

## An Important Ottoman Land Law: 1856 Land Estate Law

*This study questions the reasons and consequences of the 1856 Land Law in Palestine. In this article, it is supported that the 1856 Land Law is one of the top significant reform acts that postponed the decay of the Ottoman Empire in the 19th century. The law within the study is supported to play a crucial figure in eliminating illegal settlement and land purchase activities throughout the Empire besides increasing tax income revenues and registering the lands, getting to know the land owners within the Empire. Unlike previous studies, this study supports the idea that this law played a critical role in shielding Ottoman presence in the region regarding its economic, political, and educational policies and extended its lifetime. While the law, at the surface level, aimed to meet the financial needs of the Empire, the law served to preserve and strengthen Ottoman presence in its region besides controlling its demographic and land structure. The law extended the Empire's lifetime and prolonged its life from decay.*

**Keywords:** Ottoman Empire, Land Law, 19<sup>th</sup> Century, Middle East

### Introduction

The beginning of the 19th century was a critical period for the Ottoman Empire. During this time, the Ottomans were facing significant geopolitical and internal challenges. European countries were engaged in colonization activities in various parts of the world, including Africa and the Middle East. The Ottoman Empire, once a robust and influential force in the region, was now in a state of decline. The Industrial Revolution in Europe brought about significant technological advancements, which gave European powers a military and economic advantage. The revolution further weakened the Ottoman Empire's position on the world stage. The French Revolution, which began in 1789 and continued into the 19th century, had a profound impact on the political landscape of Europe. It led to the rise of Napoleon Bonaparte and the spread of revolutionary ideas, which influenced political developments in the Ottoman Empire and the broader Middle East.

Additionally, scholars like Arnold J. Toynbee have studied and written about the challenges facing the Ottoman Empire during this period, and their works shed light on the complex historical context in which the Empire found itself (Carlyle, 2001; Goffman, 2004; Toynbee, 1955).

The Empire, struggling with internal and external threats to its existence in the Balkans, the Middle East, and even Anatolia, could not keep up with the changes in the world. Therefore, it is an inevitable consequence that the Empire needs to catch up with the European countries and, of course, economically, politically, and even psychologically make policies that neither meet its expectations nor strengthen its future presence in the geography in which it already lives.

1 Reaching its natural borders meant not furthering any regional extension in  
2 the world territories, especially in Africa and the Middle East; raw materials were  
3 glistering the appetite of the colonizer countries for their further colonization  
4 activities. Internally, the Ottoman Empire faced problems related to governance,  
5 decentralization, corruption, and ethnic and religious tensions, particularly in the  
6 Balkans. Externally, the European colonial powers were expanding their influence  
7 and control in various regions, including the Middle East and North Africa, which  
8 posed a significant challenge to the Ottomans.

9 The Industrial Revolution in Europe also played a pivotal role in giving  
10 Western powers a technological and economic edge, which the Ottoman Empire  
11 needed help to keep pace with. This imbalance in economic and military power  
12 further exacerbated the Empire's difficulties.

13 As a result of these challenges, the Ottoman Empire found itself unable to  
14 adapt to the rapidly changing global landscape. It needed help modernizing and  
15 reforming its institutions and policies to keep up with European powers. The  
16 Empire's inability to do so weakened its position and led to the loss of territories in  
17 various parts of the world. Of the countries that sought to engage in colonial  
18 activities, the following are worthy of mention: France, Spain, Portugal, and Great  
19 Britain, which at this time even rivaled among themselves for the division of  
20 colonial territories in Africa and the Middle East (Lange et al., 2006, pp. 1430–  
21 1431).

22 As can be seen, European countries were not only rivaling to reach raw  
23 materials of the world, but they were equally seeking ways to dominate more lands  
24 than other countries and thus rivaling among themselves. Therefore, the countries  
25 invested not only in new technological apparatuses and tools to enhance their  
26 shipping and military networks but also in political apparatuses, enhancing the  
27 relations with minorities and triggering their national sentiments, fostering small  
28 national states out of their divide-and-rule policies. Against this threat, as the  
29 Empire was already inhabited by many different ethnicities and people from  
30 varying religions, the Empire was standing as a potential resource of raw materials  
31 for colonizer countries whose primary aim was to colonize Ottoman territories and  
32 weaken Ottoman administration and presence in the region. With the defeat of the  
33 Ottomans to the Russians in the Crimean War and feeling the Russian threat on  
34 their nose, European countries, particularly France and Britain, sided with the  
35 Ottoman Empire against Russia. Although the Empire was defeated in the war, at  
36 the end of the day came the triumph of the war, which gathered much of the land  
37 Russia invaded but with a huge amount of ransom to be paid. This ransom was, in  
38 this regard, one of the primary reasons why the Ottoman Empire was indebted to  
39 European countries, which would, later on, open the gates for France and Britain  
40 to interfere with the domestic and international politics of the Empire, dwelling on  
41 both the debts of the Empire and capitulations. Within this context, the Ottoman  
42 Empire was forced to put *the Imperial Edict of Reorganization and the Royal Edict  
43 of Reform* (Tanzimat and Islahat Royal Decree) into force for the non-Muslim  
44 population. With that, the Empire was becoming the instrument of the superior  
45 countries and was forced to act according to their expectations. In order to stop  
46 these unremitting pre-organized policies against the Empire, the Empire sought to

1 secure its borders within the Balkans Middle and Asian continent. That is why it is  
 2 essential to see the effects and consequences of the Ottoman Land Reform and  
 3 Laws concerning the Ottoman lands in the late 19<sup>th</sup> century. One reason was to  
 4 register the lands and take just revenues from the people and increase the tax  
 5 income of the state; the second reason was to see the exchanges of the lands and as  
 6 the colonial courtiers, by disguising under capitulations, were trying hard to  
 7 increase their welfare, lands, and property. That is why the law was to observe the  
 8 changes in the ownership of the lands (**Solomonovich & Kark, 2015, p. 223**).

9  
 10 The Ottoman Imperial Land Code, which was promulgated on 6 June 1858, was a  
 11 truly revolutionary step in the evolution of Ottoman law in the nineteenth century.<sup>1</sup> It  
 12 was the first modern, comprehensive, and universally applicable land law enacted in  
 13 the Ottoman Empire. It consisted of 132 articles in three sections and, underlying its  
 14 intended status as the sole source of land law in the Ottoman Empire, declared null  
 15 and void all provisions of previous laws, regulations, decrees, and legal opinions that  
 16 conflicted with its provision (Aytekin, 2009, p. 935)

17  
 18 Ottoman Land Code, according to some accounts, 1856 and for some 1858,  
 19 was an important milestone for registering the lands under an account from which  
 20 the Empire could get informed about changes in ownership of the lands within the  
 21 Empire in the 19<sup>th</sup> century, which was an important step against colonial activities  
 22 already carried out by colonial countries. The Empire, in this regard, issued a law  
 23 that was composed of 132 articles with three sections registering the lands and  
 24 tapus under custody and getting to know the qualifications categories of the lands  
 25 the Empire had authority on 6 June 1858 (Aytekin, 2009, p. 935). With that, the  
 26 Empire had many benefits. One of the primary benefits acquired was to register  
 27 the lands and observe the changes on the land. The second benefit was to see the  
 28 amount of land that could be improved and taxed and be able to produce  
 29 constructive policies against the state lands that were awaiting investment. Thirdly,  
 30 the Empire had a chance to increase its revenues according to the commercial  
 31 incomes of the lands, and fourthly of which is the argument of the study is to  
 32 preserve the welfare and future of the Empire from collapsing was the fourth  
 33 argument of the study since getting know the owners of the lands and their  
 34 possible and on the ground policies on the lands alerted the Empire long before  
 35 they could take or produce policies on Ottoman lands. It was a necessity, and the  
 36 Empire needed to find a legal way to define the population for possible future  
 37 population change on the land and exchanges of the lands the Empire needed due  
 38 to the international pressure on the Empire after the Crimean War furthering the  
 39 rights of the non-Muslims and serving as the advocate of them the Empire sought  
 40 to issue Land Code from which both the Empire would know the owners of the  
 41 lands within the Empire, monitor the land and population changes, increase the  
 42 revenue of the Empire and by that The Ottoman Imperial Land Code issued on 6  
 43 June 1858 is very much important in terms of its functions and aims. It is the first  
 44 comprehensive, universally accredited, and practicable law put into force by  
 45 Ottoman Authorities with its 132 articles in three sections with its regulations and  
 46 so forth degrees (Aytekin, 2009, p. 935). Therefore, the Empire naturally  
 47 internalized its foreign and started turning to its inner conflicts awaiting to be

1 resolved. One of the primary problems was the status of Janissaries, who were the  
2 elite soldiers of the Empire and had prestigious status, and many Sultans rejoiced  
3 and supported them. This prestigious status of janissaries was a necessity for the  
4 welfare of the Empire since they were both politically and economically powerful  
5 compared to ordinary Ottoman citizens. Their expenses and status were causing  
6 distress to the Empire. Although there were some attempts to pacify, they were  
7 unsuccessful and ended in vain, such as killing a Sultan like Young Ottoman.  
8 However powerful Janissaries were springing each day out of the pressure over  
9 them, it was Mahmud II who produced an alternative military organization called  
10 Asâkir-i Mansûre-i Muhammediyah beside Janissary and all of a sudden,  
11 surrounded Janissaries and destroyed their military base and ended their presence  
12 within the Empire. However, it was welcomed by many Ottoman politicians; with  
13 the cleaning of Janissaries from the Empire, the great experienced soldiers and  
14 lineage were equally destroyed. The quality and quantity of the Ottoman military  
15 force decreased, and they could not until they came to terms. The collapse of the  
16 Janissary caused the Ottoman military force to lose strength and authority since the  
17 new military force was not as Professional as the Janissaries. The resettling  
18 military force initiated by II Mahmud caused him to be defeated by the Governor  
19 of Egypt, Kavalalı Mehmet Pasha, with his son Ibrahim, who came to the border  
20 of Kütahya by getting hold of the lands they passed. Therefore, it was seen that a  
21 matter that seems problematic unless analyzed in depth may cause another  
22 indispensable problem both for the Empire and its citizens. Even though it would  
23 not be a concise reading to associate the success of Kavalalı over Sultan II  
24 Mahmud with the destruction of Janissary, the extinguishing of the Janissary in  
25 this respect benefitted the Kavalalı who did not find a well-organized and educated  
26 military ahead of them, unlike Janissary. As the main theme of this research is not  
27 to question Sultan II Mahmud and his policies, it is important to notice the  
28 historical correlation and bond the 1856 Land Law had with Sultan II Mahmud's  
29 clearance of the Janissaries. Between 1858 and 1928, three major initiators played  
30 a key role in the development of cadastral documentation in Palestine: The  
31 Ottoman Government (1858-1914), the Christian and Jewish settlers (1869-1928),  
32 and the British authorities in the early stages of the Mandate period (1920-1928)  
33 (**Gavish & Kark, 1993, p. 71**). In 1858, the Ottoman Government brought about a  
34 major change in land administration by consolidating various land laws into a  
35 Land Code, which was applied in Palestine as in most parts of the Empire. With  
36 the opening of three Land Registry offices in Palestine, shortly after the  
37 promulgation of the Land Code, the Ottoman Government started to develop the  
38 official system of Land Books and Records. Registration of arable land was made  
39 compulsory by the Land Code, but much land remained unregistered since the  
40 books were based on registration of deeds and not on any preliminary systematic  
41 land survey (**Gavish & Kark, 1993, pp. 71–72**). The 1858 Land Code, on the  
42 other hand, reveals that the concrete problems and the legal ambivalence  
43 associated with the estates had reached a level at which they could no longer be  
44 ignored. Article 130 determined the conditions under which the land of a village  
45 could be transformed into an estate. Article 99 protected estates for their grazing  
46 rights and lands (Aytekin, 2009, p. 943). The Code was less protective of the

1 wasteland, however. Articles 6 and 103 defined the wasteland as all land that no  
2 one with a title deed possessed was not assigned to the residents of villages and  
3 towns and lay at such distance from residential sites that a loud human voice  
4 cannot be heard from the outermost boundary of the settlement, that is, a mile and  
5 a half (Aytekin, 2009, pp. 944–945). On the contrary, at the time of the enactment  
6 of the Land Code, the Ottoman state was more interested in increasing revenues  
7 from cultivation than in the natural produce of the woodlands (Aytekin, 2009, p.  
8 945). Through this silence, the Code effectively allowed the official recognition of  
9 the enclosed wasteland and possibly encouraged further enclosures. It is evident  
10 from the correspondence between state organs that the potential discontent of the  
11 estate owners was a concern for some organs of the Ottoman state. In the end, it  
12 was that concern that determined the outcome of the deliberations on this  
13 particular issue (Aytekin, 2009, p. 945). So, at first glance, it seems that the Code  
14 refrained from regulating private land because there was a separate body of law,  
15 directly based upon Islamic law, that regulated it. This is the understanding usually  
16 vindicated since the scholarly study of the Code had begun (Aytekin, 2009, p.  
17 946). The study argues that the Land Code did not regulate private land because,  
18 by the time of its enactment, the actual difference between public and private land  
19 had become so blurred in practice that it would have made no sense to regulate  
20 these two categories of land separately (Aytekin, 2009, p. 946).

21  
22

### 23 **Sultan II Mahmud**

24

25 As a renovating leader, Sultan II Mahmud marked Ottoman history by  
26 instituting reforms and renovation for the Empire since the Empire struggled to  
27 rescue itself from following back of the European countries. During his reign, he  
28 struggled hard to preserve the current status of the Empire and its borders  
29 (Yasamee, 2011, p. 46). His close connections with European countries, although  
30 the European countries were not in favor of the Sultan, he still both preserved the  
31 political status of the Empire and fostered new renovative tools for the Empire  
32 such as founding the Ministry of Foreign Affairs, Ministry of Interior Affairs,  
33 Chief of Taxing Office, first state gazette were all initiated and were put into life  
34 by Mahmut II (Yerlikaya, 2002, p.1223). The Ministry of Foreign Affairs was  
35 established by Sultan Mahmut II, who tried to develop political and economic ties  
36 with European countries in 1836. This instance alone can approve the renovations  
37 and refreshment period during Sultan II Mahmut's reign. From the military, the  
38 refreshment and renovation dispersed to other political, social, and cultural  
39 institutions. His reign witnessed many shifts and renovations to the Empire.  
40 Erasure of Janissaries who were troubling the Empire recently with their rebellious  
41 attitudes fostering governmental administration in the office of the Empire  
42 enforcing Ministry of Interior Relations, schools of medicine, military, education,  
43 law, music, primary and secondary schools with a new official gazette called  
44 Takvim-I Vekayi during his office (Yerlikaya, 2002, p.1223).

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46

## 1 Categories of the Lands within the Empire

2  
3 **Waqf Land.** These are lands that have been dedicated to some pious purpose.  
4 Several classes of waqf land exist. Where a waqf is created, the proprietary right of  
5 the grantor is divested, and it remains thenceforth in the implied ownership of the  
6 Almighty. The usufruct alone is applied for the benefit of human beings, and the  
7 subject of the dedication becomes inalienable and non-heritable in perpetuity.  
8 Dedicating land to a family waqf (waqf dburri) insured for the owner all its  
9 benefits to himself and his descendants, while his property was protected by the  
10 most robust legal and religious sanctions known to Muslim law from seizure by  
11 the state or its officers (Shehadeh, 1982, p. 86).

12 **Mülk Land.** The origin of this class of land was the ushuri and kharaji lands  
13 given, respectively, to the Muslim and non-Muslim inhabitants of the conquered  
14 areas. By 1858, the date of the compilation of the Land Code, mulk land had been  
15 enlarged to include four kinds, which were enumerated in Article 2 of the Code.  
16 These were, besides the above two kinds, land which comprises "sites for houses  
17 within towns or villages, and pieces of land of an extent not exceeding half a  
18 dunum situated on the confines of towns and villages which can be considered as  
19 appurtenant to dwelling houses," and "land separated from miri land and validly  
20 made mulk...." (Shehadeh, 1982, p. 86)

21 **Miri Lands:** Article 6 of this law provides that "the possessor of a miri land  
22 may sell the land, lease it, rent it, mortgage it, plant it and use what grows in it  
23 without planting, cut down the trees and vines growing on it, demolish all  
24 structures on it, use it as a pasture or for plantation... erect on it houses, shops,  
25 factories or any other structure he may need for his purposes...." The effect of this  
26 is to allow the holder of Miri land all possible uses of it. Nevertheless, although  
27 this is the case, practical differences still need to be made between Miri ownership  
28 and ownership of other kinds of land. These have to do with the laws that govern  
29 the succession of each upon the death of the owner and the laws that apply to the  
30 proving of title in the case of lands over which the settlement of disputes has not  
31 been completed (Shehadeh, 1982, p. 93). The third class comprises the second,  
32 fourth, and fifth categories of land described by the Code, namely Miri, Matrouk,  
33 and Mawat land. The common element in these three categories is the fact that the  
34 ultimate ownership (or rakaba) of all three lies with the state. To understand the  
35 division of land, it is essential to know about these categories, and it must first be  
36 borne in mind that the theory underlying land law was that all land was owned by  
37 the Sultan by right of conquest, except for waqf and Mulk land. All the lands  
38 owned by the Sultan, comprising arable fields, meadows, summer and winter  
39 pasturing grounds, woodland, and the like," were termed Miri. This kind of land  
40 lay close to the villages. Lands used for public purposes - such as public highways  
41 - and lands falling between several villages and used by all as a common pasture  
42 were categorized by the Code as matrouk. 2 The word matrouk expresses the  
43 conception behind this category, meaning lands which the state has left (tarakat),  
44 hence Matrouk for public use (Shehadeh, 1982, pp. 86–87).

45 **Matrouk land** is land left for public use, such as the building of roads, the  
46 maintenance and upkeep of which are the state's responsibility. In the case of

1 Mawat, this responsibility consists of ensuring that no illegal use is made of the  
 2 lands - such as starting fires - imperative because, in some cases, these lands are  
 3 not in the private possession of any citizen. Whereas in 1922, the date of the  
 4 passing of the British Order-in-Council referred to above, all land in Palestine fell  
 5 under one or the other of these five categories,<sup>38</sup> no "state land" was in existence  
 6 at that time (Shehadeh, 1982, p. 93).

## 9 State Land

11 Having shown that Miri, Mawat, and Matrouk land are not state land, the next  
 12 question that must be dealt with is whether or not a category of land called state  
 13 land in the strict sense exists in Palestine today (Shehadeh, 1982, p. 93). Vacant  
 14 lands such as mountains, rocky places, stony fields, and grazing ground which do  
 15 not have anyone by title deed nor assigned by antique to the use of inhabitants of a  
 16 town or village and lie at such a distance from towns and villages from which a  
 17 human voice cannot be heard at the nearest inhabited place is called dead or  
 18 Mawat land." Article 103 of the Land Code, where this definition of Mawat land  
 19 appears, continues, "anyone who requires such land can, with the leave of the  
 20 official, plough it up gratuitously and cultivate it on the condition that the ultimate  
 21 ownership (rakaba) shall belong to the Sultan (Shehadeh, 1982, p. 87)The Laws  
 22 led to a change in ownership of village lands, particularly in uninhabited regions.  
 23 Thus, large tracts of State lands for sale changed hands ("fluid inventory" of land).  
 24 These lands were purchased for speculative purposes or land reclamation and  
 25 establishment of modern, profitable cash crop farms. This often involved the  
 26 introduction of new technologies and had a large-scale and long-term impact on  
 27 the landscape. Whether the increased production also led to increased taxation and  
 28 state income requires additional investigation (Kark, 2017, pp. 1–19). Before the  
 29 Code, the principle was that Miri land was cultivable land and that it was an  
 30 implied term of the grant that it must be kept under cultivation at all times. This  
 31 was strictly observed. In conformity with this principle, the Land Code, in its first  
 32 chapter, listed in great detail the restrictions imposed on the right to deal with the  
 33 soil and the subsoil, what was allowed, and what was prohibited. Digging Miri  
 34 land to make bricks was prohibited,<sup>29</sup> as was mining and burial of the dead in the  
 35 land (Shehadeh, 1982, p. 91)

## 38 1856 Land Law

40 Başkanlığını Ahmed Cevdet Paşa'nın yaptığı ko-misyonun iki yıllık  
 41 çalışmasının ürünü olan kanunname, kendisinden önceki bütün düzenlemeleri  
 42 geçersiz kılıyor ve toprak rejimine ilişkin yegane yasal düzenleme hali-  
 43 ne geliyordu. Bu kanunname sadece mîrî arazide uygulanmış, mülk araziler uygula-  
 44 manın dışında kalmıştır. Bu kanun ile toprağın mülkiyeti yine devlette kalmakla  
 45 bir- likte, tasarruf hakkının genişletildiği, toprağın satış, miras ve ipotek gibi  
 46 yollarla devir ve intikalini düzenleyen konuların daha da detaylandırıldığı görülür.

1 This land law, under the guidance of Ahmed Cevdet Pasha, was prepared  
 2 after two years of extensive working groups that disabled and dismantled all land  
 3 laws before it. This land law was implemented in Miri lands and did not  
 4 encapsulate Mülk lands. For Miri lands, although the law ownership of the lands  
 5 does not change extensive use of lands such as inheritance to and from selling the  
 6 usage rights and was provided with the law to the renter of the lands, and mortgage  
 7 was provided to the user of the land (Ceylan, 1997, p. 831).

8 This law was enforced by the Ottoman administration since there were both  
 9 internal and external threats to the Ottoman presence and future. While foreign  
 10 countries, particularly Europeans, were struggling hard to interfere in Ottoman  
 11 politics to preserve the rights of Ottoman Christians within the Empire, Ottoman  
 12 officials not only defined the people living within the Ottoman Empire but also  
 13 increased the wealth of the state by acquiring taxes from them the officials would  
 14 by that easily observe the population and residence changes in the region where  
 15 Jewish Zionists were already motivated to settle in Palestine and purchase as much  
 16 land as they could find. The first substantial change to this state of affairs was the  
 17 introduction of the Ottoman Land Code of 1858 to the Arab provinces of the  
 18 Ottoman Empire (except for Egypt and much of what became Saudi Arabia).  
 19 Reflecting an attempt by the state to extend its control outside the cities,<sup>17</sup> the  
 20 Code led to a change in ownership of village lands, particularly in sparsely  
 21 inhabited regions. Large tracts of the land controlled by the Bedouin were made  
 22 available for sale,<sup>18</sup> leading to a long-term impact on the landscape (Kark &  
 23 Frantzman, 2012, p. 489). We may sum up by saying that the Land Laws led to  
 24 privatization and estate formation which had an impact on spatial change  
 25 (geographical traits, settlement patterns, building and architecture, landscape),  
 26 economic development (entrepreneurship, rational economy, new technologies),  
 27 population and immigration, social change (classes, elites, stratification), and  
 28 political implications, interactions and conflicts in Palestine, including wide-scale  
 29 Jewish settlement and the Arab-Jewish conflict. It promotes our understanding of  
 30 these historical processes and not only of the resulting creation of new landscapes  
 31 (Kark, 2017, p. 15). Despite the knowledge that European settlements would  
 32 increase the income of the Empire and contribute to strengthening its weak  
 33 economy, the Ottoman authorities were increasingly worried that these settlements  
 34 would serve as an additional pretext for interference by the powers in internal  
 35 affairs, or even worse for gaining control over areas of the Empire.<sup>1</sup> The  
 36 background to the purchase of 20,000 dunams (2,500 acres; various contemporary  
 37 sources quote its size from 7,500 to 25,000 dunams) in 18699 was the publication  
 38 of the Ottoman Land Law of 1858, the partial land surveys conducted by the  
 39 government at the end of the 1860s and the granting to the foreigners the right to  
 40 purchase land. This area was bought from the Ottoman government by Melville  
 41 Peter Berghrim, a banker from Jerusalem (Kark,1984, pp. 357-384). The  
 42 publication of the Ottoman Land Law of 1858 and permission for foreigners to  
 43 purchase land led to a change in ownership in some of the village lands,  
 44 particularly in those regions which were largely uninhabited. Thus, large tracts of

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<sup>1</sup>Karpat, *op cit.*; A. Carmel, *German settlement in Palestine at the end of the Ottoman period* (Jerusalem 1973) 62-79 (Hebrew) (Carmel, 1975)

1 land that were available for sale and changed hands (a fluid inventory of land, in  
 2 contrast with lands that were characterized by a constancy of ownership over a  
 3 long period) were bought in Palestine during this period by private investors (local  
 4 *effendis* or those of European origin). These lands were purchased for speculative  
 5 purposes or to establish modern, profitable farms based on cash crops. The  
 6 development of such farms often involved the introduction of new technology  
 7 from Europe and Palestine (Kark, 1984,357-384). In the late nineteenth century,  
 8 this perception translated into the legal categorization of large swaths of the  
 9 district's land as mahlul or unused or deserted state land. In the developing  
 10 exclusive ownership-based terms of the 1858 Land Code, the provincial land  
 11 administration had the legal authority to sell this land to interested private bidders  
 12 or to allocate it for public purposes. These purposes included settling the refugees,  
 13 as mentioned earlier, with the expectation that they would cultivate the purportedly  
 14 unused land and pay taxes, as well as allocating land for various development  
 15 projects, the most important in the Salt region being the building of the Hijaz  
 16 Railway along the pilgrimage route (Barakat, 2016, p. 106). Significantly, the  
 17 council was also to issue decisions regarding the legal status of the land, especially  
 18 concerning which lands were to be considered unused (mahlul) or legally available  
 19 for repurposing by the state.<sup>2</sup>This observation corresponds to the point that the  
 20 property administration's main goal was registering state lands to individuals in  
 21 order to pursue taxation—a Shar'i certificate, in this case, did not prove to the  
 22 administration that an individual had paid any taxes on the land in question, and  
 23 therefore was not relevant to proving longstanding control over land (Barakat,  
 24 2016, p. 113). The 1858 Land Code legalized using title over Miri land as  
 25 collateral against debt, but the authority to sanction these transactions was firmly  
 26 under the property administration. A related procedural office had the authority to  
 27 force the auction of mortgaged property to compensate creditors (Barakat, 2016, p.  
 28 114).<sup>3</sup>

### 31 **Argument of the Study**

32  
 33 The Empire, who was trying hard to resettle its power over its lands after the  
 34 Crimean War, fostered this land law in order to reestablish its power on its Miri  
 35 lands so that any foreigners would not purchase these lands and that the Empire  
 36 preserved the welfare of the lands and preserved their status and stopped shift of  
 37 land tenure (Ceylan, 1997, p. 830).  
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<sup>2</sup>See the 1849 Provincial Administration Regulation (Eyalet Kanunnamesi), Article 27, on the administrative council's duties concerning the auctioning of taxation rights. Mecmua-i Kavanin (Düstur) (Istanbul: Takvimhane-i Amire, 1851), 64.

<sup>3</sup>The property registers from the district of Salt include the oversight of this office at least from the 1890s. For example, see DLS Salt Defter-i Hakkani Vol. 30. For the imperial debates around legalizing the forced auction of mortgaged Miri land, see Mundy and Smith, *Governing Property*, 46–7.

1 **Counter argument supporting the idea that the land law was**  
 2 **unsuccessful:**

3  
 4 The 1858 code failed to prevent land privatization in Palestine, not only as a  
 5 de facto extension of possession rights, as argued by Gerber, but also de jure land  
 6 privatization. The requirement of a permit to build on Miri, which increased tax  
 7 revenues, resulted in only privatization. To avoid the higher tax rate on Miri lands,  
 8 landholders tried to transform state land into private land by changing its  
 9 classification from Miri to mülk land (Solomonovich & Kark, 2015, pp. 224–225).  
 10 One of the outcomes of the agrarian change and privatization process in the period  
 11 of post-Ottoman Land Law was the establishment of new villages by the  
 12 landlords, including the Sultan. Two good examples are as follows: the  
 13 establishment of villages on the estates of the Sursuk family lands in the Valley of  
 14 Yizrael (Marj et al.), where they accumulated in the last quarter of the nineteenth  
 15 century over half a million metric dunams. The Sursuqs were absentee landlords  
 16 who owned extensive plots of land (around half a million metric dunams) in  
 17 Palestine at the end of the nineteenth century. The Sursuks built two new tenant  
 18 villages (Jalud and Tel el Fir) in the Valley of Esderalon (Yizrael) for their tenants  
 19 on their lands. We also have a few semi-modern cadastral maps of several villages  
 20 in the valley, which testify to the intention of developing these locations. Among  
 21 these are the Ottoman Plan of Djindjar (1910) and the Ruin of Tel el-Fir (Kark,  
 22 2017, p. 11). At first glance, it might appear as if the Ottomans did not bother to  
 23 map Palestine, leaving this to zealous French, British, German, and American  
 24 teams of surveyors and explorers. However, Dr. Arthur Rupin, who was head of  
 25 the Palestine Office of the Zionist Movement, wrote at the beginning of the  
 26 twentieth century that the Ottomans undertook with partial success a general  
 27 measuring of all the state lands in Palestine. Avitzur, a geographer, and Shavit, a  
 28 historian, in a general description of villages and agriculture in Palestine published  
 29 in 1983, also wrote (without giving a reference): "The Ottoman regime conducted  
 30 an extensive activity of land registration in the land registers. The land registration  
 31 was based on cadastral maps of the different regions. It initiated a systematic  
 32 mapping of *jiftlik* [Ottoman land held by the Sultan, R.K.] and *mahlul* lands [lit.  
 33 Vacant - state land that reverts to the state for various reasons - such as not being  
 34 cultivated by its holder or the holder having no heirs, R.K.] (Kark, 2017, p. 11).  
 35 We may sum up by saying that the Land Laws led to privatization and estate  
 36 formation which had an impact on spatial change (geographical traits, settlement  
 37 patterns, building and architecture, landscape), economic development  
 38 (entrepreneurship, rational economy, new technologies), population and  
 39 immigration, social change (classes, elites, stratification), and political  
 40 implications, interactions and conflicts in Palestine, including wide-scale Jewish  
 41 settlement and the Arab-Jewish conflict. It promotes our understanding of these  
 42 historical processes and not only of the resulting creation of new landscapes (Kark,  
 43 2017, p. 15).

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 45  
 46

1 **Conclusion**

2  
3 1856 Land Law had essential consequences in terms of contributing to the  
4 welfare of the Empire both economically and politically. With that, the Empire  
5 gathered control of the region, registered, and had the opportunity to watch the  
6 land purchase movement within the Empire and observe the non-Muslim,  
7 particularly Zionist, land purchasing activities in the region. Ottoman officials with  
8 the law could monitor the changes within the Empire. With that, while the private  
9 property had come to be protected by the law, the Empire with that law had the  
10 opportunity to increase the revenues taken from the lands and had the opportunity  
11 to make use of the lands by changing Patrick lands into Miri lands for production  
12 and creating new work locations and areas for the people to increase production.  
13 These were the benefits that had already been discussed by many varying scholars  
14 so far of which are legitimate and valid; however, with the law, the Empire also  
15 had the opportunity to observe the changes in land ownership, especially in Kudiis  
16 and its region, so that the changes in the ownership of the lands, the changing  
17 population and unregistered incoming immigrants would be defined with the law  
18 and serve as a tool to differentiate Zionists and expansionist Europeans from  
19 innocent investors and people who were solely looking for a place to conduct their  
20 religious rituals in Kudus.

21 Landholders have some leverage in their efforts to protect themselves from  
22 dispossession. Viewed from the angle of the central state, it is possible to consider  
23 the Land Code as an attempt to preserve the social cohesion of Ottoman society  
24 without initiating a significant land reform. Nevertheless, excluding cultivators  
25 other than independent smallholders from the jurisdiction of the Code was liable to  
26 undermine that attempt. This law, in this respect, served to preserve the welfare of  
27 the people and their status in the region so that trading activities on the land  
28 owners would closely be traced and necessary precautions were taken without  
29 losing time and put into force before causing a significant distress or problem for  
30 the Empire.

31 In sum, the study aimed to provide a different reading perspective towards  
32 Land Law of 1856 in the study supporting that Land Law not only helped the  
33 Empire foster revenues and increase the usability of Matrouk lands, the law, on the  
34 other hand, helped Ottoman officials to observe the population, demographic  
35 changes and land purchasing movement within the Empire so that the Empire  
36 could beforehand take necessary precautions and restricting against colonization  
37 activities and those of activities that would change both demographic and land  
38 purchasing activities in the region.

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