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



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## ABSTRACT

For the last two decades, land in Yajouz has been the locus of fierce contestation among the government of Jordan, the Bani Hassan tribe, and new settlers. Today, Yajouz is peripheral urban settlement deemed illegal by the government. Three main aspects have contributed to the making of Yajouz in its present form: the first is the contested nature of claims to land. The second is the plurality of mechanisms of control and ordering of the social and the geographical space, allowing the Yajouz community to develop as a semi-autonomous social field. The third is the process of mutual adjustment between state organs and the Yajouz social field, defining the sense of security of tenure among settlers and the social functioning of law. The tenure relations that have ensued reflect neither property claims of the Bani Hassan tribe, nor property rights of the state, but rather a dynamic status that is constantly being defined and redefined through the adjustment process.

## INTRODUCTION

Popular urban settlements have received considerable attention within the urban studies literature in the last three decades. They have been termed "informal," "illegal," "irregular," "spontaneous," "self help," "low income," and "squatter." Most of these terms, have been used with explicit or implicit connotations about the legal status of these settlements, often viewing the settlements as existing "outside" the realm of governmental law and state intervention. As a result, very few studies have investigated the interaction between these settlements and governmental law in its day to day functioning. For the most part, the "legality" of a settlement has been reduced to compliance with, or deviance from, the letter of the law. Such an approach tells us very little about the actual property relationships and tenure security in these settlements, and results in simplistic dual/gap representations of the function of law in society.

In this paper, I will use a legal pluralism framework to explore tenure relations and security in Yajouz, Jordan:<sup>1</sup> a peripheral urban settlement deemed illegal by the government. Over the years, Yajouz residents have had to develop rules, regulations, and contractual arrangements to regulate their property relations and to mitigate the effects of government crack down on Yajouz. How these rules and arrangements

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<sup>1</sup> Based on field work I conducted in Jordan during the summers of 1987, 1988, 1989, and 1990 (Razzaz, 1991).

developed, and how they relate to governmental laws and regulations is the subject of this paper.

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

## **THEORETICAL DEBATES**

### **Popular Settlements and the Law**

A growing number of studies are focusing on the relationship (or lack of it) between governmental law and popular settlements.<sup>2</sup> Various analysts, however, have differed in their assessment of the meaning and function of law in these settlements. Hardoy and Satterthwaite, for example, describe Third World cities as divided into "legal" and "illegal" parts with a "gap" separating the two (Hardoy and Satterthwaite, 1989: 6). As a result of this separation, "most poor people have

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<sup>2</sup> See Karst, 1973; Doebele, 1977; Santos, 1977; Conn, [1968]; Perdomo, 1982; Sobreira, 1986; Azuela, 1987; Fass, 1989; Hoffman, 1990.

little faith in laws. Many may know little or nothing about existing laws." (ibid.: 32)

Although the poor may know little about the letter of the law, they are often conscious of its function. Several studies seem to ~~provide~~ <sup>offer</sup> such evidence. Treating squatter settlements in Mexico, Azuela emphasizes the connections, instead of the gap, between squatters and the law:

despite the fact that low income settlements are in some way illegal, or rather because of this, law becomes a real issue which influences the strategies of the social agents involved, thus shaping social relations and, in some cases, the very structure of urban space. (Azuela, 1987: 523)

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

We are thus in the presence of interclass legal pluralism.... In this instance class conflict is characterized by mutual avoidance (latent confrontation) and adaptation....Both legal systems are based on respect for the substantive principle of private property...[the unofficial legal system] achieves its informality, subtlety, and flexibility through selective borrowing from the official legal system. Thus although they occupy different positions along a continuum of formalism, they can be said to share the same legal ideology and to be culturally homogeneous. (Santos, 1977: 89)

In a later article, Santos captures the "porosity" of plural legal orders:

We live in a time of porous legality or legal porosity of multiple networks of legal orders forcing us to constant transitions and trespassings." (Santos, 1987: 298)

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

#### **Governmental Law Within Legal Pluralism**

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

One common trend in the literature is to acknowledge legal plurality, but assert that "unofficial" systems are subordinate to the "official" system. This theme is nowhere more evident than in Hooker's description of legal plurality, in which:

...the national legal system is politically superior, to the extent of being able to abolish the indigenous system(s)  
.... Where there is a clash of obligation...the rules of the national system will prevail and any allowance made for the indigenous system will be made on the premisses and in the forms required by the national system. (Hooker, 1975: 4)

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

Ruffini, in contrast, seems to capture the importance of conflict as a common aspect to the relation between the state legal system and other systems. He describes the Sardinian shepherd as someone who is

...trapped in a dilemma, a conflict between radically opposed systems of values and behavior [the Italian legal system and the Sard shepherds system] so that conformity to one will cause him to suffer the negative sanctions of the other. (Ruffini, 1978: 224)

Unlike, Hooker's portrayal of superior governmental law or Ruffini's portrayal of conflict, Black presents law as complementing other forms of social control: "the quantity of law increases as the quantity of social control of...[social groups] decreases, and vice versa." (Black, 1976: 6) As a result, Black's theory of law predicts "more law in societies where other social control is comparatively weak." (Black, 1976: 6)

But Black's theory of law does not address the possibility of adverse relations between governmental law and other forms of social control. Such adversarial relations are not an anomaly. Every time issues of rights, freedom, access to resources, are contested, adversarial relations are likely to take over.

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

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

The main flaw in Pospisil's hierarchy of legal systems is that he ignores the sources of power and legitimacy within the hierarchy. That is, the hierarchy ignores the distinction between a "legal system" that is recognized and condoned by governmental law as a legal entity (such as the family or the church) and a "legal system" that is not recognized as a legal entity (neighborhood), or even considered illegal by its very existence (such as the gang).

In other words, the hierarchy of legal systems works well when authority itself is hierarchical and relationships of authority are more or less defined and accepted. However, when a "legal system" and its authority are contested then the notion of hierarchy and legal levels becomes misleading.

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Moving away from structural formulations of plurality, Moore introduces "semi-autonomous social fields" as a unit of analysis

of legal plurality (Moore, 1978). A semi-autonomous social field is one that:

can generate rules and customs and symbols internally, but that...is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. (Moore, 1978: 55)

Social fields are semi-autonomous not only because they are affected by outside forces but also because they have access to mobilize such forces in their interest:

[P]eople arrange their immediate situations... by exploiting the indeterminacies in the situation... or by reinterpreting or redefining the rules or relationships. They use whatever areas there are of inconsistency, contradiction, conflict, ambiguity, or open areas that are normatively indeterminate to achieve immediate situational ends. (Moore, 1978: 50)

Can so many conceptions of legal pluralism be reconciled? I will argue that these conceptions are not necessarily mutually exclusive, rather, they refer to a variety of relations that do empirically exist between the governmental legal system and other social fields.

#### **AN ANALYTICAL FRAMEWORK**

##### **How do Semi-Autonomous Social Fields Develop?**

Groups organizing to protest a certain law, an agency, or a policy can be said to be part of a social movements.<sup>3</sup> They aim

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<sup>3</sup> Castells defines an urban social movement as: "a collective conscious action aimed at the transformation of the institutionalized urban meaning against the logic, interest, and values of the dominant class." (Castells, 1983: 305)

to put pressure on the state to introduce, change, or retain elements of governance. But a social field is more than a movement. Not only can it protest existing rules and regulations, but it can provide forms of relief from these rules and regulations. Such relief comes in the form of non-compliance mechanisms and/ or alternative rules and regulations.

However, not every form of breaking state rules and regulations and "getting away with it" represents a social field at work: a driver parking in an illegal spot and evading a ticket is not part of an "illegal parking" social field. Neither is it the scale of illegality or unauthorized behavior that makes a social field: if 99 percent of drivers on highways exceed the legal speed limit of 55 mph, that does not make them part of "speeding" social field. What then, are the determinates of a social field?

Social fields do not develop overnight, nor can they, in their totality, be premeditated. They develop over time in response to groups needs, grievances, or interests. It is individual and group action which can occur overnight or be premeditated. Repeated actions accumulate into practice, and repeated practices accumulate into procedures. Procedures if contested in nature, could accumulate into networks and organizational arrangements that aim to protect or promote these procedures or undermine resistance to them. Going back to my example of exceeding the speed limit: a driver's action of exceeding the speed limit, could be seen as an isolated

violation. When that driver repeats his action, along with a whole segment of highway drivers, the action becomes an illegal practice, but it still is not a social field. When these drivers start identifying states and highways where speed enforcement is lax, when they develop tips on "how to avoid a speeding ticket," they are in the process of developing procedures. When these drivers start to collude with each other (flashing their lights to each other as a sign of police radar ahead), they develop networks. Furthermore, when an industry develops making and marketing radar detectors to be used by these drivers, at that point they attain a level of organizational arrangements that are aimed at protecting and promoting their contested practices. When, through their organizational arrangements, networks, procedures, and practices, these drivers pose a challenge to enforcement: force authorities to reconsider their laws, their penalties, their methods of enforcement, at that point they are, as a social field, actively contesting the control and ordering of the highway system. Finally, not every driver on the highway receiving fringe benefits from lax enforcement is part of the social field. Indeed, only those who participate in the action, practice, procedure, and organizational arrangement are part of it. This is not such a far fetched scenario: commercial truckers come quite close.

The above example shows how new social fields, defining new relations, and generating internal rules and inducement mechanisms can come into being in response to new interests, to

protect existing interests from perceived threats, or to further promote existing interests as new opportunities arise.

I will show in the following sections how Yajouz, as a social field, has developed in response to several factors, among them is the tribal members' inability to formally register the Yajouz land as their private property, the refugees and returning migrants' inability to find affordable housing, and the inability of state agencies to fully enforce their rules and regulations.

#### **Forms of Interaction Between a Social Field and Governmental Law in a Contested Domain**

There has been a considerable debate within the legal pluralism discourse over the treatment of the state as a rule maker and enforcer. Some maintain that governmental law making and enforcement should be distinguished from other rule making and compliance inducing fields, and that the term "law" should be reserved for government made rules (see for example, Moore, 1978, and Merry, 1988). Others, however, argue that distinguishing "law" as a governmental phenomenon defeats the very purpose of legal pluralism and falls back onto the conventional legal centralist view of law (see for example, Griffiths, 1986; Benda-Beckmann, 1988).

While governmental law is indeed only one of a multitude of ordering systems in society, it would be misleading not to distinguish it from other semi-autonomous social field in society. Indeed, the main flaw in legal centralism is not its

recognition of the significant role played by governmental law, but rather, its neglect of the role of non-governmental ordering mechanism. This paper will show that it is the interaction between governmental law and non-governmental ordering mechanisms that defines and redefines property relations. This interaction is characterized not by rigid strategies attempted again and again by each side, but by a process of adjustment and readjustment of strategies, rules, and arrangements.

In the following part, I will examine the case of Yajouz. I will first identify the historical and normative forces that led to the making of Yajouz. Then I will examine the interaction between Yajouz as a social field and the state.

#### **THE CASE OF YAJOUZ: A SOCIAL FIELD IN THE MAKING**

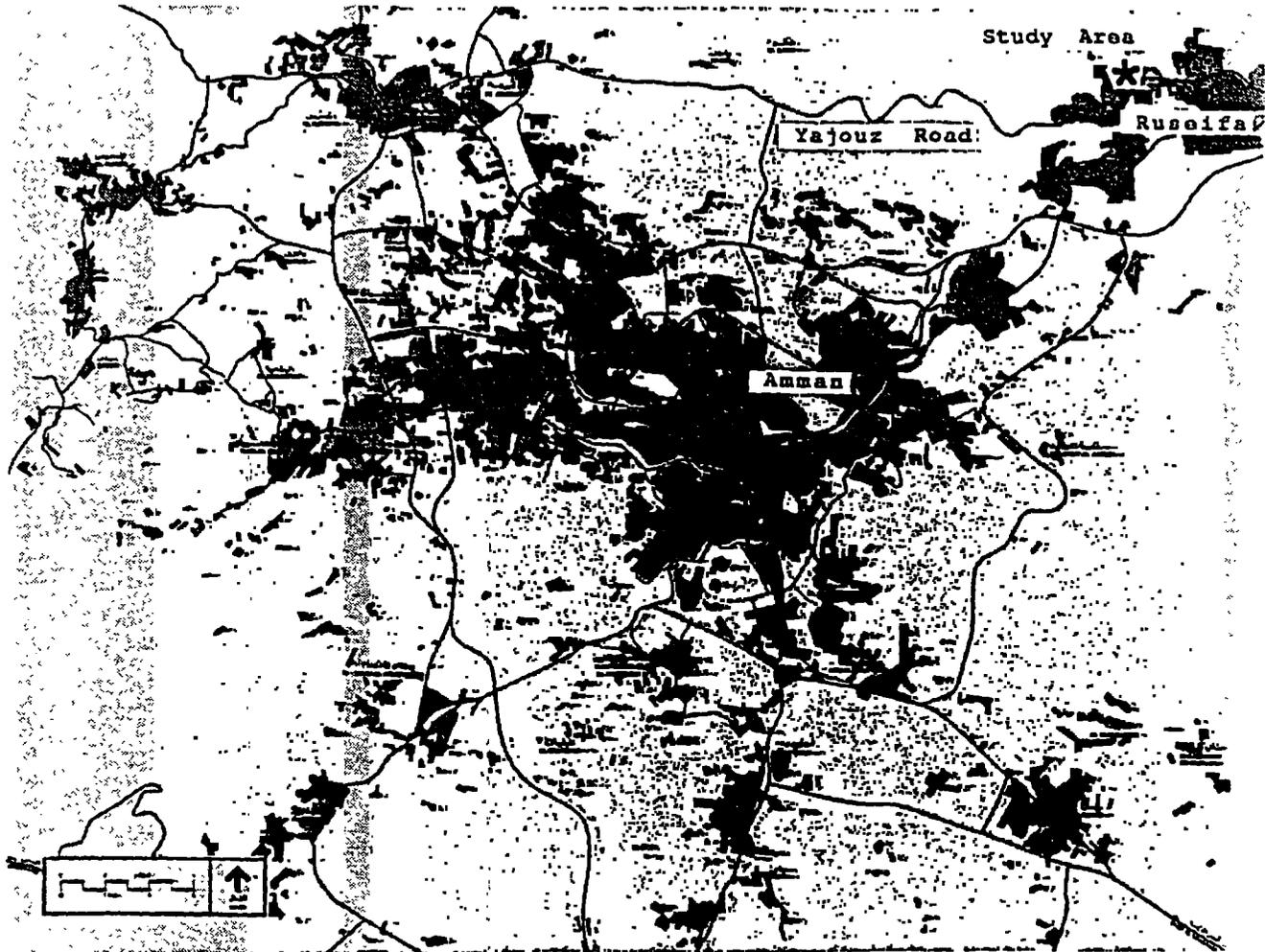
##### **Historical Background**

Yajouz<sup>4</sup> is located to the north-east of Amman, the capital, south-west of Zarqa, the second largest city in Jordan, and within the northern limits of the Ruseifa city boundaries, a medium size town. A major artery crosses Yajouz, connecting it directly to both Amman and Zarqa (see map).

The roots of struggle over land in Yajouz can be traced to the colonial era. The British, keen on creating a modern

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<sup>4</sup> Yajouz is not the official name of the site but the name of the main artery that passes through the site. The site is officially referred to as *Utl ez-Zarqa war-Ruseifa*, or the uncultivated land of Zarqa and Ruseifa (two adjacent towns).



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

agricultural tax base, started actively dismantling the traditional tribal land tenure system (*musha'*), and replacing it by private freehold system with clear individual land titles. This individually based land tenure system, it was hoped, would increase security, improve agricultural productivity, and therefore, generate tax revenue for the newly created government (which then was fully subsidized by the British).

Thus, the focus of the British, and later the Jordanian government was on agricultural land. The most fertile areas in the country were given priority for settlement of rights and registration of title. As for semi-desert and desert land, the British were less interested in dismantling the *musha'* tenure system. Most of these areas were registered as State Land, with the common understanding that tribes claiming these areas as their domain could inhabit it, use it for herding or scant cultivation, and register it formally and obtain individual land titles whenever they desired. Many tribal groups refused to register their lands fearing excessive fees and taxation.

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

## **Market Conditions**

The late sixties and early seventies brought significant socio-economic changes to the country. The exodus of hundreds of thousands of Palestinians after the 1967 war with Israel; and the oil boom of 1973; transformed the country from a weak agricultural economy to a booming service economy.

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

### **Conflicting Claims to Resources: Seeds of Confrontation**

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

The Bani Hassan, however, were not about to concede their perceived rights to the land. They started illegally subdividing and selling small plots of land to middle and lower income groups priced out of the formal housing market in near by cities. As a result, a thriving unregulated land market emerged along the eastern periphery of Amman.

### **Seeds of Autonomy: Conflicting Narratives**

In an interview with the head of the Department of Lands and Surveys, he insisted that the Bani Hassan requests for land registration were denied because they had failed to meet the legal requirements which included cultivating the land for three consecutive years. He claimed that when the settlement of land

rights was carried out in the area in the 1950's none of them claimed the land officially. To him, the present Bani Hassan claims could only be attributed to "greed" and not to inherent historical rights.

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

The conflict between the Bani Hassan and the state, however, cannot be reduced to legal technicalities. A sense of betrayal and distrust has characterized the attitude of the Bani Hassan towards the state since the British Mandate of Jordan (see Razzaz, 1991). A well known Bani Hassan elder, reflected the persistence of this attitude towards the state:

Every promise they [officials] made to us, they broke. They are a bunch of crooks who grew very greedy. They figure Bani Hassan land is easy to grab, and once they grab it in the name of the state, somehow it ends up appearing as their private ownership.

Another member defended the Bani Hassan's right to illegally subdivide and sell the land. He said:

How come all the valuable agricultural land in the west has been registered to its legitimate owners who are now making

millions from selling it as urban land, while we here are denied the right to register land we already own.

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

The historical dimension of the conflict was well expressed by a shaykh of the Bani Hassan:

Before there was a state, there was us [the tribes]. Before the state had rights, the tribe had rights. Before the state had land, the tribe had land. If they [officials] want us to respect state rights, they have to respect ours.

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

#### **Seeds of Autonomy: Self-Help**

During the seventies and the early eighties, no public service or infrastructure existed in Yajouz. Yajouz's ambiguous legal situation, in addition to its sparse population were enough

to dissuade water and electricity agencies from offering their services to the area. Lack of water, electricity, public transportation, and schools were among the major deterrents to locating in Yajouz. By 1977, several tribal members purchased private electric generator, and started selling electricity to neighboring houses. As for water, private water tank trucks started reaching houses through gravel and dirt roads cleared by residents. Neighborhoods close to water mains were able to hook up illegally and obtain piped water.

Despite its inadequacy, this limited level of services satisfied settlers with their basic needs and allowed them to survive in Yajouz. In doing so, it gave them the means to establish their lives in Yajouz, and as we will see later, the minimum autonomy needed for asserting their possession of the land. Thus, what had started as a routine and legal attempt to register land, developed into an elaborate system of transactions, contractual relations, dispute processing forums with norms and procedures. Using Moore's terminology, a semi-autonomous social field was in the making.

## **The State Adjusts**

### Establishing CPSP, The Coercive Arm of the State

The early eighties saw heightened tensions between the central government and the Bani Hassan tribe. With land becoming such a quickly inflating asset, neither the Bani Hassan nor the

government were willing to back off and concede their claims to the area.

To put an end to further settlement on state land, the Board of Ministers, in a 1980 meeting,<sup>5</sup> established the Committee for Protecting State Property (CPSP) which was charged with "protecting state owned land and maintaining law and order on those lands." It was composed of representatives of several state agencies<sup>6</sup> with an enforcement arm represented by a field patrol and bulldozer under the command of a police officer. Among the committee's first objectives was to fence off and prevent building on certain parcels within Yajouz which were designated for certain public uses. This put the patrol, however, in direct confrontation with members of the Bani Hassan. In 1983, the Prime Minister of Jordan made several public statements to the effect that the Bani Hassan's "abuse" and "usurpation" of state property would not be tolerated. When Bani Hassan members continued to sell land in the area, he gave orders to the armed security forces in July 1983, to fence some already inhabited areas, and evict the Bani Hassan settlers and demolish their houses. The reverberations of the campaign came as a shock to the government: members of Bani Hassan took to arms to prevent armed security from demolishing their homes. There were reports

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<sup>5</sup> Board of Ministers Resolution No. 463, November 16, 1980.

<sup>6</sup> The governor's office, the municipality, the Department of Lands and Surveys, the Security Service, and the Police Department.

of security agents shot, and military vehicles burned. Dozens of men from Bani Hassan were rounded up and imprisoned. Riots broke out in front of the prison by fellow tribal members. More arrests were made (incident mentioned in Satloff, 1986: 66).

Although the confrontation itself was limited, it came as a blow to the government's sense of control and grip over the use of coercive power. There was a realization among high officials that tribal loyalty to the regime cannot be taken for granted, and that the confrontation brought to the surface a tense regime-tribe relation that had been concealed by state public rhetoric of internal solidarity and unity, and private rhetoric of an omnipotent and invincible regime.

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

Soon after, the CPSP patrol was back roaming the area, with clear instructions to demolish any structure under construction. The criterium for demolition was the roof: if the roof was already installed, the structure was to be left intact, but if

the structure was still unroofed, it was to be demolished. Enforcement was quite effective for several months: demolition, fines, and detention were systematically carried out.

By 1984, the land market and construction activity in Yajouz came to a standstill (see Figures 1, 2, and 3). Potential buyers became increasingly cautious, and very few land owners dared to build.

### **Yajouz Adjusts**

As can be seen from the figures, however, the lull in the market was not long lived. Starting in 1985, housing starts, land transactions, and land prices were all on the rise again. The complex process of market recovery in Yajouz can be seen as the outcome of series of adjustments and readjustments in response to new needs, opportunities, and uncertainties. These adjustment have been reflected in changing practices, procedures, networks, and organizational arrangements among tribal members and new settlers in response to actions by the CPSP. The state, in turn, encountered these adjustments by a series of its own adjustments of rules, regulations, and CPSP enforcement practices. In the next section, I will examine the series of adjustments and readjustments that have characterized the contestation of land in Yajouz.

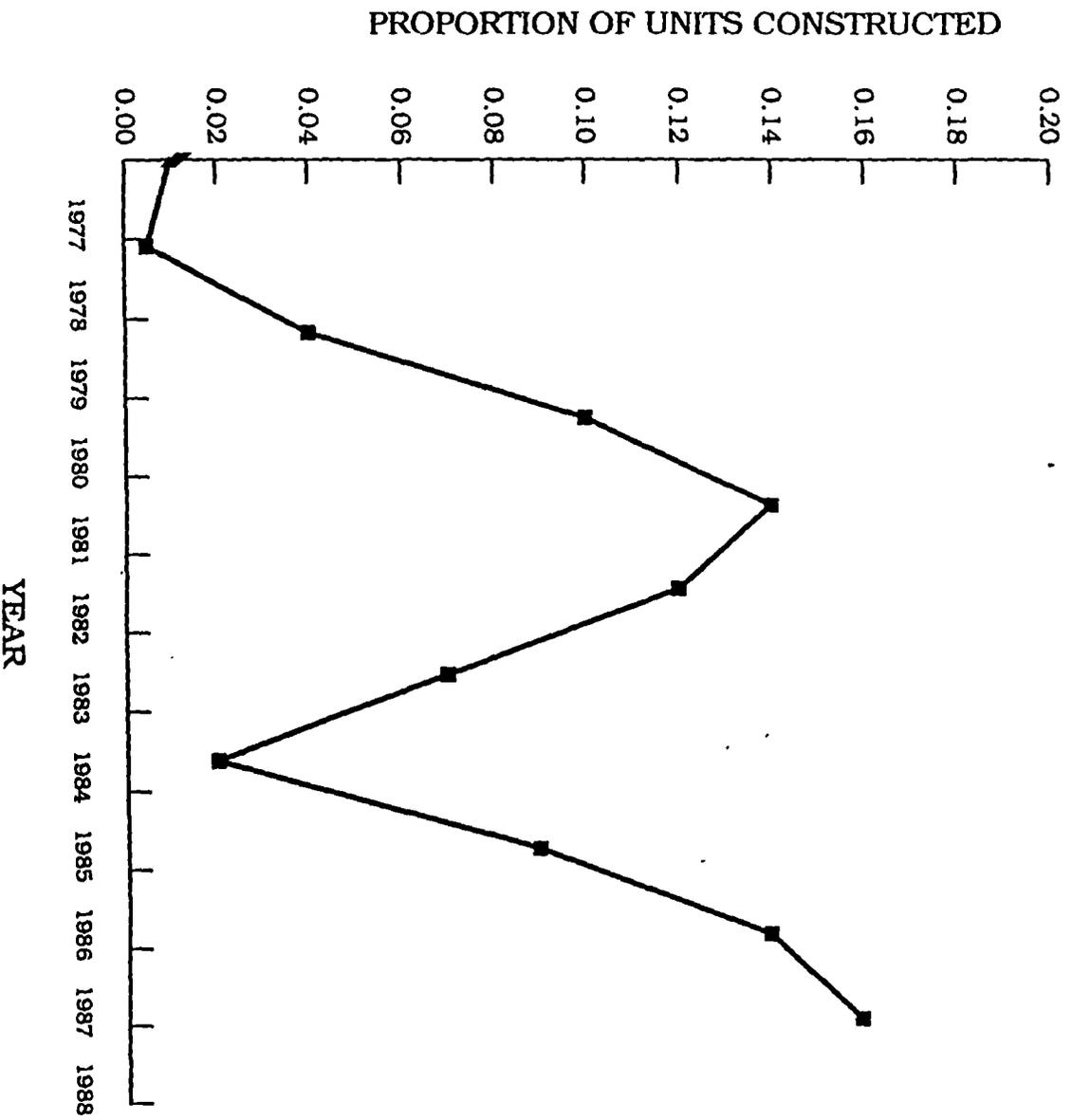


Figure 1: Housing Starts in Yajouz

Source: Survey of Yajouz, summer, 1989.

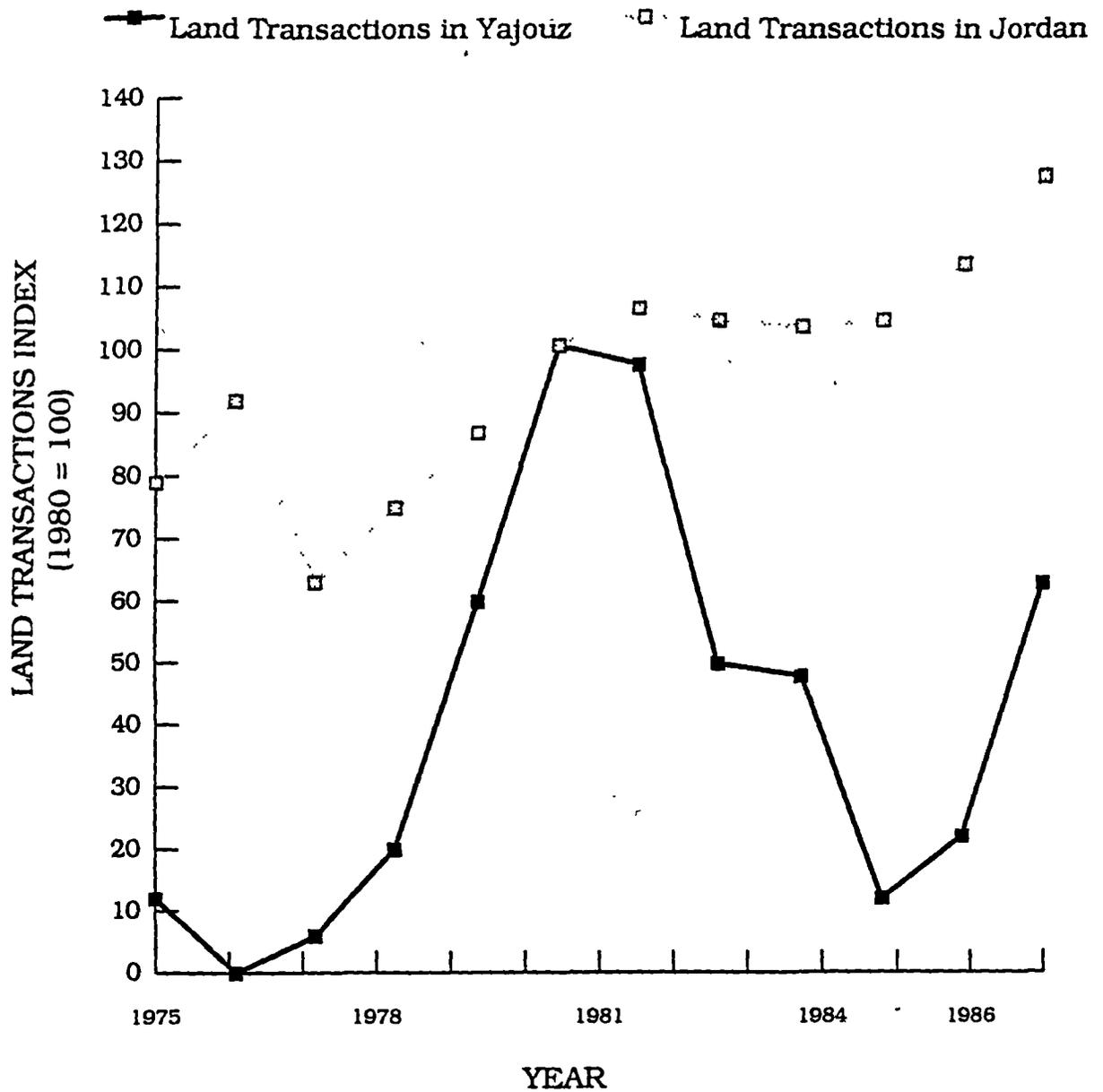


Figure 2: The Trend in Land Transactions in Yajouz Compared to the National Level

Source: - Department of Lands and Surveys, Annual Reports.  
 - Survey of Yajouz, summer, 1989.

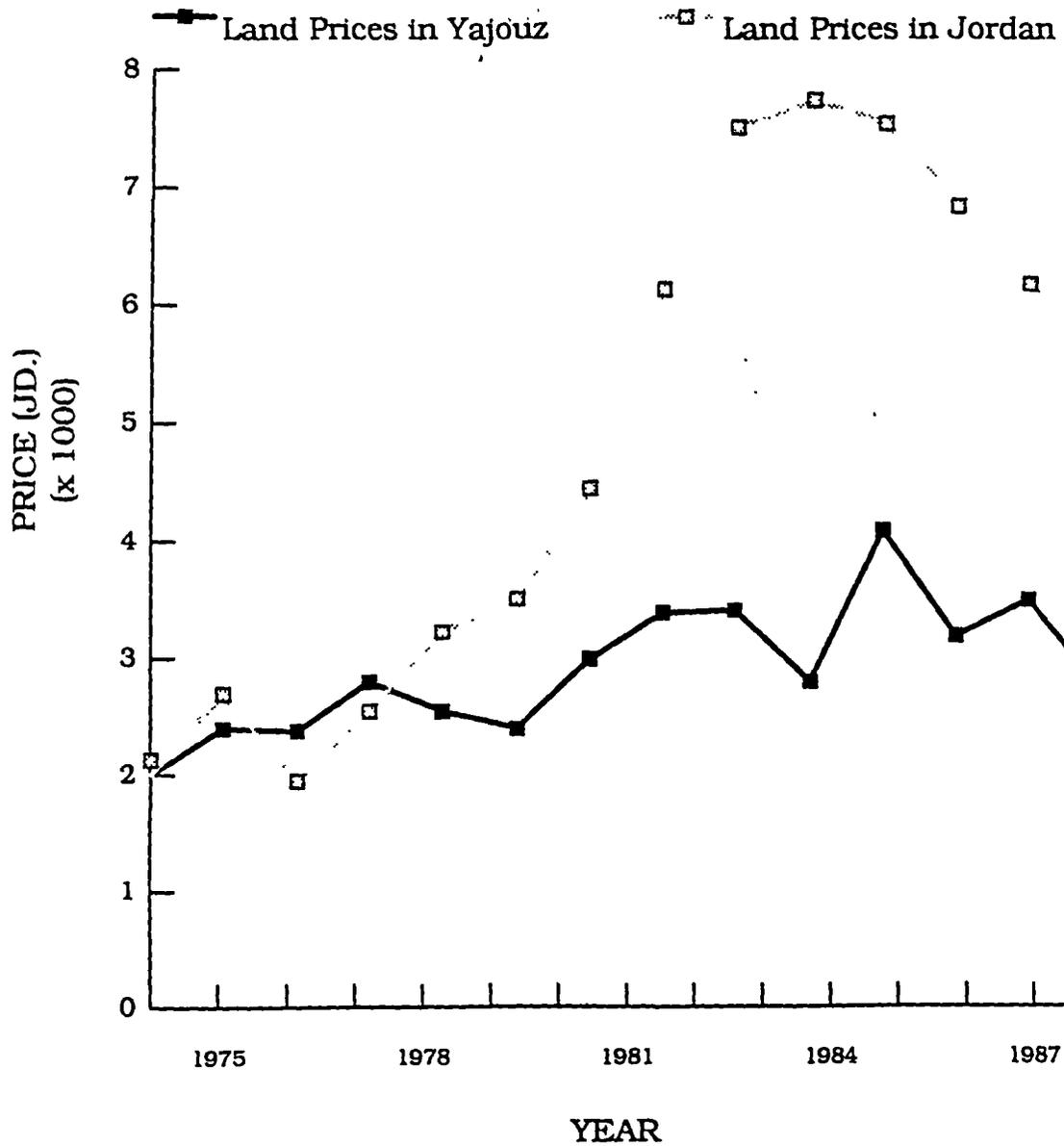


Figure 3: The Trend in Land Prices in Yajouz Compared to the National Level.

Source: - Department of Lands and Surveys, Annual Reports.  
 - Survey of Yajouz, summer, 1989.

### Maintaining Closely-knit Relations

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

The man I was visiting explained:

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

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

It turns out that Yajouz has several kinship and place-of-origin based neighborhoods. They are, however, by no means exclusive. A "Hebron" community has many non-Hebron households from other Palestinian towns as well as Bani Hassan and Da'ja tribal households. Indeed, some neighborhoods are not identifiable by kinship or town-of-origin as no single group constitutes a majority. Nonetheless, the attempt by settlers to have some influence or control over their surrounding through attracting others with a common background is evident.

Two main roles in the community play a significant role in dispute prevention and containment. The first is that of the early settler who becomes a land promoter (*wasta*), arranging deals between the tribal holders of land on the one hand, and relatives and townsmen seeking to move to the area on the other. Buying land through the *wasta* minimizes the "lack of information" problem in such a market. The second significant role is that of the tribal land owner with a reputation of honest dealing (*mu'azib*) (literally, host). In an interview with one of the tribal members considered *mu'azibs*, he boasted that none of the land sales made by his family<sup>7</sup> had been abrogated. He attributed it to the honest dealings, and their earnest efforts to resolve any problems by making sure the buyer is satisfied. He said,

When a dissatisfied buyer comes back to me asking to annul the sale, I don't even ask for reasons. I return his money and take back my land.

It turns out there is some exaggeration about the lengths to which sellers are willing to accommodate buyers, but there is no question that tribal members try hard to allay any fear or hesitation on the part of buyers by making such claims.<sup>8</sup>

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<sup>7</sup> Family here refers to the extended family, which is a subsection of a clan which in turn is a subsection of the Bani Hassan tribe.

<sup>8</sup> This "confidence building" approach is not significantly different from those used in highly developed markets. The "satisfaction guaranteed or your money back" slogan aims at allaying buyers concerns about switching to a new product.

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

#### Modifying the Seller's Obligations

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

Today, the use of hujja for land transaction without transferring the title and obtaining a title deed (sanad) is illegal.<sup>9</sup> In Yajouz, however, the hujja continues to be used as the only document for transferring the possession of the land.

In the process of interacting with state organs, there has been continuous adjustments in Yajouz to new needs, roles, obligations, and uncertainties. These adjustment have been reflected in many forms, not the least important of which is the

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<sup>9</sup> However, a hujja (proof) is a legally adequate means of transferring ownership in areas where rights to land had not been settled and registered by the Land and Survey Department. In contrast, for land that has been settled, land transactions require the registration of the transaction at the Land Registry Department and obtaining a title deed. Yajouz is registered as state property. Therefore, the hujja is null from a legal point of view.

sale contract (hujja) itself. Over time, the hujja has acquired new meanings, new functions, and new conditions that had never been part of the "traditional" hujja.

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

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

Thus, the tribal seller is a lifetime guarantor of the buyers' possession of the land. This is, almost always, explicitly mentioned in hujjas: "the seller is responsible for the protection of the buyer against the intrusion of tribal members and adjacent neighbors." This provision, however, started appearing differently after 1977: "with the exception of the state" was added to the provision, absolving the seller from protecting the buyer against demolition or appropriation of land by the state. By the mid-eighties, almost all hujjas examined, included this distinction.<sup>10</sup> This change came at a time when

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<sup>10</sup> Examining the terms of contract in hujjas dating between 1970 and 1988, I found that none of the hujjas written before 1977 had a provision for the case of State intervention, be it demolition, fines, eviction, or appropriation. The first hujja I examined with an explicit provision absolving the seller from any responsibility towards the buyer in case of state intervention was dated in 1977. About sixty percent of hujjas dated between

the state had stepped-up its policing of the area in an attempt to prevent further expansion of settlements.

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

In its form, the *hujja* has increasingly resembled official sale contracts: two witnesses are required to sign the *hujja* along with the buyer and seller. Increasingly, standardized *hujja* "forms" in which specific information can be included (such as names, dates, location, etc.) are sold in the market. In some cases, a *hujja* is hand written on paper with the state emblem on top, with the wording and arrangement of text resembling official contracts. Sometimes official stamps that are used for administrative documents are added to the *hujja* (See Figure 4). All these elements: the standard form, the state logo, and the stamps provide an aura of officialdom to the ratification process. The inclusion of such symbols in the ratification process "is aimed at investing transactions with a

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1977 and 1983 had an explicit provision absolving the seller from responsibility in case of state intervention. And almost all *hujjas* dated after 1983 had an explicit provision absolving the seller from responsibility in case of state intervention. In all, I reviewed ninety three *hujjas*.

load of normativity which will increase the security of contractual relationships..." (Santos, 1977: 51).<sup>11</sup>

These *hujjas* play an important role in endowing the Yajouz land market with the certainty and security required by buyers and sellers to conduct their transactions. However, in the absence of official support, these contracts remain unenforceable without the support of local arrangements that enforce these contracts, and act to prevent, contain, and process disputes over land. Such arrangements have developed in Yajouz, some as extension of existing tribal relations, and others in response to new needs, opportunities, and risks posed by the market and the conflict with the state. In the following section, I will examine local arrangements for enforcement of contracts, and prevention and containment of disputes over land.<sup>12</sup>

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<sup>11</sup> In his brilliant study of a squatter settlement in Rio de Janeiro, Santos examines the role of the typed document, witnesses, stamps, etc. Describing the role of the typed document, he states that "[t]he keyboard of the typewriter extracts from the white pater a legal fetish in much the same way that the chisel extracts a statue from stone." (Santos, 1977: 47)

<sup>12</sup> For an in-depth examination of dispute processing, disputing fora, and the involvement of the state in processing private disputes in Yajouz, see Razzaz, 1991.



المملكة الأردنية الهاشمية

~~وزارة المواصلات~~

~~برق ورسائل~~

~~تلفون~~

الرقم

التاريخ

بسم الله الرحمن الرحيم

صحة بيع أرض

لقد تم الاتفاق بين الفريقين الفرديين الأولين السيد محمد بن خالد صفيح

والسيد محمد بن صفيح والفريق الثاني السيد فاطمة بنت محمد صفيح

وتم الاتفاق على بيع قطعة الأرض رقم (٤٩) الواقعة في حي المصيفي في

الضاحية رقم (٤٤) والبالغ مساحتها أربعة فدان وأربعة عشرين

متر مربعاً وتقع في بلدة دياربلا في ولاية عمان وقد تم الاتفاق على البيع

بمبلغ قدره مائة وأربعة وعشرون ألفاً ومائتان وستون ريالاً فقط

وتم الاتفاق على أن يكون هذا البيع حراً من أي قيد أو شرط

وأن يقرض لهذه القطعة من أي مطالب أو ديون أو معارض

وغير ذلك مما قد يترتب عليها من أي وجه أو جهة

والشاهدين المذكورين في هذا العقد

السيد محمد بن خالد صفيح السيد محمد بن صفيح

السيد محمد بن خالد صفيح السيد محمد بن صفيح

Figure 4 : A contract (hujja) using Ministry of Communication stationery! The upper right hand corner reads: The Hashemite Kingdom of Jordan. The crossed-out print reads: Ministry of Communication- Telegram, Mail, Telephone- Post Office. The hand written headings read: In the name of God the Beneficent, the Merciful- Proof (hujja) of Land Sale (see also hujja in Appendix G).

### Threatening to Invoke State Coercive Power

The presence of state coercive power not only influences power relations between state organs and Yajouz residents, but also influences power relations among residents themselves. In an interview with one of the new buyers in the area, I asked him why he thought the tribal seller was going to fulfill his obligations made in the hujja. The buyer said:

The last thing tribesmen want to have, is for me to go complaining to the governor or the police. They know that the authorities are looking for excuses to clamp down on them.

There is no doubt that this is true. Every visit I made to the governor's office or the Department of Lands and Surveys, I was confronted with a barrage of anecdotes proving that the tribes in the area are involved in all sorts of cheating, fraud, and usurpation of state land. The situation was always described as chaotic, a "grave threat to law and order," a "potentially explosive situation where disputes between neighbors, heirs, and contesting claimants, could turn bloody and set the place on fire." These portrayals of "lawlessness" and chaos serve to justify the sometimes harsh measures used by authorities in clamping down on the residents "in defence of law and order and the public interests."

Such a campaign to undermine the tribes' control over land provided a real deterrent from cheating by land sellers. In fact, it seems to have contributed to an "offensive" of good will in which tribal members and families compete to prove their worthiness as dependable parties to deal with.

### Threatening to Resort to Courts

Going to court over property is largely a last resort used when all else fails. "Litigation over property is not very common in Yajouz," a lawyer said, "but it is on the rise." People in the area tend to agree. A shop keeper who was suing his seller said: "I never knew I could bring someone to court over land in Yajouz. We were always warned by the government that if we buy land through a hujja and without proper registration that the sale would be unrecognized by the government and would have no legal value."<sup>13</sup> However, people have become aware that despite the "illegality" of the transaction, there are avenues for restitution available, especially in cases of hujja abrogation and obtaining injunctions against encroachment. In fact, many lawyers seeking clients have been promising restitution in return of 10 percent of the damages collected as their legal fee.

A series of Supreme court decisions during the late 1970's and early 1980's have enhanced the legal positions of buyers vis-a-vis sellers in these settlements (Razzaz, 1991). These shifts in the legal status of the buyer, in addition to the increased awareness of the legal options available seem to have a significantly influenced the outcome of disputes processed outside courts. As one settler put it:

Previously, when a seller was stubborn and refused to negotiate, he would say pejoratively: sue me in court why

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<sup>13</sup> The Lands and Surveys Department used to periodically publish messages in the daily news paper warning citizens of the risk of buying land without obtaining a proper title through the Department.

don't you. Now he would have to think twice before saying that.

Thus, it is not only through litigation, but through the threat of litigation, and the relative power of disputants, that the outcomes of some disputes are determined.

Arrangements in Yajouz, however, were not limited to providing local alternative regulative and administrative mechanisms. As I will show below, arrangements were also developed to resist or circumvent state enforcement mechanisms that threatened the interests tribal members and settlers.

#### Quality Building Deters Demolition

Contrary to one's expectations about building quality in a settlement lacking secure tenure, dwellings in Yajouz are built of relatively high quality, durable building materials. This is done despite the high risk of demolition by the CPSP. As it turns out, while the patrol would simply bulldoze any temporary shelter even if it was inhabited, it would leave intact permanent structures that are already roofed.<sup>14</sup> As a result, settlers have learned that building with durable materials (cement blocks, concrete structures), while involving the risk of demolition and

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<sup>14</sup> These guidelines were not in compliance with any modern Jordanian law, which calls for evicting usurpers of public land and returning the property to its original physical condition at the usurper's expense (see, for example, Law no. 14, 1961, article 6). However, the Ottoman laws (al majallah), which are mostly predicated on shari'a, recognize prescriptive rights: those rights are based on the ability to possess and demonstrate revivication (ihia') of land. While cultivation, permanent construction, renting or collecting rent have traditionally been considered as methods of reviving land, putting up a tent or a temporary shelter has not.

loss of investment, entails significantly better chances at evading reprisals by the CPSP patrol.

#### Protecting the Possession of Vacant Land

Undeveloped and unattended land is hard to protect in a contested settlement such as Yajouz. Such land is vulnerable to be appropriated by the state or encroached upon by neighbors. Settlers, however, have managed to maintain their possession of vacant plots through symbolic or partial development: some settlers built small unfinished rooms. Although these rooms often stood bare and uninhabited, they testified to the holders' claim to the land. Other settlers purchased larger-than-needed plots, fenced them, and built their dwellings on part of the plots, leaving the rest as a backyard with the intent of future subdivision. One of the settlers in the area who has applied this strategy commented on the pleasant layout of his estate:

If you plan ahead, you can have a house, a beautiful yard for the kids to play... and when hard times hit, you can always sell off the yard to someone you trust is going to be a good neighbor (ibn halal).

Evidence from the area shows that many settlers "plan ahead." Those who buy plots larger than 500 m<sup>2</sup>, often build the house on one side of the plot to maintain the option of subdividing the plot further in the future.<sup>15</sup>

Such a procedure, while only allowing for small scale land holdings (the largest plot in the survey area was 3000 m<sup>2</sup>),

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<sup>15</sup> About 50 percent of the plots purchased are larger than 500 m<sup>2</sup>, and therefore can be subdivided and sold.

enables the better-off settlers to acquire larger plots and maintain the option of subdividing them in the future, and at the same time, minimize the risk of losing the land to the state or to private individuals.

#### Evading State Enforcement

As mentioned above, the government's policy of "preventing new expansion," was translated into an active strategy of demolishing dwellings under construction which had not yet been roofed. This "roof" criterium prompted settlers to adjust their building technology to cut down on the time it takes to install the roof. By using wooden scaffolding to hold the concrete roof, the construction period was cut from about two weeks to two days (Razzaz, 1991).<sup>16</sup> This adjustment in the building technology was vital given that the patrol was off-duty Thursdays afternoons and Fridays, the official weekend in Jordan. These days gradually turned into the busiest workdays in Yajouz:

On the weekends of the summer of 1986, Yajouz looked like one whole construction site. Trucks hauling concrete, steel, blocks roaming up and down the main street and into the dusty side roads. Each of the construction sites was a hive of construction workers carrying materials, digging the earth, setting reinforcement, hammering the scaffolding, pouring concrete. There was a deadline that every one trying to build a home has to meet: installing the roof before Saturday morning, when the patrol visit is anticipated.

One of the construction sites was a fifty square meter structure with ten people working on it. The owner of the site, Abu Khalaf, a sixty-five year old man, was working diligently with his five sons and four hired workers. If

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<sup>16</sup> Within two days, builders would excavate and pour concrete foundations, columns, beams, build the scaffolding to hold the roof, pour the concrete roof, and build the outer concrete walls.

the roof was not ready to be installed by Friday evening, Abu Khalaf risked losing his investment, which was already about a JD 1,000 (US\$ 1,500), imprisonment, and additional fines. There was little time to spare.

In another construction location, I talked to an informal contractor. He said the owner of the site was a school teacher. He was not around because he had evening classes, but he would take part in the construction all Friday (weekend). Despite the absence of the owner, the construction work was advancing as quickly as on other sites. The contractor explained that he had just as much at stake to finish over the weekend as the owner of the site; otherwise he would run the risk of being detained for a week or even more. Should the patrol catch a contractor building for someone with no legal title to land, he would be imprisoned and forced to pay a bail of JD. 2000 before he is released. He would also have to sign a pledge not to accept any construction jobs on state's land. The contractor I talked to had already been to jail once.

In a different location close to the main street, a concrete structure was rising from behind a two meter high earth mound. I was told that if the road overlooks the building site, settlers may bring in several truck loads of earth to form a mound that camouflages the building activity by obstructing vision from the road. This gives them the opportunity to move in all the building materials and prepare the foundations during weekdays, without being spotted by the patrol.

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

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

## State Organs Re-adjust

### Readjustment In Enforcement Mechanisms

In 1987, and faced by the continued proliferation of dwellings in Yajouz, the governor allowed the patrol more discretion in carrying out demolition, imprisonment, and fines even if roofs have been installed. The patrol started appearing occasionally on weekends. Many of the buildings newly roofed were demolished. Some were partially demolished. In many cases, settlers had to put their own lives at risk (or seemed to anyway) to protect their investments:

On a Sunday morning I was following the state patrol and a bulldozer roaming up and down the narrow unpaved roads branching from Yajouz Road. They came to a stop next to a construction site: a reinforced concrete skeleton with the roof slab installed but still held by scaffolding. The owner of the structure and about ten family members were still working at the site. A police officer stepped out of the state van, and the settler, an older man, walked up to him. The officer informed him that he was illegally building on state land, and in effect "stealing public property" a punishable crime under the law. The older man swiftly responded to the "stealing" charge by producing the hujja which proved he had paid for the land, but the officer took no notice of it. Then the officer gave orders to the bulldozer to demolish the structure. The settler and his family pleaded and bargained with the officer, but he seemed intransigent. At one point, as the bulldozer moved towards the structure, some of the boys in the family climbed up the structure and others ran inside it, at which point the bulldozer stopped again. Finally, the Officer offered a compromise: If the family stepped out of the structure, he would only have one side-column "kicked" by the bulldozer with minimal damage, but if the boys keep running inside the structure every time the bulldozer moved, he would leave but come back later and totally demolish the structure when the family was not around. The family stepped out, and the bulldozer "kicked" the side column, breaking the concrete cover and exposing bent steel bars.

In other cases, settlers were less fortunate, they faced full demolition. Some of them, mostly the better to do, were able to rebuild, but others were not:

A grocer pointed towards a pile of rubble. He told me that a soldier sold his wife's jewelry and a pick-up truck he owned to finance the buying of the land and the construction of a room. The patrol spotted the construction in its final stage and demolished the structure completely. The grocer commented: "the poor soul had no money to rebuild, he left the site and I've never seen him since."

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

In spite of these continuous reminders, settlers knew that the pattern of enforcement was far from uniform. Rather, it was often capricious or cyclical. As enforcement increased, building activity slowed down and visa versa. But why, one might ask, is the patrol incapable of absolute and sustained enforcement, although harsh sanctions are provided for by the law?<sup>17</sup> The answer lies partly in understanding the limits of law enforcement: full implementation of the law would be politically unfeasible, threatening of a confrontations similar to those of 1983. But beyond the political constraints, there are practical constraints to full enforcement which I will discuss below.

#### Scale of Enforcement

Not only is the contested land vast in area (100,000 dunums (25,000 acres) including Yajouz and other areas), but the number of construction sites, especially during the summer is

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<sup>17</sup> Usurpation of state land is punishable by jail, fine or both; by immediate eviction "without consideration to any claims of possession" by the usurper; and by returning the property to its original physical condition at the usurpers expense. Law no. 14, article 5, 1961 (see also amendments).

overwhelming for a single patrol with access to only one bulldozer.<sup>18</sup>

A police officer heading the patrol had no illusions that the patrol can bring the construction activity to a halt. He said:

The building that is going on these days is simply overwhelming for us to control. The most we could do is to discourage people from building by setting an example of those we do punish.

Furthermore, there is a clear discrepancy between the proportion of settlers who are subjected to demolition and the proportion of those who were detained (41 percent and 7 percent respectively).<sup>19</sup> This, I was told, was due to the limited capacity of the judicial and enforcement system to process these cases. The patrol member said that when the police station or the Public Property Court get flooded with offenders, they instruct the patrol officer not to bring in additional violators.

#### Corruption and Dissent

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

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<sup>18</sup> The bulldozer belongs to the municipality of Zarga and is frequently needed for urgent municipal work.

<sup>19</sup> Survey of Yajouz, summer, 1989.

This discretion created ample opportunities for corruption and bribery. Rumors were circulating that many well to do settlers were paying off patrol members to keep them off their backs. In response, the governor ordered that patrol members be rotated every two to three months.

The rotation strategy caused levels of enforcement to be cyclical. A settler commented:

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

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

Thus, while lack of discretion limits the patrol's ability to circumvent settlers' attempts to elude the enforcement system, increasing the patrol's discretion increases the possibility of corruption.

In addition to corruption, there are signs of dissent within the patrol on ethical and moral grounds. Many appointed patrol members have refused to carry orders of demolition and demanded to be transferred to a clerical job instead. I talked to one of

the employees in the governorate who had requested to be transferred less than a week after he served with the patrol. He said:

I left the patrol because on the first incident of demolition I witnessed, I sided with the settlers instead of the police officer, he reported me, and I requested a transfer...See the King's famous motto is "Let's build this country, let's serve this nation."<sup>20</sup> I do not see the patrol contributing to either... It is us not [the decision makers] who have to face the people. They make clear cut decisions, and we are expected to follow, but they don't see the misery and anguish these decisions bring about...Many of my colleagues in the patrol are not pleased either...Some think of it as another job, others think that their being there actually helps since they can be more lenient towards the settlers.

Thus information networks within the community, the potential for corruption, and establishing relations with patrol members help mitigate and undermine enforcement efforts.

#### Plurality of Public Agenda

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

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

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<sup>20</sup> This statement was made by the King and became a motto that appears frequently on the walls of public offices, in the media, and on national monuments.

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

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

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

In the early 1980's, and in recognition of the vast areas of *de facto* settlements in Yajouz, a governmental committee developed a plan consisting of a series of consecutive steps culminating in provision of metered water and electricity and the regularization of Yajouz. The planned sequence was as follows: the Department of Lands and Surveys would demarcate plots; settlers would pay a portion of the market price (*badal mithl*)<sup>21</sup> for the land and obtain legal title; the municipality would inspect the buildings and issue "occupancy permits" (*ithin ishghal*);<sup>22</sup> and finally, service agencies would provide water

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<sup>21</sup> *Badal mithl* literally means "equivalent," and generally refers to the market value of land. Payments usually range from 50 to 100 percent of the market value.

<sup>22</sup> This permit is issued by the municipality once a building is inspected and is found to meet the building and zoning regulations. Buildings in Yajouz, lacking legal tenure, did not qualify for such permit.

and electricity. Each of the steps in the plan was predicated on the one preceding it.

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

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

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

This administrative fiction of issuing a "pre-permit" rather than an occupancy permit enabled the Water and Electricity Departments to start providing hook ups to dwellings willing to

pay connection fees.<sup>23</sup> And while municipality employees insisted that the pre-permit was not an alternative for the "occupancy permit," the latter was of little value to settlers once services were delivered.

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<sup>23</sup> The Electricity Company (a parastatal) was offered land by a tribal member to locate its generator. A hujja was written, and a structure to house the generator was built. Latter that year, the Committee for Protecting State Property fined the Electricity Company for "usurpation" of State Land (in an letter of protest by the company addressed to the CPSP and the Lands and Survey Department).

## CONCLUSION

The case of Yajouz has made it clear that although residents of Yajouz have developed their own rules, regulations, and contractual arrangements, Yajouz as a social field does not stand outside the realm of governmental law. Therefore, the relationship between a social field and governmental cannot be assumed away. In fact, this paper has suggested that the interaction between the social field and governmental law contributes to the formation as well as the transformation of both the social field and governmental law.

The relationship between the two however, cannot be depicted in static terms. In fact, subordination (Hooker, 1975), complementarity (Black, 1976), conflict (Ruffini, 1978), or hierarchy (Pospisil, 1971) seem to reflect various instances along a continuum in the autonomy of social fields as defined by Moore (1978). When a social field is subordinate to, or complements governmental law and largely exists to the extent it is allowed to, then its autonomy is highly limited, if not absent altogether. When, on the other hand, a social field is in continuous conflict with governmental law and can still function as a social field, i.e. generate rules and induce compliance, then it is likely to be highly autonomous. For the most part, however, social fields are neither completely autonomous nor completely dependent, they are indeed semi-autonomous: they shape, and are shaped by, surrounding social fields as well as governmental law.

Similarly, Yajouz, in its relations with state organs, is a case of a semi-autonomous social field that can regulate its affairs through practices, procedures, networks and arrangements, but is, at the same time, vulnerable to outside intervention. Its relationship to the state cannot be reduced to or labelled as "compliance" or "deviance," for both are often part of the same process used at different times with different state organs. Residents of Yajouz took advantage of, and invoked, some laws, manipulate and circumvented others, and violate and resist still others.

Furthermore, it is important to dispel misconceptions of a social field representing tradition in the face of modernity. Yajouz as a social field is essentially a "modern" response to equally "modern" phenomena: the nation state actively seeking to control the allocation of resources in society by bestowing legitimacy over certain social claims and illegitimacy over others. Indeed, Yajouz came in response to, more than anything else, contemporary threats of dispossession, opportunities for profit, and basic needs for housing. Even the practices, procedures, networks, and arrangements, though drawing on existing tribal and community links, were a product of the process of adjustment and readjustment to intervention by state organs.

This process of mutual adjustment between Yajouz and state organs showed that while the short term impact of state intervention in the early eighties was to curtail the activity of

the land market (figures 1, 2, 3), the long term impact was the development of practices, arrangements, and networks to circumvent and undermine undesirable state intervention, and hence cause the market rebound. The rebounding Yajouz land market, however, was a somewhat different market in its rules, regulations, contracts, networks, and development patterns, thus was significantly affected by state intervention. Similarly, the rules, regulations, and enforcement mechanisms of state organs were transformed in the process of mutual adjustment. The conclusion of this case study, therefore, is not that the state action is irrelevant in the long run, but rather that the temporal effects of state intervention cannot be predetermined or anticipated. Such indeterminacy characterizes not only state intervention, but the whole process of mutual adjustment among semi-autonomous social fields (Moore, 1978).

The nation state of today is highly intrusive of social life such that its influence on local and indigenous communities can no longer be ignored. This is far, however, from the centralist view of the state as omnipresent in, and all-encompassing of, generating rules and inducing compliance to these rules. This study has been an attempt to accommodate the role of the intrusive state within the general framework of legal pluralism.

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