legislation, while still presenting it as ‘Ottoman law in force.’¹¹ In a 1925 report on land tenure in Palestine, Dowson expressed his intention to make similar revolutionary changes in the country’s land regime.

“. . . while the spirit and fundamental concepts of Ottoman law should, on this showing, remain the basis of Palestinian land tenure, the statutory expression of such land tenure must be purged of inconsistencies and of moribund provisions, be reconciled with reasonable and well established practice, assimilate where it can lessons derived from the experience of others, and above all be clarified and simplified if it is indeed to constitute the foundation of a land system appropriate to the needs of the country . . .”¹²

In this way, while the 1928 Land Settlement Ordinance laid the foundation for far-reaching reform in Palestine’s land regime, the legal categories of land based on Ottoman law remained in place. Changes in the significance of these indigenous categories made by the 1928 ordinance, as well as other steps taken to modify the nature of land categories, resulted ultimately in their transformation, which was part and parcel of the transformation of the land regime as a whole.¹³

A third principle underlying Dowson’s approach, and one that will prove to be extremely relevant to our discussion of Israeli settlement of title in the 1950s and 60s, was his focus on the improvement of the position of the small Palestinian peasant farmer as the primary aim of reform. Dowson held that Palestine’s only valuable natural resource was its agricultural potential, and that curing the ills of Palestine’s agricultural economy would
place the country on a much sounder economic footing.¹⁴ He believed that land settlement and the resulting security of title would improve the position of small Palestinian Arab farmers, who constituted the overwhelming majority of the population, and thereby revitalize Palestine’s agriculture-based economy. While it was clear that cadastral survey and settlement of title would also benefit Jewish settlers, Dowson firmly held that improving the position of small Palestinian farmers would be the key to success. One example of this, among others, was his acknowledgement of the need to recognize land rights based on more traditional, indigenous criteria, or on equitable rights. He explained:

“While nothing but chaos can be expected if the settlement parties have not full knowledge of the legislation that has been in force during the period in which all existing real rights have been acquired, and do not pay the most careful regard to it, it is an equitable and not a legal settlement that must be aimed at if the nearest approach to what the people themselves will consider a just settlement is to be obtained . . .”¹⁵

So, out of political expediency and a desire for a just settlement, Dowson focused on his perception of the needs of small Arab peasant farmers.

It must also be noted that staking legal claim to state land was only of secondary importance to Dowson, and this can be considered a fourth guiding principle. This is not to say that he deemed achieving secure title to state land as unimportant. However, while he believed that Palestine had a significant “public estate” and advised securing it as soon as possible,¹⁶ his writings leave no doubt that settlement of title was first and foremost about curing the Palestinian agricultural economy. He regarded the discovery of state land as a secondary, albeit extremely valuable, side effect.¹⁷ For this reason, the overall geographical priorities of British settlement of title were not set primarily by considerations of securing state title to land, but by other considerations, sometimes practical, sometimes security-oriented, and sometimes political. This principle will prove extremely relevant to our discussion of Israeli settlement of title later in this article.

By the time that British rule in Palestine came to an end in 1948, most of Dowson’s reforms had been implemented and settlement of title had been applied to approximately 5,588 million dunams of land, or approximately 20% of Palestine’s total land area.¹⁸ As has been pointed out by other researchers, this process was an important factor in increasing the transfer of land from Arab to Jewish ownership during the Mandate period.¹⁹ Still, it would be inaccurate to say that this was the intent of the Mandate regime in undertaking settlement of title. Rather, the government enlisted Dowson
to achieve the regime goal of improving the country’s land system and agricultural economy. The four principles discussed above—the superiority of western concepts of land administration, attaining ‘revolution through evolution,’ the centrality of the small Palestinian Arab peasant farmer and the secondary nature of state land acquisition—together constituted the theoretical basis of this reform.

THE TRANSFORMATION OF CONTEXT AFTER 1948: FROM MANDATE TO JEWISH STATE

The establishment of Israel resulted in upheavals in many realms, most notably the flight and expulsion of hundreds of thousands of Palestinians, a massive influx of Jewish immigrants, and a major transformation in governing regime. Israel was a Jewish state governed by the leaders of the pre-state Jewish nationalist struggle, and state machinery was regularly employed to continue increasing the state’s Jewish character and decreasing its Arab character. This was extremely true in the realm of land tenure.²⁰ Now, the struggle was framed within new terminology—one of ‘law,’ ‘government decisions’ and ‘state policy.’

According to early Israeli legislation, Palestinian refugees were classified as ‘absentees.’ Their land was sequestered by the Custodian of Absentee Property, and could then be transferred (by means of an intermediary body called the Development Authority) to the state and to the Jewish National Fund—the official pre-state guardian of ‘Jewish national land’ in Palestine. The state also illegally seized hundreds of thousands of dunams belonging to the Palestinian Arabs that remained in Israel after 1948 as citizens of the state, and this land was eventually vested in the Development Authority by the Land Acquisition Law of 1953.²¹ All in all, the state claimed approximately 16.7 million dunams of land, including approximately 5 million dunams of land defined as ‘absentee property,’ vast areas of land in the northern and southern Negev desert, and approximately 2.7 million dunams regarded as ‘fallow’ and ‘waste’ lands within the administrative borders of Arab villages. The JNF claimed 1.9 million dunams, including one million dunams purchased from the state in January 1949.²² Thus, while small Arab farmers were reduced to a minority, the two entities that regarded themselves as the guardians of Jewish landed interests in Israel—the state and the JNF—claimed a vast majority of the country’s land.

The fact that, prior to 1948, land settlement had been completed for only 5 million of the 20.4 million dunams incorporated into the state (about
25%) weakened the state’s claims for much of the land that it regarded as its own.²³ The two major concentrations of land that had not undergone settlement of title were located in the thinly populated Negev desert and the overwhelmingly Arab Galilee,²⁴ whose Arab population lived under Israeli military rule between 1948 and 1966. While the state’s lack of secure title to these lands would come to dominate Israel’s settlement of title operations by the second half of the 1950s, senior Israeli officials on the whole appear to have not realized the significance of this factor during the first few years of statehood. This is not surprising, as the legal side of state land administration between 1948 and 1953 focused on establishing a legal foundation for the massive wartime and post-war land expropriations, in order to facilitate their unfettered use for the integration of Jewish immigration, the establishment and reinforcement of Jewish settlements, and other state goals.²⁵

IN SEARCH OF LAND FOR JEWISH SETTLEMENT: FEARS OF ARAB SEIZURE AND ADVERSE POSSESSION AS FACTORS IN ACCELERATING SETTLEMENT OF TITLE

The concrete ramifications of the state’s insecure title to unsettled land was first clearly and effectively framed in political and geographical terms in 1954 by IDF settlement and planning officials, during joint discussions of military, Interior Ministry and JNF officials regarding plans to achieve a Jewish majority in the overwhelmingly Arab Galilee (Yihud ha-Galil, or Judaization of the Galilee). “Due to the absence of legal land settlement, land-tenure relations are not clear,” noted Israel Defense Forces (IDF) Planning Department Director Yuval Ne’eman.²⁶ According to his assessment, Arabs of the Galilee were seizing absentee and state lands through illegal cultivation and construction, as well as through the submission of “groundless” claims based on the 1953 Land Acquisition Law. In result, he warned: “land reserves that had existed in this area are increasingly being pulled out from under us.” In order to remedy this situation, he called for a swift acceleration of settlement of title in order to counter the phenomenon:

“All possible steps must be taken (in the Justice Ministry, the Interior Ministry, the Defense Ministry and the Knesset) to hasten the legal processes related to land settlement, preventing illegal seizure and ending untamed illegal construction. We must also ensure all assistance that the IDF is capable of providing for swift implementation of the tasks involved,
in order to safeguard what exists and to increase land reserves in the area as best as possible.”²⁷

In this way, military planners urged government officials to employ the legal process of settlement of title in order to implement the ethnically based demographic engineering of a Galilee with a Jewish majority. If the officials did not take steps to prevent the seizure of absentee and state-claimed land, they cautioned, the possibility of using these lands for Jewish settlement would be lost.

Fueled by this concern, which was growing increasingly prevalent among government officials, mobilization for accelerated land settlement began to pick up speed during the second half of 1955, as initial plans were drawn up and budgets appropriated.²⁸ This involved coordination among the numerous state agencies involved with the process: the Department of Surveys (Labor Ministry), the Department of Land Registration and Settlement (Justice Ministry), and the Department of State Property, the Development Authority and the Custodian for Absentee Property (Finance Ministry). It also meant the increased involvement of Yosef Kokia, the Justice Ministry’s Director-General, who would play a decisive leadership role in the special program of accelerated settlement of title as it evolved during the second half of the 1950s and the 1960s.

Towards the end of the year, the Ratner Commission, a government appointed commission charged with considering a reduction in scope of military government throughout the country, pointed out a second factor, which would quickly become the dominant impetus for accelerated settlement of title in northern Israel: the Hityashnut factor.²⁹ Hityashnut is the Hebrew term for the legal concept ‘limitation of action,’ which means that, after a specified period of time that generally varies according to the area of law in question, a claimant loses the right to take legal action regarding a given claim. More important to our discussion, however, is the term Hityashnut as it refers to the related legal concept of ‘prescription,’ or the process of acquiring a specific right by continuous assertion of that right over an extended period of time. Acquiring property rights to land in such a way is known as ‘adverse possession.’ In the context of the legal status of northern Israel in the 1950s, adverse possession regarding unregistered Miri land was defined by Article 78 of the Ottoman Land Code of 1858, which remained in force in Israel until the late 1960s.

Article 78 specified that a person possessing and cultivating unregistered Miri land for 10 years acquired a right to title.³⁰ In the absence of prior uniform registration, it was this provision that had enabled Palestinian farmers during the Mandate to claim ownership of the land they cultivated,
as part of the ‘equitable settlement’ envisioned by the designers of British settlement of title. Small Arab peasant farmers continued to rely on Article 78 for this purpose under Israeli rule as well.³¹ On this basis, the Ratner Commission warned that, in 1958, Arabs who had seized state and absentee land in 1948 would be eligible to claim title. They also cautioned that other Arabs who had taken possession of land more recently would be able to falsely claim that they too had held it for ten years. Thus, Hityashmut challenged the state’s claims for land it regarded as its own and served as a means by which Arab citizens could legally gain title to such land. To circumvent this obstacle, the commission proposed an accelerated program of settlement of title, and the implementation of limited, yet extremely far-reaching statutory and procedural (judicial and administrative) changes.³²

In the midst of its discussion of the Ratner Commission’s report, on April 29, 1956, the Government charged Justice Minister Pinhas Rosen with preparing a plan of action regarding settlement of title. One month later, he submitted his “Proposal for Settlement of Title to Land under Military Rule,” which was based squarely on the Ratner Commission’s recommendations regarding land settlement.³³ It called for declaring settlement of title within the areas under military government, enacting legislative changes so that state-claimed land could no longer be acquired through adverse possession and greatly increasing the personnel and resources dedicated to settlement of title. Echoing calls by senior legal and land officials, it called for a cancellation of plans to transfer the judicial powers of the settlement officer to the District Court. On the contrary, it recommended placing four district judges at the disposal of the settlement process as settlement officers and setting them to work. In this way, it appears that a desire to relocate the extensive judicial powers of the settlement officer to the framework of the judicial branch of government was subordinated to a desire to expedite accelerated settlement of title in the Arab Galilee as soon as possible.³⁴ It was also proposed to empower settlement officers to effect ‘consolidation’ of state land by negotiating land-exchanges, in order to facilitate its use by the state.

Rosen’s proposal clearly distinguished between the state’s approach to Jewish farmers and Arab farmers, specifying:

“Of the above mentioned area of 1,140,000 dunams, it is less urgent to accelerate the settlement of 284,000 dunams in the Acre and Safad Sub-districts, and 175,000 dunams in the Triangle, than in the rest of the area. This is due to the fact that this area contains Absentee property that has already been partially populated by Jewish settlements, which prevents Arab seizure of the land.”³⁵
Jewish citizens were thus entrusted with land claimed by the state as a means of preventing its seizure by Arab citizens, and settlement of title was to be employed in order to limit the Arabs’ ability to turn their equitable rights into real property rights. Accordingly, it was to be implemented solely in areas with little or no Jewish population.

The “Proposal for Settlement of Title to Land under Military Rule,” was modified in a number of ways before receiving government approval in August 1956. The Prime Minister’s Arab Affairs Advisor recommended making no public mention of the relationship between accelerated settlement activity and the military government. “In addition,” he continued, “we must refrain altogether from any linkage between land settlement and the issue of minorities and must therefore talk more about illegal trespassing than Arab seizure of land.”³⁶ However, despite such cosmetic changes, the thrust of Rosen’s plan remained the guiding force behind the steps that would follow. Settlement of title became the process by which the state sought to achieve a legal basis for its land claims and to oppose the counter-claims of Arab residents. To this end, a coordinated interdepartmental program of accelerated compulsory settlement of title (with legislative, judicial and administrative components) was put into place. The process also served as a primary means by which the Jewish state attempted to safeguard its sovereignty in areas that were overwhelmingly Arab in population, by securing title to as much land as possible for the purposes of Jewish settlement.

On September 11, 1956, one month after the plan’s approval, Director-General Kokia oversaw the establishment of a special committee to push forward the process.³⁷ The Supreme Land Settlement Committee, which included senior officials of the involved government agencies, the JNF and the Military government, provided overall direction, with an eye towards maximizing the land acquisitions of the state and minimizing those of Arab citizens. The committee had a decisive impact on the process by determining where and when settlement of title would be implemented, coordinating the various agencies involved, and generating strategies for maximizing state and JNF landholdings. The Land Settlement Operations Committee, which was established to implement the policies of the Supreme Land Settlement Committee, consisted of three senior JNF officials and two senior officials of the Department of State Property.³⁸

At the urging of an October 1956 joint meeting of these committees, and presumably based on the recommendations of the Ratner Commission, Kokia recommended legislation to nullify the possibility of adverse possession with respect to Miri land. Also at the committee’s suggestion,
Kokia instructed Settlement Officers to continue receiving claims, but not to determine rights until this new legislation could be brought before the Knesset for discussion. As it was the submission of claims that halted prescription, this strategy was clearly aimed at thwarting prescription in as many villages as possible in the short term, while eradicating the possibility of prescription altogether in the long term.

Kokia’s instruction to not proceed to the stage of investigation of claims remained in place for more than six months, until the accumulation of massive amounts of claim-related material resulted in the disruption of settlement in a number of villages. The policy was therefore cancelled in July 1957. By this point, however, a new Statute of Limitations had already been placed before the Knesset in bill form, proposing to extend the period of prescription for unregistered state land from 10 to 50 years. This unusually long period of prescription met with opposition both from within and without the Knesset, and Israeli officials sat down to take another look at the issue.

As mentioned, government advisors regarded 1958 as an important deadline for new legislation vis-a-vis adverse possession. In late February 1958, Rosen and Kokia met in Rosen’s office with Reuven Aharoni, the administrative Settlement Officer of the Northern and Haifa Districts, to discuss the prescriptive period to be specified by the Statute of Limitations then being addressed by the Knesset’s Law and Constitution Committee. The Justice Minister and Director-General asked Aharoni what length of time would best prevent Arab farmers from seizing land claimed by the state, based on adverse claims of continuous possession and cultivation. Aharoni’s response was that the prescriptive period would have to be at least 14 years, in order to admit British aerial photographs from 1944–45 as evidence, and that the law’s first 5 years should be exempt from prescription. In other words, Aharoni advocated not only an extension of the prescriptive period, which would make it more difficult for Arab farmers to prove title-claims, but a temporarily halt in prescription as well, in order to provide state land officials with an opportunity to submit all their claims to the area in question. This formula was more or less identical with the legislation that the government was simultaneously advocating in the Law and Constitution Committee.

Accordingly, the final version of the Statute of Limitations enacted by the Knesset one month later, on March 27, 1958, extended the official prescription period from 10 to 15 years, and retroactively applied this condition to all claims that had not yet been decided, including those that had already reached prescription. In this way, it nullified rights that, while overwhelm-
ingly equitable in nature, had already been constituted and that were thus very real (in the non-legal sense of the word). For all claims that had not yet reached prescription based on the new 15-year condition (or, in the words of the law, all claims based on possession and cultivation that began after March 1, 1943), the law’s first five years in force would not be considered as prescriptive; this, in effect, extended prescription to 20 years.⁴⁵

Overall, the statute made it more difficult for Arab farmers to support their claims. The five years between the law’s enactment and March 1, 1963—during which prescription was temporarily halted—were regarded by Israeli land and legal officials as a window of opportunity to halt prescription permanently, by submitting as many claims as possible for disputed lands. As we will see below, this five-year ‘window’ dictated the manner in which accelerated land settlement was implemented in northern Israel through the mid-1960s.

Sandy Kedar’s 1998 article “Majority Time, Minority Time: Land, Nationality and Adverse Possession Law in Israel,” focuses primarily on the use of Article 78 of the Ottoman Land Code within the context of case-law during land settlement in northern Israel during the 1950s and 1960s.⁴⁶ In his article, Kedar discusses how the extension of the prescriptive period made it more difficult for small Arab farmers to turn their equitable land rights into real rights to title, as had been customary procedure during British settlement of title. He also identifies the introduction of new rules of evidentiary procedure initiated by the courts and upheld by the Israeli Supreme Court, which made proving fulfillment of the requirements of Article 78—the only legal defense remaining to Arab farmers of unregistered land—increasingly difficult.

One of the new Article 78 procedures adopted by the courts provided for the splitting of parcels by separating all uncultivable land, and then checking whether at least 50% of the remaining land had been cultivated (“the 50% rule”). This rule dictated that the separated, uncultivated, portion be registered in the name of the state. If cultivation for the prescriptive period could be proven for at least 50% of the remaining land, it would be registered in the name of the farmer; if not, it too would be registered in the name of the state. The implementation of this rule served to minimize even further the amount of land that would be held by Arab farmers after the implementation of settlement of title. Kedar rejects the “formalist” explanation of this rule’s evolution, and asserts that “the Supreme Court functioned within a certain social and ideological context, with central concepts such as ‘land redemption’, and that “...the 50% Rule should be regarded as an element of ‘judicial land redemption’.”⁴⁷ Kedar thus asserts
that the Israeli judiciary should not be regarded as merely an objective body implementing the law as written, rather that it too acted in concert with state and Zionist bodies, according to Zionist ideology, in minimizing Arab land holdings.⁴⁸ This assertion stands out as the most controversial assertion in any academic discussion of Israeli settlement of title to date.

THE NATURE OF ACCELERATED SETTLEMENT OF TITLE IN THE NORTH

The extent to which the courts actually cooperated with state and Zionist institutions in implementing settlement of title is the subject of ongoing archival research. Nonetheless, it is clear that the borders between Israeli national interests and Jewish national interests were, at best, blurred during this period, especially on the matter of land. Among other things, this fact is reflected by the JNF’s central role in settlement of title operations. For instance, a senior JNF official was appointed to the Supreme Land Settlement Committee, and JNF representatives made up the majority of the Land Settlement Operations Committee. And, as asserted above, the impact of these two committees on settlement of title was extremely significant.⁴⁹ In addition to the suggestion of new procedures and overall guidance aimed at maximizing the area of land acquired by the state, an instructive example of additional ways in which the committees influenced the process was a March 1960 decision of the Land Settlement Operations Committee to delay the onset of settlement operations in the village of Sandala. The decision was based on the fact that initiation of land settlement in this village would have interfered with JNF efforts to purchase land from villagers. This and similar efforts were repeatedly proposed by JNF representatives and were generally approved by the committee, and implemented.⁵⁰

But the involvement of JNF representatives in the process of settlement of title was not limited to these two committees alone. In fact, the majority of the numerous committees subsequently appointed to address different aspects of accelerated settlement of title, by Kokia and by others, would invariably include significant JNF representation.⁵¹ In addition, many JNF officials involved with settlement of title were eventually absorbed into the Israel Lands Administration (henceforth, ILA), the joint JNF-state framework for the administration of a new form of “Jewish national land.”⁵² After its establishment in 1960, the ILA was charged with submitting land claims in the name of the state and the Custodian for Absentee Prop-
erty. In this way, Yosef Weitz, the senior JNF official well-known for his passionate, uncompromising approach toward acquiring land in Israel for the purpose of Jewish settlement, was appointed as the ILA’s first director. Similarly, it must be kept in mind that when Hiram Danin and Nahman Alexandrovski sat on an interdepartmental committee to review settlement of title operations in 1963–64, as representatives of the ILA, they had until very recently been dedicated employees of the JNF.⁵³

Villages in the ‘Special Operation of Land Settlement in the North’ (as of April 1960)

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<th>Status</th>
<th>Village</th>
<th>Area (dun)</th>
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<td>Al ’Aramisha</td>
<td>11,463</td>
<td>Not Started</td>
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<td>10,815</td>
<td>In Process</td>
<td>Saffuriya</td>
<td>55,852</td>
<td>Not Started</td>
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<tr>
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<td>10,870</td>
<td>In Process</td>
<td>Sandala</td>
<td>3,249</td>
<td>Not Started</td>
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<td>Al-Makr</td>
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<td>Complete</td>
<td>Ghabatiya</td>
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<td>19,890</td>
<td>In Process</td>
<td>Umm al Fahm</td>
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<td>Mi’ilya</td>
<td>28,720</td>
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*Source: ISA (74) 5742–gim/3 “Land in the Country that has not yet been Settled”, April 10, 1960 [Hebrew].*
‘The Special Land Settlement Area’ of the north eventually covered an area of 736,000 dunams within 37 localities, all Arab villages and virtually all located either within or on the border of what had been the Mandatory Acre sub-district.⁵⁴ (see Table 1) Due to the perceived threat of adverse possession, almost all land included belonged to populated villages, as Israeli authorities already enjoyed relative control over the lands of depopulated villages.⁵⁵ Finally, it should be noted that virtually the entire ‘Special Land Settlement Area’ fell squarely within the boundaries of early plans for Yihud ha-Galil (different plans drawn up for Yihud ha-Galil over the years have reflected changes in these boundaries). In fact, of the populated villages within the area demarcated for Yihud ha-Galil at this time, only those for which settlement of title had been completed or reached advanced stages during the Mandate were excluded from the operation.⁵⁶ (see Fig. 1)

By April 1960, results of the strategy of mass-submission of claims were clear: settlement had been completed in only 3 of the 37 villages: Al Rama, Al Makr and Judeida. By April 1963, only one more village—Nahf—had been completed. In contrast, prescription had been halted in virtually all villages by 1963. The remaining, more complex and time-consuming stages of settlement—investigation of claims, transfer of disputes to the Haifa District Court, and preparation of schedules of rights—continued throughout the 1960s, and disputes in many villages lasted for decades.⁵⁷

Israeli Settlement of Title in Light of the Guiding Principles of Sir Ernest Dowson

The program of settlement of title designed by Ernest Dowson in the 1920s was aimed primarily at introducing a new degree of security of title to the landholdings of small Palestinian peasant farmers. In contrast, the Arab villages of northern Israel were left in the midst of settlement for years, delaying their ability to enjoy the benefits provided by security of title.⁵⁸ This is just one way that Israeli settlement of title strayed from Dowson’s approach, despite the fact that it was firmly based on the legislation and procedure that he had designed during the Mandate period.

The principle of ‘revolution through evolution’ also does not appear to have been adopted by Israeli land officials. In fact, Israeli legislation relating to settlement of title was often extremely ‘revolutionary’ in nature. This is not to say that the Land (Settlement of Title) Ordinance was amended in any major fashion during this period.⁵⁹ Rather, that the expropriation of millions of dunams of Palestinian refugee and non-refugee land and expanding conceptions of ‘state-land’ gave an entirely new meaning to settlement of title to state-claimed land. The fact that the vast majority of land in the country would be claimed by either the state or the JNF—both
Map of the special area of land settlement in the north of Israel in the context of 'Judification' of the Galilee in the 1950s.
self-avowed guardians of Jewish land and settlement interests—meant that they would be put at the disposal of Jewish national interests. The 1958 Statute of Limitations, specially designed by Israeli legal and land officials in order to maximize the amount of land that could be acquired by the state through settlement of title, also had a direct impact on the settlement process. The 50–year prescription period for Miri proposed in the 1957 bill form of the statute indicates that the intention of the officials guiding the settlement process was to profoundly transform and limit, in one fell swoop, the equitable rights of small Arab farmers. In this case, as throughout the whole process, a desire to use a more evolutionary approach in order to refrain from completely alienating small Arab farmers does not appear to have played a role.

Also in contrast to Dowson’s approach, Israeli land officials were not concerned with improving the position of Arab farmers. On the contrary, a major principle guiding these officials was to minimize the land acquired by Arab farmers and to maximize the area under state and JNF ownership. For the state, the equitable rights of small Arab farmers, therefore, became more of a threat than a legitimate vehicle for transforming the region’s land tenure system from one based on usufruct to one based on ownership. In an ironic sense, small Arab farmers did remain the focus of Israeli accelerated settlement of title: but not as a population whose position needed to be improved, rather as one that needed to be prevented from turning its equitable land rights into legal rights of ownership.

Of the 4 principles that guided Dowson, only the superiority of western concepts of land ownership and administration continued to guide the engineers of Israeli land settlement. This is not to say that Israel adopted purely capitalist policies regarding its land regime, but that the basic concept of absolute ownership introduced under British rule was immediately adopted, as were methods of land survey, investigation of rights and registration. In a short 1951 memo, the first Director of Israel’s Department of Land Registration and Settlement summarized Israel’s system of land settlement and registration, stating unequivocally: “Land registers in Israel are based on the new method of registration known as the Australian Torens system. This system was introduced at the end of 1928.” The memo then provides a survey of the system in place in Israel, which reads like a Hebrew translation of a description of the Mandate system designed by Dowson.

Just as Dowson’s implementation of western concepts had ultimately served state aims, so did Israeli settlement of title. In Israel’s case, though, the ultimate goal of accelerated land settlement in northern Israel was not the creation of a healthy agricultural economy for the good of both the
government and the population. This goal, which was in fact a high priority for the state, was pursued in other ways, primarily focusing on the new country’s rapidly increasing Jewish population. Instead, the ultimate goal of Israeli settlement of title at this stage was the identification and acquisition of as much state land as possible for Yihud ha-Galil. As pointed out in 1957 by Yosef Weitz, the pivotal JNF official and member of the Supreme Land Settlement Committee, who became the first Director of the ILA: “The aim of work until now has been to secure state ownership of its lands. The aim now is Yihud ha-Galil . . .”⁶²

Ernest Dowson died in 1950, and this precluded him from expressing his view on Israeli settlement of title in Arab areas during the 1950s and 60s. Had he lived longer, he may very well have graced us with a long, detailed report or a series of letters shedding light on the subject. While we will never know how Dowson himself would have perceived the process, this article has presented a picture of how Israeli settlement of title in parts of northern Israel during the 1950s and 1960s stood up to the principles that guided him.

On a more general level, we must conclude that the regime context within which legislation and procedure for settlement of title was implemented played a major role in determining the nature and impact of the process itself. In contrast to the priorities of Dowson and the Mandate government, the Israeli government focused on forcefully asserting the sovereignty of a Jewish state throughout all its territory and over all its citizens, promoting and facilitating Jewish immigration and settlement, and enhancing the state’s Jewish and Hebrew character in a variety of ways. Thus, Arab farmers were perceived by the state as threatening and suspicious, and efforts were made to minimize their landholdings and maximize the landholdings of the state and the JNF for Jewish settlement, as well as other state priorities of the period. In this way, despite continuity in the fundamental concepts of land survey, ownership and administration upon which the process was based, profound changes within the overall context resulted in a process of a very different nature.

Notes

*This article is based on a paper presented at the 2001 Annual Meeting of the Middle East Studies Association (MESA) as part of a panel entitled “The State, Colonial Land Tenure and Sir Ernest Dowson.” The same paper was presented as
part of a panel on “Legal Geography” at the 2001 Annual Meeting of the Israeli Geography Society. I am grateful to Michael Fischbach for his close reading of an earlier draft, and for his important observations. I would also like to thank Sandy Kedar and Yossi Ben-Artzi for their helpful comments.


7. Dowson, “Notes, 1923,” 52.

8. PRO CO 733 50095/25 “Preliminary Study of Land Tenure in Palestine” (by Sir Ernest Dowson), December 5, 1923 (Herein: Dowson, “Preliminary Study, 1923”) 34–41; CO 733/152/1 “Notes on the Abolition of Tithe and the Establishment of Land Tax in Palestine” (by Sir Ernest Dowson), April 1928.


13. For instance, *Mewat* (‘Dead’) land, whose cultivation Ottoman law encouraged by enabling the cultivator to register it in his or her name after bringing it under cultivation, came to be regarded as part of the Public Domain (state land) during British rule. During settlement of title, *Mewat* land (except that which could be proven to have been ‘revived’ prior to 1921) found to be free from any private rights were registered as *Miri* in the name of the Government. See Ch. II, Art. 3 of the Ottoman Land Code of 1858 in: Stanley Fisher, *Ottoman Land Laws* (London, 1919) 33; *A Survey of Palestine* (Jerusalem, 1946) 235, 237.


16. Dowson, “Notes, 1923,” 42. For a statutory expression of this approach, see Sec. 28, Art. 3 of the Land (Settlement of Title) Ordinance, 1928, which states that “All rights to land in any settlement area which are not established by any claimant and registered in accordance with the settlement shall belong absolutely to the Government.” Official Gazette (June 1, 1928) 201–275.

17. Dowson, “Notes, 1923,” 42.

18. ISA (74) 5742–gim/3 “Land in the Country that has not yet been Settled,” April 10, 1960 (Herein, “Land in the Country that has not yet been Settled”) [Hebrew].


20. Oren-Nordheim discusses the continuation of this struggle in the realm of land policy, identifying the two “parallel axes” of “state land policy” (mamlakhi) and Jewish “national land policy” (le’umi). In many cases, however, attempting to distinguish between the two becomes problematic, as the state officially adopted Jewish national goals and state apparatuses were frequently employed to achieve these goals. See Michal Oren-Nordheim, The Evolution of Israeli Land and Settlement Policy from the Establishment of the State through the First Years of the Israel Lands Administration: 1948–1965 (Ph.D. Thesis, Hebrew University, 2000) 351–362 [Hebrew].


23. “Land in the Country that has not yet been Settled.”

24. Ibid.; Survey of Palestine (Map), 1:250,000, Index of Villages and Settlements (with shaded overlay indicating Progress of Land Settlement as of December 31, 1945).


26. Israel Defense Forces Archive, Ramat Gan (below IDF) 1970/72/649 Ne’eman to list within Ministries of Interior and Defense, the Prime Minister’s
Office and the IDF, “The Problem of Developing the Galilee,” December 1954 [Hebrew]. This document reflects the degree to which the IDF was involved with the overall process from its outset. It should be noted that the term pituah, or “development,” was frequently employed in place of yihud, or “Judaization.” Thus, the file holding the report bears the title “Yihud ha-Galil,” or “Judaization of the Galilee.”

27. Ibid.


31. PRO FO 1022/6 Koussa to Justice Minister, July 23, 1957.


33. ISA (74) 5497–gim/2624 Justice Minister to Government Secretary, “Proposals for Settlement of Title to Land under Military Government,” May 30, 1956 (henceforth, “Proposals for Settlement of Title to Land under Military Government”) [Hebrew].

34. This transfer of jurisdiction was eventually effected by a 1960 amendment to the 1928 Land (Settlement of Title) Ordinance. Laws of Israel 302 (February 25, 1960) 14 [Hebrew].

35. “Proposals for Settlement of Title to Land under Military Government.”


37. CZA KKL5/23905 Danin to Nahmani, Danin and Alexandrovski, September 28, 1956 [Hebrew].

38. Ibid.

39. ISA (74) 5741–gim/18 Pinhasovitch to Kokia, October 24, 1956 [Hebrew]; Kokia to Pinhasovitch, November 21, 1956 [Hebrew].

40. ISA (74) 5741–gim/19 Aharoni to Director of Land Registration and Settle-
41. Bills 312 (June 13, 1957) 280–293 [Hebrew].

42. British Foreign Office files contain letters from the Arab attorney and activist Elias N. Koussa to the Israeli Prime Minister and Legal Minister, and from the Arab Advocates of Israel to the Knesset Legislative Committee. Copies of these letters were also forwarded to the British Consul General in Haifa and Dag Hammerskjold, the Secretary General of the United Nations at the time. See PRO FO 1022/6. Also see Kedar, “Majority Time,” 693–694.

43. ISA (74) 5742–gim/1 Summary of Meeting in the Office of the Legal Minister, February 28, 1958 [Hebrew].

44. ISA (60) 111–kafl/11 Minutes of Meeting #30 of the Knesset Law and Constitution Committee, February 10, 1958 [Hebrew].

45. Laws of Israel 251 (April 6, 1958) [Hebrew].

46. Kedar, “Majority Time.”

47. Ibid., 720; also see Sabri Jiryis, The Arabs in Israel (London, 1976) 115–116.

48. For criticism of Kedar’s assertions regarding the role of the courts in Zionist land redemption, see Zandberg, Land Title Settlement, 236 (note 46).

49. Zandberg also notes this problematic element of the two committees, but plays down their actual impact on the process. Ibid., 298–299.

50. ISA(74) 5742–gim/3 Minutes of the Land Settlement Operations Committee, March 22, 1960 [Hebrew]. Also, see the minutes of the 19 June 1959 meeting of the Operations Committee, in which E. Danin requested that parts of Al Taiyiba, Na‘ura and Tamra (just north of Afula) undergo resettlement in order to allow the JNF to improve its position for implementing land transaction agreements with the villagers. (ISA (74) 5742–gim/1)

51. For example, a committee appointed on October 30, 1959 to investigate various aspects of the land settlement process included a JNF representative, as did the one appointed in November 1960 to review claims submitted in the name of the state and the Custodian for Absentee Property. (ISA (74) 5742–gim/3 and 4)


53. ISA (74) 5741–gim/15 Bahlul to Legal Minister, September 9, 1964 [Hebrew].

54. ISA (74) 5742–gim/1 “Report on March 2, 1958 [Hebrew]; “Land in the Country that has not yet been Settled.”

55. For various reasons, the localities of Saffuriya, Sabalan, Sha‘ab, ‘Arab al-‘Aramisha and Ghabbatiya were exceptions to this rule, and were also included in the Special Settlement Area, despite their “abandoned” status.

56. Survey of Palestine (Map), 1:250,000, Index of Villages and Settlements (with shaded overlay indicating Progress of Land Settlement as of December 31, 1945).

58. Zandberg notes that the restrictions placed on transactions in a ‘settlement area’ can have a negative economic impact on the area’s land market. Zandberg, *Land Title Settlement*, 68. Also see Dukhan, who points out that after a preliminary announcement of settlement of title in a specific area (to be posted no later than 30 days before the onset of settlement operations), no claims for land in the area in question, or requests to correct registration, may be submitted to the courts. (*Land Law*, 291–292)

59. The most significant amendment to the Ordinance during this period was the transfer of the Settlement Officer’s judicial authority to the Haifa District Courts in 1960. As noted above, this amendment was first proposed by the Legal Ministry in 1955, but was delayed after Israeli legal and land officials argued that such a step would have a negative impact on accelerated settlement of title in the north. “Land (Settlement of Title) Ordinance Amendment Law, 1955.” *Bills* 229 (1955) [Hebrew]; “Land (Settlement of Title) Ordinance Amendment Law, 1960.” *Laws of Israel* 302 (February 25, 1960) [Hebrew].

60. This assertion appears to be applicable to the approach of Israeli legal and land officials to land law as a whole during the years in question. During this period, officials identified a need for sweeping change, and a new land code was devised during the 1950s and 1960s that would completely replace the Ottoman foundation of the country’s land law. See Dukhan, *Land Law*, 3–4; *Bills* 612 “The Land Law, 1964.” (June 15, 1964) 178–212 (explanatory remarks, 206–212) [Hebrew]; “The Land Law, 1969.” *Laws of Israel* 575 (July 17, 1969) 259–283 [Hebrew].

61. ISA (74) 5741–gim/17 Fishman to Kokia, “Turkish Consulate’s Questions on Land Registry Offices,” September 25, 1951 [Hebrew].

62. ISA (74) 5741–gim/18 Minutes of Supreme Land Settlement Committee, August 5, 1957 [Hebrew].