LETTERS TO THE EDITOR

The meaning of 'dead' lands

William Claiborne (February 22) quotes an East Jerusalem attorney, Elias Khouri, to the effect "that much of the land not deeded to Arab owners (and therefore being ceded to the purposes of Israeli settlement) falls into the category of 'miri' land." Mr Khouri is not being particularly ingenuous with your reporter, since "miri" for all intents and purposes went out of existence in Palestine in a series of land laws promulgated by the Ottoman Authorities in 1913-14 and was absorbed into freehold.

This legislation was purposefully applied by the British in Palestine, who consciously operated within the framework of the previous regime (cf. the Mewat and Mahlul Land Ordinances of 1920-21). A "Settlement" process was set in motion in the late twenties to adjudicate outstanding claims and register title-deeds of just such properties, which was more or less complete by 1948 in time for the British departure.

What Mr Khouri is referring to is quite another matter, what was called "Mewat" or "Mahlul" in the Ottoman Empire and in the British Mandate succeeding to it (cf. the author's book *Islamic Law in Palestine and Israel*, E. J. Brill, Leiden, 1978, pp. 53-72 and 136-54), i.e., "dead" or "vacant lands", land which properly appertained to no owner and to which, therefore, no *tapu* fee or new Ottoman/British title-deeds applied unless it went through the typically Ottoman/Islamic process of enclosure and "vivification" (cultivation for three consecutive years), at which point it became "miri" and title-deeds were theoretically granted and a *tapu* fee paid. Land became "vacant" or reverted to its "dead" status either through a failure of heirs or a 3-year failure in cultivation, or both.

These "dead" or "Miri Mahlul" lands, which Khouri allows your correspondent to believe had the same character as the now defunct "miri" lands, came to constitute, along with another category of lands called *Metruke* in the Ottoman Empire, what was called in the Mandate "Public Lands" or State Domain, the ownership of which was vested in the British Crown through the High Commissioner (in strict Islamic theory Mewat or Mahlul properly belong to Allah or his representative on earth, which the British Authorities and the Israelis today evidently consider themselves — "Allah" or "El" presumably being equivalent usages). The situation on the West Bank has not changed at all since Mandate times, nor has it changed appreciably in Israel despite a new Land Law in 1969 (this is to say nothing about the problem of "Absentee Property", which is another question entirely).

Despite Mr Khouri's misleading of your correspondent (who makes the typically "Western" mistake of taking such disingenuous half-truths at face value), the Israeli authorities are perfectly within their rights as the secular Sultan (ie, "Power") by whatever cultural or legal yardstick one wishes to apply, either Islamic theory, Ottoman law, or Mandate, Israeli, or Jordanian law succeeding to it or depending on one's point-of-view even Biblical writ. Mr Khouri, as an East Jerusalem lawyer, well knows that any *bona fide* "enclosed" or cultivated "Dead" lands have been held in the Ottoman Empire since 1858-59 by title-deeds and since 1913-14 are indistinguishable in every way from freehold tenure. They are, therefore, not at issue in the current dispute, which rather involves unenclosed and uncultivated lands, what Islam so graphically alluded to as "Dead" and what Ottoman, Mandate, and Israeli authorities consistently treated as "Public Lands" or State Domain.

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Palestinian lands: Islamic law still counts

Dr Shahak's intemperate attack on me (April 12), while obviously heart-felt, contains substantial inaccuracies.

(1) His definition of *miri* is incorrect. You can call *miri* whatever you choose, as Mr Khouri and Dr Shahak blithely do, but the simple facts are that since 1858-59 and 1913-14 in the Ottoman Empire and the early 1920s in Palestine, *miri* lands were obliged to be held by title-deeds. Dr Shahak implicitly concedes as much in calling *miri* "private" (I only contended that "for all intents and purposes" they had become indistinguishable from freehold).

Since transformation of *mewat* into *miri* required prior and direct Government approval in both Mandate Palestine and Ottoman/Islamic law preceding it (all incursions not involving such in the Mandate being referred to as "squatting"), your readers can well imagine how jealously such prerogatives were guarded by all governments concerned — including the Israeli and Jordanian successor ones. Whether justly or unjustly (I am not here judging the merit of the laws involved), if land is not held by title-deeds, it is by definition simply not *miri*, but rather *mewat* or "dead" — *metruke* or "Public Lands" having long ago been registered in the name of the Government.

(2) There were not "two kinds" of *mewat*, as Shahak asserts, there was only one and most decidedly these were not simply "desert" as he lamely contends. Rather, there were two kinds of *metruke* or Public Lands, both of which he mistakes for his second variety of *mewat*. To show how these Islamic categories retained their force, not only did the British recognise both of these types of *metruke* in Arts. 12-13 of the Palestine Order-in-Council of 1922 and Arts. 29-30 of the Land (Settlement of Title) Ordinance of 1928 (a distinction which was retained in the supposedly "new" Israel Land Law of 1969), but cleaning up a last bit of untidiness, the High Commissioner was invested with the power to declare *miri mahlul* (vacant *miri*) "Public Lands" in the Land Law (Amendment) Ordinance of 1933. As a consequence, not only was an enlargement of the domain of Public Lands of immense proportions presaged, but in the process prescription was severely reduced — "absence from Palestine" not even being recognised as a cause for its interruption — and adverse possession and squatters' rights, where *mahlul* and *mewat* were concerned, were curtailed absolutely.

(3) We are, unfortunately, not dealing with sentimentality, but hard and sometimes cold reality. The law, right or wrong, is as I have stated it to be. I cannot attest how most "cultivated lands" on the West Bank are presently held, as this, as Shahak rightly notes, would involve a time-consuming, costly, and if history is any judge, probably useless survey, but this was never my intent — only to show what the law actually bearing on the situation is. Nor can I comment on the value of the source he relies on twice referring to as "the Hebrew Press".

(4) Finally, his contention that Islamic law "ceased to be operative" years ago particularly where the formerly Jordanian West Bank is concerned is a typical Western conceit and no good Muslim would ever agree to such a contention (sophistic comments about Western "Orientalists" and reference to Edward Said's "masterpiece" notwithstanding). In fact, Islamic law was purposefully absorbed into the legal framework of Palestine by Art. 46 of the P.O.i.C. of 1922 and on the West Bank this has never changed, Mandate Law still being generally operative (which includes the Islamic/Ottoman Civil Code or *Mejelle* of 1869-76 and the Ottoman Land Code of 1855.

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