

# Planted Flags

TREES, LAND, AND LAW IN ISRAEL/PALESTINE

-- Yale Agrarian Studies Colloquium --

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**Foreground: uprooted olive tree replanted; background: Hizma checkpoint in the north east entrance to Jerusalem and the Separation Barrier (photo by author, August 2006)**

The text includes excerpts from the book's introduction and epilogue;  
full text for chapter 4, and the book's bibliography

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## EXCERPTS FROM THE BOOK'S INTRODUCTION: "TREES AND WAR"

National wars are typically associated with soldiers, with blood, and with large flags blowing in the wind. They are not associated with trees or with greening the landscape. This book tells an extraordinary story about the mundane uses of law and landscape in the national war between Israelis and Palestinians. It is a story about the interchangeability of "green" and "red." As the Palestinian national poet Mahmoud Darwish has written, "the olive grove was always green. At least it used to be, my love. Fifty victims, at sundown, turned it into a red pool" (Bardenstein 1999: 153-54). Chief Inspector David Kishik of the Israeli Civil Administration in the West Bank also talks about tree wars: "the [olive] trees look so naïve, as if they couldn't harm anyone. Just like children. But then, many years later, they turn into terrorists that actually kill people... *The tree is the enemy soldier.*"

*Planted Flags* is structured around the two dominant tree landscapes in Israel/Palestine<sup>1</sup>: pine forests and olive groves. The pine tree, which is usually associated with the Zionist project of afforesting the Promised Land, is contrasted here with the olive tree, which Palestinians identify as a symbol of their longtime agricultural connection to the land. For decades, Jewish people from around the world have been invested, both economically and emotionally, in planting trees in Israel, while Palestinians have been cultivating and harvesting olive groves on what they consider to be Palestine's hills. It is difficult to imagine that these ostensibly apolitical

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<sup>1</sup> My use of the term "Israel/Palestine" in the book's title and throughout this work is based on a variety of reasons: First, *geography*: this term includes the two areas which, according to most international law interpretations, should be Israel and Palestine. It is, then, the most geographically precise term for describing the area under Israeli control (between the Jordan River and the Mediterranean Sea); Second, *external borders*: there are no clear borders between these two entities, because the settlers bring "Israel" (Israeli law, the IDF etc.) wherever they choose to settle, and thus in effect Israel is everywhere in Palestine. To some extent, the reverse happens when up to 70,000 Palestinians from the occupied Palestinian territories enter Israel every day and when Palestinian residents of East Jerusalem usually travel freely through Israel; Third, *internal borders*: Palestinians (or Arab-Israelis, including East Jerusalemites) comprise about one-fifth of Israel's population; Fourth, *historicity*: under the British Mandate of pre-1948, the entire region was named "Palestine." Since most analyses, including this one, begin before 1948, Palestine would be a more accurate definition of this place; Fifth, *land*: about half of the territory in Israel/Palestine is disputed in terms of ownership and allocation. Jewish land, some of which appropriated from Palestinians, is, in a sense, still "Palestinian." On the other hand, many settlers see the entire *Eretz Yisrael* (including the West Bank) as Israeli territory; Sixth, *fluidity and dynamics*: the above relations change all the time, with immigration, development, walls, violence, and identity politics. Hence, for example, the Israel's Bedouin citizens, previously "loyal" to the state, increasingly identify themselves with the national Palestinian cause; Seventh, *politics of knowledge*: like Kurdistan, Tibet and other nations that have been denied their right for political self-determination, "Palestine" should be fully present in the analysis of critical scholars, first and foremost by the act of naming it. I would like to express my thanks to Oren Yiftachel for his thoughts on this topic.

acts could actually fuel a brutal but clandestine war that has been going on in the area for over a century: the war over the natural landscape. What is it that makes these seemingly innocuous, even natural, acts of planting, cultivating, and uprooting trees into acts of war? How is this war reflected, mediated and, above all, reinforced, through the polarization of the “natural” landscape into two juxtaposed landscapes? And what is the role of law in this story?

*Planted Flags* explores these questions through an ethnographic study. It relies on over sixty in-depth interviews and observations conducted with military and government officials, architects, lawyers, Palestinian and Israeli farmers, and Jewish settlers. By telling the story of trees through the narratives of these different people, the seemingly static and mute landscape of Israel/Palestine assumes life, expressing the cultural, economic, and legal dynamics that constantly shape and reshape it.

The next several sections introduce three themes that run throughout the book: naturalization, bifurcation, and lawfare. These themes facilitate and amplify the nationalistic properties of the natural landscape in Israel/Palestine. Subsequently, Section II discusses the methodology employed in this work and Section III describes the book’s structure.

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### III. MAPPING “PLANTED FLAGS”

The first chapter, *The Jewish Pine: A Genealogy of Tree Bureaucracy*, is divided into two parts. The first part suggests that the olive and the pine are specific instances of what is perhaps a broader and deeper historical and paradigmatic split between the archetypes of field and forest. While the field is the domain of cultivation, the forest is the domain of the wild, that which resides outside of culture. Essentially, the chapter argues that the binary juxtaposition between olive and pine trees embodies the dichotomy between forest and field, this time within the semi-colonial paradigm of Zionist ideology. This embodiment has been contingent upon the construction of a differentiated system of legal tree protection: the protection of individual fruit trees, on the one hand, and that of forests within reserves, on the other hand. In this region, this type of differentiation was central to land laws from as far back as the Ottoman period, was extended in different forms during the British Mandate, and is now prominent in Israel’s tree administration.

The differentiated legal protection ascribed to various trees, the chapter further argues, has not only been crucial for the making of tree wars in Israel/Palestine; it is also at the heart of the bifurcation between the two trees discussed here: pines and olives. The legal protection of certain trees provides the grounds for understanding how and why the pine has come to occupy such an important place in the Jewish relationship to the land of Israel. In this sense, the chapter provides the legal and organizational foundation for the more elaborate discussion of the pine as the Zionist tree in Chapter 2, and of the olive orchard in the Palestinian landscape in Chapter 3.

In light of this understanding, the second part of the chapter discusses the place of the forest in mainstream Zionist agenda. It introduces the Jewish National Fund (JNF) and focuses on its dual identity: its construction as a Zionist land acquisition body, on the one hand, and its role as the preeminent and largest Jewish environmental organization, on the other hand. In summary, the first part of Chapter 1 lays out the historical foundations of the various legal and cultural norms that have set the stage for tree wars, while the second part presents the JNF and its dual roles in the Palestinian/Israeli conflict.

Chapter 2, *The Zionist Pine Tree Project*, is less institutional in its focus. Its emphasis is on the everyday techniques utilized by the JNF for its tree-oriented missions. The chapter explores the physical and symbolic meaning of many of its mundane practices, which in turn help explain the incredible appeal of the JNF's work to Jews and non-Jews alike. The chapter begins with an exploration of three different tree donation techniques practiced by the JNF: the tree certificate, the blue box, and memorial stones. While these three donation techniques are not the only fundraising methods employed by the JNF, they nonetheless illustrate the power that trees have for establishing Jewish ties to the land of Israel.

From the act of tree donations, Chapter 2 then proceeds to discuss the act of planting trees. Specifically, it emphasizes the physical and symbolic power of the planting act, pointing to its centrality in the transformation of the diaspora Jew into a *halutz*, a pioneer, and for redeeming the land from its perceived desolation. The chapter then widens its scope to discuss the complex relationship of Zionism to nature. Nature not only provides Zionist narratives with a temporal bridge between antiquity and modernity; it also remakes the landscape in a particular way that excludes the other. Interpreting Herzl's *Altneuland* ("The Old/New Land"), Chapter 2 seeks to show that the central Zionist figures of Herzl's period did not necessarily ignore the existence of local communities. Rather, these leaders considered local people to be a natural part of the landscape, which also implied that they had no valid legal claims to land.

After the general discussion of Zionism and nature, Chapter 2 returns to the specific. Detailing the Zionist preference for non-local species, it paves the way for an in-depth discussion of why pines, of all trees, have become so emblematic of the Zionist project. These sections discuss the particular properties of pines and their monocultural use by the JNF, the JNF's use of specific mapping strategies to render pine landscapes more legible and, finally, the physical occupation of land through pine trees. This latter issue ties together two crucial elements: the tree as a material form that occupies space, on the one hand, and the legal norms that identify and protect this sort of spatial presence, on the other hand. Chapter 2 also unravels the physical and symbolic connections between rooting and occupying, uprooting and absencing. Finally, the chapter explores resistances to the pine as the Zionist tree through its construction as the enemy of Palestinians. This animosity explains the frequent targeting of JNF pine forests for acts of arson by Palestinians, especially since the First Intifada of 1987, and also in the events of summer 2006.

Chapter 3, *The Palestinian Olive Tree Project*, turns its attention to the olive tree. It studies the various meanings that the olive takes on within Palestinian culture and its targeting as the Palestinian tree by both the State of Israel and by certain Jewish settlers. The chapter begins by describing the olive's significance to the Palestinian people, especially in the occupied West Bank and after the Second Intifada of 2000, demonstrating the intimate connections between the economic aspects of olive cultivation and the symbolic, religious, and aesthetic aspects of this cultivation. Importantly, the chapter also outlines the myriad meanings that the olive embodies in Palestinian culture, from a *shajara mubarak* (holy tree) to a *shajara fakir* (tree of the poor).

Next, the chapter focuses on the phenomena of olive uprooting. It explores three distinct practices of uprooting, each with its own rationale: the massive uprooting of olive trees by the State of Israel to pave way for the Separation Barrier, the more limited yet symbolic case of uprooting the olive to secure the home of a top-ranking Jewish-Israeli official, and, finally, the olive's publicly contested uprooting by certain Jewish settlers. The chapter then proceeds to explore another, much less direct, way of controlling the Palestinian's relationship with the olive: a labyrinthine administration of detailed military regulations that impose "friction zones" and "timetables." Officially, these military regulations have been enacted for the purpose of protecting Palestinian farmers engaging in cultivation from the violence of certain Jewish settlers. However, this system also closely monitors and often curtails the Palestinian's sense of

space and time. In effect, an omnipresent security regime is implemented and imposed on the Palestinian in the occupied West Bank.

Overall, Chapter 3 argues that the identity of the olive tree as a representation of the Palestinian is not only the result of the olive's economic and historical significance within this particular culture, but also a consequence of its being the target of certain Jewish and Israeli aggression. Through acts of uprooting, sabotaging, and denying Palestinian access to the olive tree, the State of Israel and certain Jewish-Israeli settlers have thus imbued the olive with enormous powers. The struggles conducted on the olive's behalf, in other words, have significantly magnified the status of the olive as a Palestinian tree and its contested place in the Israeli/Palestinian landscape.

The negotiations of national agendas through the natural landscapes are particularly intriguing in the context of the occupied West Bank, which, at least according to most international law definitions, does not hold a clear national status. Chapter 4, entitled *The Tree is the Enemy Soldier*, discusses the national war over territory as it manifests in the West Bank landscape. Specifically, it inquires into the role of an archaic legal norm – Article 78 of the 1858 Ottoman Land Code – in the struggle over land. This norm, revived by the Israeli Civil Administration in the West Bank during the 1980s and 1990s, grants a longtime cultivator the right of adverse possession of this land.

Although it makes no explicit mention of trees, in practice Article 78 creates a clear preference towards cultivation by trees over any other form of cultivation. The key factor that has made the tree into a prominent cultivation technology in this context is its robust legibility. This chapter unravels the dynamic story of legibility as it emerges through the interactions between Israel's inspection unit, Palestinian tree practices, and the Jewish settlers' subversion of both. The chapter describes the genealogy of the state's reading of the landscape, and especially the shift from a naked-eye reading by state inspectors to a more sophisticated scientific reading through aerial photos that are exclusively interpreted by state experts. The scientific technology of the aerial photo has quickly gained prominence in Israel's military court proceedings, not only reflecting but also reshaping the natural landscape. The aerial photo has made it technically possible to prove the status and level of tree cultivation not only with regard to certain geographical locations but also for specific periods. Based to a large extent on this technology, non-urban and non-private land in the occupied West Bank that has not been cultivated for ten years or more is automatically declared state land (Shedaheh 1993).

Chapter 4 also introduces a new player in the negotiations over trees in the West Bank landscape: the New Settlers. Although relatively small, the New Settler community has drastically transformed the unwritten rules of the war over trees in the region, contesting both the Palestinian's exclusive affiliation with the olives and the state's interpretations of the Ottoman Article 78.

The New Settlers' contestation of existing tree binaries sets the stage for the book's epilogue. As its title suggests, *Tree Wars?* considers alternative avenues to view what might otherwise seem like a prefixes and rigid natural war between two tree landscapes in Israel/Palestine. First, the epilogue considers the olive's role as a universal peace symbol. Despite its initial connotations, the chapter eventually suggests that rather than promoting world peace, the olive's use in this context serves to legitimize, by way of naturalization, the national war over the landscape of this place. Secondly, the epilogue discusses the olive oil industry and its potential to transcend the national scheme by functioning through an intersection of both individual and global economic interests. Thirdly, the epilogue examines several incidents of "tree vandalism" that involve both pine trees and olives, both Palestinians and Jews. The ostensibly indiscriminate nature of these incidents has led the inspectors interviewed here to suggest that economic interests provide grounds for collaboration between the otherwise nationally-opposed peoples. The epilogue considers whether the various economic interests mentioned here undermine the national powers of the tree wars over landscape, or whether, as in the two previous instances, they merely reinforce the national bifurcation of the landscape. I leave this question open for now and return to it at the very end of the book.

## **CHAPTER IV**

### **"THE TREE IS THE ENEMY SOLDIER"**

[L]andscape is a medium not only for expressing value but also for expressing meaning, for communication between persons. (Mitchell 1994, 15)

A landscape, like a language, is the field of perpetual conflict and compromise between what is established by authority and what the vernacular insists upon preferring. (Jackson 1984, 148)



**Figure 1: A Jewish Settlement in the northern West Bank, surrounded by state pine trees; Palestinian olive groves in the foreground (August 2006, Photo by author)**

## **I. TREESCAPING THE OCCUPIED WEST BANK<sup>2</sup>**

The landscape is both a representation and a physical materiality (W.J.T. Mitchell 2000; Blomley 1998, 568; Mitchell 1996, 34). Ascertaining the legend of this text and the genealogy of the landscape's material production is a rather complicated process that requires paying close attention to the various interpretations offered by an array of actors who speak in the name of the landscape. Who creates and reads the West Bank treescapes, who's making/reading takes precedence over others, and in what sense does legibility matter to the working of law in this place? The detailed analysis provided herein indicates that the work of landscape configuration seeks to erase the very fact of its social production, thereby making a scene appear unworked (Mitchell 1996:6). In this sense, a landscape is both a work and an erasure of that work. This erasure is in itself a form of hegemony.

The previous chapters have demonstrated that trees in general, and olive and pine trees in particular, perform a crucial role in both the Zionist and Palestinian national schemes. In particular, they are both physically and symbolically utilized for establishing connection to and

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<sup>2</sup> Although I initially preferred the term *occupied territories*, the more limited physical geography of this study, which does not include the Gaza strip, resulted in that I eventually refer to it as the *West Bank*. Another term that is used to define this space is *Judea and Samaria*, which invokes a more biblical connotation. One way or the other, this study focuses only on the *occupied* West Bank (mostly Area C) and does not include those areas controlled by the Palestinian Authority (Area A).



control over land. Over the years, the European pine has become the quintessential symbol of the Zionist project of afforesting the Holy Land, transforming it into a European-type landscape. Indeed, since 1901, the JNF has planted over 240 million trees (mostly pines) in Israel, a massive enterprise that has fundamentally altered the Israeli/Palestinian landscape.<sup>3</sup> Pines have been planted over the ruins of Palestinian villages, erasing them from the landscape and also preventing Palestinian refugees from returning to their homes. At the same time, the olive tree has become the quintessential symbol of Palestinian resistance, and an emblem of the steadfast Palestinian connection (*tsumud*) to the land. The increased uprooting of olive trees by both the Israeli military and the Jewish settlers merely serves to reinforce the intensity of Palestinians' identification with the olive tree, an intensity which is also reflected in a distinct body of Palestinian poetry. In this pitting of the pine tree and its people against the olive tree and its people a discursive and material split is constructed with dogged determination by the two national ideologies that compete in and over the landscape of Israel/Palestine, so that these two tree types assume the totemic quality of their people, reflecting and reifying the standing conflict.

This production of tree bifurcation in the West Bank after its occupation by Israel in 1967 is amplified by the role of law. The legal norm that has had the most effect in the shaping of tree struggles in the West Bank is Article 78 of the 1858 Ottoman Land Code (1274 to the *Hijra*, the Muslim calendar). Put simply, Article 78 grants a longtime cultivator the right of adverse possession of the cultivated land. In the West Bank, this pertains only to undeveloped and nonprivate lands in Areas B and C, and mainly to Area C, which is considered largely rural.<sup>4</sup> Article 78 reflects a certain cultural, historical, economic, and material understanding of what cultivation means and entails. At the same time, it also illuminates the law's unique power to construct the physical landscape by defining which actions might be recognized as cultivation and by employing technologies that assist in defining such actions.<sup>5</sup>

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<sup>3</sup> As noted earlier, the JNF interviewees have proudly pointed out that Israel is the only country that has come out of the twentieth century with more trees than it has entered with (although it seems that Japan has also been claiming this title).

<sup>4</sup> Since the Oslo Accords (1993), the Palestinian Authority has been in control of the urban areas of the West Bank (defined as Area A), which constitute some forty percent of the West Bank. Areas B and C have remained under the direct control of Israel's Military and Civil Administration.

<sup>5</sup> The term "technology" is deployed through this chapter in two different, at times intersecting, ways: first, in the Foucaultian sense, to imply a matrix of practical reason, as in "technologies of power" or "technologies of the self" (Foucault [1994] 1997, 225). Simultaneously, I also draw on the extensive discussions of technology as tool and text in the Science and Technology Studies literature (see e.g. Woolgar 1991). My use of the term "technologies of seeing" later in the chapter refers to both discourses.

Keeping the agrarian context of the Ottoman Land Code in mind, it is revealing to witness the intensified application of Article 78 of this code as part of Israel's Civil Administration of the West Bank between 1979 and 1993. Specifically, the circumstances that have led to the State of Israel's increased application of Article 78, then to its decline, and, finally, to its recent revival by the New Jewish Settlers in the West Bank – all occurring more than a century after its inception by the Ottomans – explain why trees have come to figure prominently in the application of Article 78. They provide a visible marker for establishing a legally recognized control over territory. And yet their legibility requires specific technologies to be deployed by various relevant actors, especially state officials such as inspectors and aerial photo interpreters, so that they can *see* the tree in the West Bank landscape in such a way that is acknowledged by law. Reading these aerial photographs has thus great consequences for the application of Article 78 and, consequently, for the (re)making of the West Bank landscape.

The sociolegal power dynamics between the various actors are not just something that can be read from the landscape but, crucially, these sociolegal power dynamics are also something that the physical landscape serves to obscure behind a seemingly natural façade. As argued earlier, this is especially true with national agendas, which rely heavily on land, trees, and other natural objects for their effective implementation in the world (Malkki 1992). Moreover, the negotiations of national agendas are particularly intriguing in the context of the occupied West Bank, which, at least according to most international law interpretations, is not considered part of any national entity. Yet despite (and perhaps precisely because of) its depiction as a no man's land (Navaro-Yashin 2003), this place is important for at least two imaginary national communities (Anderson 1991).

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

## **II. A HISTORICAL BACKGROUND ON ARTICLE 78'S APPLICATION IN THE WEST BANK**

### **A. LEGAL AND POLITICAL BACKGROUND**

Article 78 of the 1858 Ottoman Land Code states that “every one who has possessed and cultivated [*Miri*] land for ten years without dispute acquires a right by prescription [...], and he shall be given a new title deed gratuitously”.<sup>6</sup> This Article is still in force in the West Bank.<sup>7</sup> It is part of the legal property regime implemented by Israel in its capacity as the occupying power after 1967. Indeed, in the midst of the 1967 war, the Military Commander in charge of the area issued a Proclamation on Law and Administration, which declared that the existing legislation in the West Bank would remain in force unless it was incompatible with Israeli Military Orders. In effect, the legal system in the West Bank is an eclectic combination of Ottoman, British Mandatory, and Jordanian laws, as well as an overriding set of roughly on 1000 Israeli Military Orders, judicial case law, and administrative regulations (Shehadeh 1993).

The 1858 Ottoman Land Code established local land committees for the management of disputes over land ownership. Jordanian law, mainly the 1964 Law of First Registration of Land (#6), created two committees for the administration of land registration in the West Bank: the Committee for the First Registration of Land, and the Land Appeal Committee. Initially, these two committees were composed of local judges, lawyers, and government officials. However, several Israeli military orders, in particular Military Order 1034 of 1982, altered Jordanian law so that both committees are now officially run by Israeli institutions: the First Registration Committee by Israel’s Civil Administration, and the Land Appeal Committee by the military

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<sup>6</sup> *Miri* is the bulk of non-urban land in the West Bank and one of five land categories established by the Ottoman Land Code (Shehadeh 1982, Zamir 1985; see also Chapter 1). The original translation of the Code by R.C. Tute uses the term “state land” instead of “*miri* land”. However, Rajah Shehadeh claims that the proper translation of *miri* is Crown land in the British sense of the term (1982, 90).

<sup>7</sup> Generally, trees have been molded into tools of war in both Israel and the occupied West Bank, and in this sense many commonalities exist between these geographies. The basic legal framework applied to state land was developed within Israel proper through the 1960s. Starting in the late 1970s, this approach has diffused into the occupied West Bank, through its almost unquestioned application of case law by members of the Land Appeal Committee, all Israeli lawyers (Forman 2009; see also Bisharat 1994: 516). At the same time, certain practical, ideological, and institutional distinctions have also shaped the tree wars in Israel and the occupied West Bank in different ways. In the course of the 1967 war most Palestinians did not flee the area eventually occupied by Israel. Consequently, in the West Bank Israel has been occupying an area inhabited by an estimated one million Arabs. This area also lacked the wide expanses of vacant land that Israel received from the mass exodus of Palestinians in 1948 (Bisharat 1994: 524-5). These differences have resulted in the following legal situation: while in northern Israel the state has been making piecemeal land claims, in the West Bank it usually claims large tracts of land. Additionally, most of the lands in Israel have undergone settlement, rendering Article 78 no longer relevant there. Conversely, Article 78 is highly relevant in the West Bank, where most lands have not yet been settled (Jeremy Forman, personal communications, October 8, 2008).

Appeal Boards, which are part of the broader military court system in the West Bank.<sup>8</sup> This chapter focuses on the military-run Land Appeal Committee and its implementation of Article 78.

Article 78's implementation in the West Bank since the start of the Israeli occupation is strongly tied to Israel's practice of seizing land, mostly for the purpose of settling it with a Jewish population. Initially, the definition of state land in the West Bank included land that was owned at the time of occupation by an enemy state or by any corporation thereof.<sup>9</sup> In addition, although not statistically significant, during their Mandate over Palestine (1917-1948) the British declared certain lands to be forest reserves, thereby transforming them into state lands.<sup>10</sup> Similar practices existed in other colonies (see for example Thirgood's discussion of Cyprus, 1987), especially in India (Guha & Gadgil 1989). Later on, lands acquired for public use, as articulated in Article 1 of the 1967 Military Order on Governmental Property (Number 59), were also defined by the Israeli military orders as state land. However, this mechanism of confiscating land for public use has rarely been used by Israel due to the cumbersome procedure it entails.

As a result, Israel sought other, more effective, mechanisms that would enable it to legally seize land. During most of the 1970s the requisition of lands for military use served this purpose. Although Article 46 of the 1907 Hague Regulations prohibits an occupying force from confiscating the private property of an occupied population, Article 52 states an exception to this rule for temporary military needs. Based on this exception, between 1968 and 1979 Israel captured vast amounts of private Palestinian property for what was then defined as military purposes. In a landmark decision,<sup>11</sup> the Israeli High Court of Justice (HCJ) rejected a petition submitted by several Palestinian landowners against the military requisition of their land for building the Jewish settlements of Beit El and Beqa'ot. In this case, the HCJ accepted the state's argument that the military requisition was temporary and that it indeed intended to meet security needs.

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<sup>8</sup> The Israeli Military Authority managed the various affairs of the occupied Palestinian population until 1981, when a Civil Administration was established as part of the Military Authority to manage local civil matters such as health and education.

<sup>9</sup> The phrase "day of occupation" was amended in a 1982 Military Order (Number 1091) to include any enemy property.

<sup>10</sup> However, the British Mandatory government scarcely made use of this power: of a total of 26 million dunams, they declared only 850,000 dunams as forest land. The declared areas were divided into 430 forest reserves. See also in the book's introduction.

<sup>11</sup> HCJ 606, 610/78, *Suleiman Tawfiq Ayyub et al v. Minister of Defense et al*, Piskei Din 33 (2) 113, 120-122 (1978) (hereafter: *Beit El*).

Approximately six months after its ruling in the Beit El case, the HCJ issued its decision on the matter of Elon Moreh.<sup>12</sup> Basing his decision on the observation that “both the Ministerial Committee and most of the government were decisively influenced by the Zionist philosophy of settling all of the Land of Israel,” Justice Yitzhak Landau, who delivered the court’s majority opinion, saw himself compelled to reject the state’s claim that the lands were required for military needs. Following this decision, Menachem Begin, then Israel’s prime minister, put an end to the practice of military requisitions for establishing Jewish civil settlements in the occupied Palestinian territories.<sup>13</sup>

Coupled with the increasing strength of the settler movement after the Likud party assumed power in 1977 and the settlers’ desire for additional land, the Elon Moreh decision prompted the Israeli administration to seek an alternative legal mechanism for more massive acquisitions of land in the occupied Palestinian Territories. Such a legal mechanism was soon devised by Plia Albek, Director of the Civil Division in the State Attorney’s Office between 1969 and 1992 (Benn 2004, Zertal and Eldar 2007, 361-375). Albek inverted the legal construction of Article 78 from encouraging and strengthening individual cultivation – as was the original intention of the Ottoman legislature and the actual practice of subsequent governments – to one that the Israeli Military Authority interpreted and continues to interpret to declare all uncultivated lands as state land.

Albek’s innovative legal interpretation has no explicit statutory basis, either in Israel’s military regulations or in international practices (Zamir 1985, 32 but see Forman 2009). The brilliancy of this interpretation is twofold: first, it flips Article 78 on its head by focusing on the absence rather than on the presence of cultivation. Second, it works around the international law principle that prohibits an occupier from making irreversible changes to existing property rights. Based on what it framed as a legitimate interpretation of existing law,<sup>14</sup> between 1979 and 1993 Israel declared over forty percent of the land in the West Bank (roughly 400,000 acres) as state land (Zertal and Eldar 2007: 370; see also Bisharat 1994: 526). In the years after the 1993 Oslo

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<sup>12</sup> HCJ 390/79, *'Azat Mahmad Mustafa Dweikat et al v. State of Israel et al*, Piskei Din 34(1) 1, 29 (1979) (hereafter: *Elon Moreh*).

<sup>13</sup> However, recent information released by Israel’s Civil Administration indicates that of a total of forty-four settlements established for “security reasons,” nineteen were built after and despite Begin’s decision. Overall, more than one-third of the West Bank settlements were built on private Palestinian lands that were temporarily seized by military order for “security purposes” (Rapoport 2008).

<sup>14</sup> “I did nothing new,” Albek announced about this practice, “I was familiar with the Ottoman Code from my work in the Justice Department and just checked to see that it hadn’t been changed by Jordanian law” (Benn 2004).

Accords, Israel gradually decreased its use of Article 78, shifting its focus to securing control over lands that have already been declared as state land.

The registration of state land as such is administered by the Land Appeal Committee, whose operation is currently defined by the 1967 Order of Appeal Committees (MO 172). If no appeals are submitted to the Land Appeal Committee within 45 days of the declaration of state land, the Military Commander may take possession of the land and register it as state land. The mechanism of state declaration of land according to Article 78 applies only to Miri land,<sup>15</sup> which is not registered as privately owned,<sup>16</sup> and which has remained uncultivated for ten years or more. The assertion of cultivation for at least ten years has become a central contestation site for Israel's state declarations of land and as such is the main focus of this chapter.

## B. A (POST)COLONIAL READING OF ARTICLE 78

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

But the project of maintaining Article 78's viability also comes with a price: in order to legitimize its wide application, it was necessary for Israel to recognize ownership when claimed

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<sup>15</sup> Currently, since Areas A and B of the occupied Palestinian territories are largely urban, most of the agricultural (Miri) land is situated in Area C, which was subdivided by the Israeli administration into C1, C2, C3 and so forth.

<sup>16</sup> When occupying the West Bank in 1967, the Israeli Military Authority froze all registration procedures, leaving over two thirds of the land unregistered and open to dispute.

by Palestinian cultivators. Consequently, in its application of Article 78 in the West Bank, Israel has been walking a fine line between restricting the application of Article 78 for the purpose of Palestinian cultivation, on the one hand, and acknowledging its powers for the purpose of declaring state land, on the other hand. The Land Appeal Committee has strictly adhered to the development through cultivation model designed in the Ottoman period, refusing to broaden the definition of development to include other forms of improvement such as industry or even forestry. While the apparent rationale behind the Ottomans application of Article 78 was based on the liberal Lockean idea of recognizing improved nature as the property of the improver (see Locke [1690] 2003, see also Cronon 2003, 79), it is now used by Israel to restrict the recognition of the possible scope of improvement by confining it to agricultural cultivation. At the same time, what Israel considers as real improvement in the West Bank has been taking place through non-cultivation, which then enables other forms of improvement, such as Jewish settlement.

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

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

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

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

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

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

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

Given the legal, political, and (semi)colonial (Shafir 1989) circumstances of Article 78’s revival by Israel almost a century after its original inception by the Ottomans, the question remains *how* and *why* trees have become such a valuable instrument in the war over land in the West Bank, and *which* technologies of seeing have contributed to this central role.

### III. WHY TREES? – A MATTER OF LEGIBILITY

We have entered the game phase, and without the scheme of Article 78 we wouldn’t have the tools with which to play this game. Instead of saying upfront *‘this is our land not yours’*, we [Jews] prefer to beautify the conflict and stress over the minute details of whether this is private or state property. While at the same time, we know very well that the conflict is much deeper than a piece of tree: the tree is just a convenient cover-story to work with. Sadly, everybody plays the game. *Is the land cultivated, or uncultivated?* – this has become the central concern for all the players in this game. (interview, Chief Inspector David Kishik)

The interviewees in this study have all highlighted the centrality of the tree in the struggle over land in the West Bank. “The struggle over land is fought mainly through the tree,” says one informant; “The tree is a double-edged sword in the fight over land in the occupied territories,”



says another; and “the olive tree is the best technique for acquiring ownership,” says a third. Yet it would be a mistake to see tree wars as a bizarre fetish on the part of the people that reside in this region. When asking why trees perform such a pivotal role in this specific struggle over land, it is important to engage with both the tree’s physical and symbolic attributes as well as with the specificities of the legal practices that are negotiated alongside Article 78’s application.

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

#### A. A LEGIBILITY OF PHYSICAL PRESENCE

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

Interrelated with the tree’s strong presence, durability, longevity, and easy maintenance is also the tree’s special immutability. The head justice of the Land Appeal Committee explains that “[t]rees make for easy cases. The harder cases are those that involve terraces or other markers of cultivation history.” Similarly, Chief Inspector Kishik clarifies that “when you plant a tree there is no such thing as taking your hands off the territory. A farmer might not have seeds to plant one year or, for some reason, he cannot reach his land that year, but trees prevent such problems from happening in the first place.” The relatively uninterrupted presence of the tree in the land, which is merely one of its many physical traits, is infused with significance in this specific legal constellation. It is the combination of the tree’s physicality and the legal meaning

attributed to this physicality that makes the distinction between nonseasonal trees and seasonal vegetation meaningful in this context, in turn setting this distinction as grounds for a series of sociolegal consequences.

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

## B. THE ROOTING/UPROOTING SPECTACLE

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

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

At the same time, Palestinian residents of the OCCUPIED PALESTINIAN TERRITORIES also perform extensive tree planting projects by planting olive trees. Indeed, several state officials interviewed as part of this study complains about the political manipulation of trees by the Palestinians. For example, Chief Inspector Kishik describes how, immediately following the Oslo Accords in 1993, “tens of thousands of [Palestinian] trees invaded state land.” “It's not like the Arabs have a ‘tree commando,’” Kishik clarifies: “but [Arab] farmers are definitely encouraged to plant, and are even paid to do so by the Palestinian Authority.”

Moreover, Deputy Chief Inspector Marko Ben-Shabbat perceives olive planting as a statement of Palestinian resistance to Israel's declarations of state land: "[w]e notify our intention to declare a certain land as state land, and, sure enough, they soon start planting this area with new trees." Instead of assigning the invasiveness to Palestinians, it is assigned to the natural flora. This type of projection serves to totemically displace through naturalization the perceived threat to Israel's national existence and legitimize the emergence of new forms of postcolonial discrimination (Comaroff and Comaroff 2001).

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

However, the inspectors serve not only as the eyes of the state but also as the state's hands. Following the detection of an invading tree and the determination of the tree's age, the state inspectors proceed to the uprooting project. By distinguishing new trees from trees that are more than ten years old, the inspectors can then assert which trees may be legally uprooted. Indeed, the simple presence of a new Palestinian tree on state land is defined by the Israeli Civil Administration as an instance of illegal trespassing, in turn legitimizing the brutality of tree uprooting by the state. At the same time, Kishik stresses that tree uprooting is not a casual act but rather one that necessitates a stringent procedure: "it might be easier for the inspector to just uproot the tree as soon as he discovers it, and this way to bypass all those tedious legal procedures, but we [...] prefer to act generously towards [Palestinian] citizens so that Abu Mazen [Mahmoud Abbas, Palestinian prime minister since 2004] doesn't start with his yelling."

### C. "THE TREE IS THE ENEMY SOLDIER": A NARRATIVE OF PATRIOTIC INSPECTION

Tree uprooting is perceived by the inspectors as a patriotic act meant to protect national lands. The ideology that makes the uprooting of trees a national apparatus is clearly articulated

by Chief Inspector Kishik. It is worthwhile to mention here that Kishik is also an orthodox Jew and a settler. When I ask him how his uprooting job fits with the Biblical prohibition on uprooting fruit trees, even if those are enemy trees in a time of war, Kishik replies,

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

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

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

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

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

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

#### IV. RE-READING THE LANDSCAPE THROUGH AERIAL PHOTOS

##### A. AERIAL PHOTOS AS A TECHNOLOGY OF LEGAL VISUALIZATION

The admittance of aerial photos as secondary evidence has become a standard procedure in the application of Article 78 by the Israeli Land Appeal Committee in the occupied West Bank. In particular, the use of aerial photos in this context serves to establish the duration and percentage of cultivation. In weighing the value of various forms of evidence, the Land Appeal Committee has often cited from the Israeli Supreme Court decision that "the way of aerial photos is not to lie,"<sup>17</sup> thereby asserting that aerial photos provide objective proof. This approach is hardly surprising. Similar to other photographic images, aerial photos are also perceived as an exact reflection of things rather than their mere representation. Indeed, visual imagery has always been considered more direct than words, and "mechanical images that could be touted as

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<sup>17</sup> Criminal Appeal 149/81 *Ahmad Yussef Alian Sallah vs. the State of Israel*, Padi 38(3): 374. In this case, the court preferred aerial photos over witness testimony.

nature's self portrait were perceived as yet more immediate" (Daston and Galison 1992, 120). This particular nature of aerial photos lends them the force of being categorized by the law as objective facts rather than subjective interpretations, thereby constituting a "regime of truth" (Foucault 1984, 133). The strong tendency that legal actors share toward mechanisms of sensual visualization also makes the law into an aesthetic experience (Darian-Smith 2004, see also Leach 2002, Jasanoff 1998).

Malka Offri of the Survey of Israel: Agency for Geodesy, Cadastre, Mapping and Geographic Information is the only expert on aerial photos who testifies on behalf of the State of Israel in Israeli courts and in the Land Appeal Committee in the West Bank. Offri is expected to produce a credible reply to the central question posed by Article 78: has the land been cultivated for a period of at least ten years? However, even in those instances where she finds that the land was indeed cultivated, Offri can still determine that this cultivation does not reach a fifty percent threshold, defined by Israeli case law as establishing cultivation for the purpose of Article 78.<sup>18</sup> Offri's reply is submitted to the Land Appeal Committee in the form of a report, which also includes a reproduction of the relevant aerial photo. In her report, Offri presents "a very accurate definition of cultivation, non-cultivation, and partial cultivation" (Offri, interview). Both her functional rhetoric and the appearance of accuracy are frequent features of scientific reporting and serve to reinforce Offri's positioning as a "virtual witness" whose function resembles the "eye-glasses of a telescope" (Simon and Schaffer 1985, 66, Hilgartner 2000, 17).

The reproduced aerial photo attached to Offri's written reports (Figure 20) is yet another technique for enhancing the report's credibility. But while the Land Appeal Committee perceives aerial photos as photographic mirror of reality, they are in fact the end-product of a dense process of human interpretation, which includes the working of at least three machines (zoom-transferscope, double-photo, and stereoscope). The committee never gets to see the "original" aerial photo and is only exposed to it through an interpretation produced by its official spokesperson (Callon 1986), Malka Offri.

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<sup>18</sup> Civil Appeal 148/62 *the State of Israel vs. Said Salah*, Padi 16:1446; Civil Appeal 479/62 *the State of Israel vs. Salah Kir*, Padi 17, 631; and, more recently, Civil Appeal 567/83 *Rashid Said Abass vs. the State of Israel*, Padi 41(3): 741.



**Figure 2: A reproduced aerial photo, representing parcel boundaries and single trees (e.g. in the lower right corner); black & white photocopy from colored photo (courtesy of Survey of Israel: Agency for Geodesy, Cadastre, Mapping and Geographic Information)**

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

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

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

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

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

## B. CONTESTING THE LEGIBILITY OF AERIAL PHOTOS

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

## C. AERIAL PHOTOS AND TREES: MAPPING "EXISTING THINGS"

On the immediate physical level, climatic conditions limit the use of aerial photography to certain seasons of the year, namely fall and spring. This affects the capacity of the aerial photo to document a year-round cultivation cycle. The technical blindness of aerial photos to certain seasonal vegetation leads the discussion back to trees. Indeed, mostly because of the tree's unambiguous and continuous physical presence through the seasons, the technology of aerial photography strongly favors trees. In this sense, the admissibility of aerial photography in the



Land Appeal Committee results in that it has the power not only to read the landscape but also to make it. In other words, the legal monopoly that aerial photos have on the practice of reading the landscape affects landscaping choices, and especially the choices of planting and uprooting trees rather than any other form of cultivation or land use that is less recognizable by the aerial photo.

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

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

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

## V. THE NEW SETTLERS: UNSETTLING TREE LEGIBILITY

The 1990s saw a gradual decline in state declarations of land and a parallel rise in the transfer of lands into Jewish hands through private purchases, conducted mainly by Jewish straw-companies.<sup>19</sup> Simultaneously, a new practice of acquiring land has emerged in the West Bank: cultivation by individual Jewish settlers. This new practice relies on the same legal

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<sup>19</sup> Although the system of purchase seems to place the Palestinians in a better position than direct appropriation by military requisition, Banner's study in New Zealand shows how the legal regulations of the market eventually weakened the position of Maori land sellers and facilitated extensive land acquisitions by white settlers (Banner 2000, see also Merry 2004). A study of this sort remains to be conducted in the West Bank.

mechanism previously exercised by Israel: Article 78 of the 1858 Ottoman Land Code. But while its application by the Israeli Military Authority was mostly used to declare uncultivated lands as state land, focusing on a “half-empty-glass” interpretation of Article 78, the New Settlers utilize Article 78 to positively assert their individual possession of the land in question. By doing so, the New Settlers also contest the traditional tree affiliations previously assumed by the conflicting people in this region, thereby opening up another front in the tree “lawfare” conducted in the West Bank.

#### A. PARALLEL CULTIVATION

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

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

## B. THE NEW SETTLERS: A NEW TREESCAPING LANGUAGE?

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

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

The increase in tree cultivation in “Judea and Samaria” is, according to Nir-Tsvi, a liberating process, not only in the sense that it takes the New Settlers out of what he refers to as the “ghettos” and into “open spaces,” but also in the sense that it brings these settlers closer to the land. Indeed, since the 1990s, this small group has been settling the terrain in small outposts situated on hilltops, using buildings and trees as proxy settlers to compensate for their demographic inferiority in the place.<sup>20</sup> This notion of settlement resonates with the ideal of the Jewish pioneer prevalent in early Zionist narratives, which also highlighted the urgency of settling the frontier (Troen 2000).

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

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

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<sup>20</sup> There are 121 settlements in the West Bank and 102 outposts (half of the latter were built since 2001). Approximately 250,000 settlers (of which a few thousand reside in outposts) and 2.5 million Palestinians currently reside in the West Bank (<http://www.peacenow.org.il>, last viewed November 26, 2006).

Israel's official position may indeed seem inconsistent, both with the general logic of adverse possession and with Israel's longstanding policy of appropriating lands in the West Bank, followed by their settlement by Jewish people. One possible explanation for Israel's new position is its desire to set itself apart from certain settlers, especially those who reside in what the state has currently defined as "unauthorized outposts."<sup>21</sup> More often than not, these settlers are no longer perceived as promoting Israel's "national security" interests in the West Bank but rather as presenting a national threat.

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

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

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

However, what the official state position did not (and perhaps could not) take into account is the large number of New Settlers who, unlike Nir-Tsvi, plant trees because they genuinely believe in reconnecting to the Holy Land. Such a blurring of distinctions does not seem to correspond very well with Israel's (colonial) investment in maintaining a clear taxonomy between the modern and the traditional (Mamdani 1996) in the West Bank. Indeed, the transformation of the modern Jew into a traditional cultivator has been a source of much confusion for Israeli officials, and has required state lawyers to come up with legal devices to explain why the category of cultivation established by Article 78 cannot apply to Jewish settlers. A legal battle over this issue is currently being fought in the Land Appeal Committee between the Jewish settlers and the State of Israel. Evidently, the only way that this colonial bifurcation can be kept intact is by mobilizing the settlers "downward" so as to reclassify them as either primitive farmers or as plain fanatics. Accordingly, the current official state position is that in

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<sup>21</sup> See e.g. Talia Sasson's report, <http://www.fmep.org/documents/sassonreport.html> (last viewed June, 2008).

order to establish cultivation, one must possess an “agricultural intent.” This new interpretation of the legal norm not only focuses on the actus reus of the cultivators, but also on their agricultural consciousness. This position was recently argued before the Land Committee by the Israeli military authority, which stated that “non-agricultural cultivation cannot be defined as cultivation for the purposes of Article 78 of the Ottoman Land Code.”<sup>22</sup>

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

### C. CHALLENGING THE PALESTINIAN/OLIVE AFFILIATION

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

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

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

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<sup>22</sup> From the draft of the state’s legal request to be admitted as a formal side in the legal proceedings pending before the Land Committee (in Article 16 of this draft).

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

The project of promoting control over territory through physical occupancy is performed, Nir-Tsvi explains, by creating a visible continuity between Jewish buildings and Jewish trees. The placement of artifacts as proxy Jewish settlers for the purpose of constructing a tangible and continuous linearity again illustrates the importance of landscape in the power dynamics played out in the occupied West Bank. Accordingly, instead of reading the trees and buildings (for example, those portrayed in Figure 21) as simply trees and buildings, one should shift one's perception and read them as statements of domination over the territory.



**Figure 3: On the mountain ridge in the background – a continuous line between the trees and buildings of the Settlement Eli. Foreground - an Israeli flag over the “Haroe” outpost (photo by author, August 2007)**

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

By making [the olive] into an ethos also for the [Jewish] settlement, [t]he symbol of the olive is flipped on its head: because it has become a game that everybody

participates in, the Palestinian's affiliation with the olive tree is now in danger. [...] *They even steal our symbol is what I want to say.*

Indeed, instead of the rivalry between pine and olive people, the national war now involves a much tighter contest between various nuances of olive treescaping.<sup>23</sup> In particular, the clear distinction between Palestinian acts of olive planting and Jewish acts of olive uprooting has transformed into interchangeable acts of planting, uprooting, and replanting of olive trees. As part of an initiative to help Palestinian farmers cultivate lands, the Israeli nongovernmental organization *Rabbis for Human Rights* (RHR) buys olive trees from Jewish Israeli nurseries so as to replace those olive trees uprooted by the Jewish settlers in the West Bank. According to RHR's policy, the new olive trees donated by the organization must be planted either exactly in the place of the uprooted olives or in a place that otherwise threatens the settlers' control over the land in question. Moreover, in a recent incident, RHR activists uprooted trees planted by settlers because they "stood in the way" of plowing the land in preparation for Palestinian cultivation. Rabbi Arik Ascherman, Director of RHR, summarizes the situation as involving "these little back and forth struggles of chopping down trees, uprooting trees, replanting. [...] So while the Palestinians plant [olives], the settlers come and plant [more olives] on top of that, and then the Palestinians come and plant for a third time [...]. [Sometimes] they don't even bother to uproot; they just plant more and more." Rabbi Ascherman coins a phrase to describe these myriad tree performances: the West Bank *tree carnival*.

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

#### D. CHALLENGING THE STATE/PINE AFFILIATION

At the same time that the challenges that the New Settlers challenge the exclusivity of the Palestinian affiliation with the olive tree, they also challenge Israel's exclusive affiliation with

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<sup>23</sup> Indeed, the olive is increasingly utilized by the State of Israel and by Israeli artists as a universal symbol of peace and as a national icon of authenticity. For more about the genealogy of Jewish/Israeli olive symbology see Braverman 2007, 107-158.

the pine tree. As mentioned earlier, the State of Israel has been planting pine trees in the West Bank as a form of non-cultivation and to prevent individuals from activating Article 78 by cultivating present or future state land. This sort of planting has assumed its meaning through the natural classification of the pine as a forest tree, which corresponds with the categories of forest and fruit trees established by the 1858 Ottoman Land Code (again, the Code restricts tree cultivation to fruit trees only). Recently, however, advocate Nir-Tsvi initiated a legal argument that defines pines as fruit rather than forest trees:

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

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

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

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

## **VI. TREESCAPING THE WEST BANK: A GAME THAT MATTERS?**

But no one wants to be uncivilized and say that this is a war over land. [...] If there wasn't Article 78 [we] would have found something else. [But] the trees look so naïve, as if they couldn't harm anyone. Just like children. But then, many



years later, they turn into terrorists that actually kill people. (interview, Chief Inspector David Kishik)

The lawfare over trees in the occupied West Bank has been framed by the two sides of the conflict as a war that kills. It is, essentially, a war over national territory. But as Chief Inspector Kishik has made abundantly clear, fighting this war through legal doctrines of tree cultivation and scientific technologies for visualizing trees seems more civilized; more legitimate; even more natural. Accordingly, one can discern the power dynamics in the West Bank by simply reading the “natural” landscape of this place. The chapter also demonstrated the fluidity of this reading, which is mostly a product of the sophisticated negotiations over the legitimate interpretation of a specific legal norm: Article 78 of the 1858 Ottoman Land Code, and of the term “cultivation” in particular. Article 78 provides a microcosm through which to examine the fluctuating national debates that mold the identities and physicality of this place.

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

While initially each actor just seems to be operating independently of others – whether planting, uprooting, pruning, or plowing – it quickly becomes evident that all are speaking an amazingly coherent language: before declaring specific lands to be state land, Israeli inspectors uproot the (olive) trees planted on it. At the same time, Palestinians plant (olive) trees to threaten Israel’s state declarations of land; Israel plants (pine) trees to strengthen the status of its state-declared lands; and Jewish settlers uproot Palestinian (olive) trees, planting their own (olive, pine) trees instead. They are all employing the same mixture of official and vernacular narratives in which the acts of planting and uprooting trees say something important about the status of the contested land. Instead of shouting “This land is mine!” or announcing “this land is definitely not yours!” all relevant actors participate in commonly understood performances of tree planting and uprooting. This culture-specific way for communicating control over land demonstrates the

vernacular language that has developed in the margins of Article 78's interpretation, as this interpretation has been negotiated between the conflicting actors in the West Bank since its occupation by Israel in 1967.

The tree's natural visibility has made it into a technology of power in the West Bank landscape. Situated at the nexus of visualization and cognition (Latour 1986, Scott 1998), the making of a treescape is at the same time also a making of knowledge. But the knowledge that can be derived from the legible treescape is constantly being confused and challenged. Indeed, through their contestation of the national landscape, the New Settlers could be perceived as questioning the national enterprise of the secular and perhaps in their view too-liberal state, thereby interrupting the binary juxtaposition between Israel and Palestine.

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

In any event, land, in its physical form, still matters. The combined workings of law and technology, which have much to do with the representational aspects of landscape, not only reflect these physical matters but also make them into what they are. The reading proposed here has paid close attention to the complex interrelations between law, scientific technology, and tree landscapes and, most importantly, to the dynamics between the more obvious governance of trees through humans and the implicit governance of humans through trees.

## EXCERPTS FROM THE BOOK'S EPILOGUE: "TREE WARS?"

*"We're tired of trees...They've made us suffer too much."*

Deleuze and Guattari 1987, 15

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### VII. CONCLUSION: TREE WARS!

*Planted Flags* is about the governing of trees through what is constructed as the natural order of things, and about how this form of tree government is utilized to naturalize and legitimize certain power dynamics. By narrating and interpreting over sixty in-depth, open-ended interviews and participatory observations, government documents, statutes, and regulations, the book makes visible how technologies of power operate through practices of landscaping and, in particular, how these technologies manifest through ecological narratives that revolve around the tree.

My focus on the government of people through trees has recognized three interrelated themes that recur throughout the book. These themes – naturalizing the nation, the bifurcation of natural landscapes, and the production of lawfare through trees – provide a conceptual framework for a deeper understanding of the national Israeli/Palestinian war over land and its manifestation in natural tree landscapes. The first theme identifies the root-power of tree government: government through nature. This specific form of government asserts and utilizes the ostensibly natural order of things in order to legitimize its practices and make them seem benign and innocuous. The second theme attempts a deeper understanding of the general tendency towards governing through the bifurcation of the natural landscape. I have been using the term “tree wars” to describe the binaries at play in this region, which are intimately related to two particular kinds of trees: olives and pines. *Planted Flags* is structured to correspond with and to explore the bifurcation evoked by these two tree types, along with the subsequent transformations, interruptions, and possible subversions of these themes. Finally, the third theme of the book regards law’s role in the tree regime. Specifically, *Planted Flags* has identified the myriad ways in which various legalities have shaped, and have been shaped by, the struggles over trees in this place. This emphasis, I have suggested, offers some insight into law’s complex relationship with the natural landscape, with nationalism, and with particular scientific technologies.

*Planted Flags* has also explored the tree's role as an ultimate connotator of land in the Palestinian/Israeli context. Since anything that is even remotely connected to land in this area is also strongly tied to the nation-state project, it is not surprising that the tree possesses such tremendous national powers. Although the ways that trees have been put to use in this region vary in time, place, and content, most of the narratives included in this book have indeed regarded the tree as a national symbol. By delving into the intense relationship between people and trees, then, *Planted Flags* exposes the strong and often taken for granted relationship between nationalism and land.

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At the same time, trees are also physical manifestations of peoples' symbolic, physical, and imaginary connections to land (Lacan 1956). *Planted Flags* has explored the "mirror stage" through which trees assume meaning: the pine tree looks itself in the mirror and sees its other, the olive (Lacan 1977). A complete identification occurs in this process between humans and trees: not only do trees *mirror* humans and vice versa, but trees are also *made* human and humans are made to be trees. This, possibly, is why Chief Inspector Kishik of the Civil Administration refers to olive trees as "enemy soldiers," while Palestinians compare the uprooting of their olive trees to the murder of family members and diaspora Jews refer to pines as proxy immigrants. Ultimately, the pines have become Jewish trees not only because of their specific features but also because both Jewish people and Palestinian acts of resistance have made them so. At the same time, the olives have come to symbolize Palestinian nationalism not only because of their economic significance and unique physical traits (longevity, endurance) but also because the Palestinians have discursively adopted them as such and, even more so, because they have been the target of Jewish-Israeli aggression.

However, as Chapter 4 reveals in the context of the occupied West Bank, at certain moments of the interviews it has become clear that it no longer matters which trees are utilized – pines or olives – but rather that it is the act of rooting and uprooting that matters. "They don't uproot, they just plant more and more," says Rabbi Ascherman, Director of Rabbis for Human Rights, "the Palestinians plant, the settlers come and plant on top of that, and the Palestinians come and plant a third time." Although such interchangeable acts of planting and uprooting – with no significance attached to the tree types involved – possibly subverts the bifurcated

dynamic that has been described through this book, this is merely a shift in format: instead of manifesting through bifurcated tree taxonomies, the war between the national peoples now manifests through the national identity and intentions of the individual planters, through the national identity and intentions of the individual uprooters.

This is true of other possible subversions of the bifurcated system, mainly through the Jewish-Israeli construction of the olive as both a peace tree and an economic investment within Israel. While presented by its practitioners as transcending the bifurcated positioning of trees in this context, these instances are merely new variations on the existing tree wars in Israel/Palestine. Instead of revolving around two separate tree regimes, the national war has now shifted its location into what was previously the tree territory of one side. It is hardly incidental, then, that of the two trees it is the Palestinian olive tree that has commonly been invaded and appropriated by Jewish-Israeli performances.

One way or the other, once scrambled from its relatively unambiguous bifurcated state, the tree warfare in Israel/Palestine has become a considerably more complex enterprise, leading to further contestations and to additional forms of subversion. The interviewees have explained, accordingly, how uprooted trees are smuggled back and forth through and across the landscape, ostensibly undermining the importance of political borders and national identities. Trees of all kinds, the interviewees have further suggested, are rooted and uprooted everywhere, based on the immediate profit they yield. No national distinctions are made, and “a wild carnival of uprooting” ensues.

Thus I believe that despite all evidence to the contrary and beyond the range of possible acts of subversion, treescaping in Palestine and Israel ultimately boils down to national affiliations. Since the national conflict over land is still such a central piece of the Israeli/Palestinian experience, and even the heart of the matter, some would say, it is no wonder that the trees of this place stand in line to enlist in the Israeli/Palestinian war.



**Figure 4: Ran Morin's Olive Park, south Jerusalem (August 2006, photo by author)**

On the border between East and West Jerusalem, Ran Morin has placed living olive trees on top of three fifteen-meter columns (Figure 22). In an interview, Morin explains his decision to plant olive trees on top of tall columns. In his words,

There is something very happy about disconnecting from the heavy historical weight. I mean, there is something light [...]. Here we are, in the air, without all this land that is so *burdensome*. This presents an entirely new situation, one in which both connection and disconnection interact. *A new potential for another stage.* (my emphasis)

Morin's words express the desire, also prominent throughout this book, to lighten the tremendous weight imposed by national bifurcations. But can the olive trees actually be uprooted from their particular place and then lifted in air – namely, lightening their weight – without losing their material and symbolic significance altogether? Or, more generally, can a concrete spatial relationship be truly apolitical and, in this context, a-national?

Morin's olive tree sculpture is situated on the border between East and West Jerusalem. This land, previously part of a Palestinian village, is now mostly owned by Kibbutz Ramat Rachel,<sup>24</sup> which has agreed to its usage as an olive park. At the same time, Palestinian shepherds from an adjacent Palestinian village roam underneath the tall pillars of the park, making it into quite a surreal scene. The particular olive trees used for this sculpture were transported from an unknown location in the area of Mavo Beitar, situated several miles south-west of the park. All

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<sup>24</sup> According to Ran Morin,  $\frac{3}{4}$  of this land is owned by the kibbutz and is agricultural land, and  $\frac{1}{4}$  is state land managed by the JNF (interview).

these hidden details seem to bring the utopian vision down to earth, despite Morin's best of intentions to rise above it. Morin's sculpture, then, provides one last example of how even a desire to move away from national bifurcations can end up using and perhaps even reinforcing these same bifurcations. Nationalism, with its landscapes of planted flags, has become second nature in Israel/Palestine.

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