An Agricultural Law Research Article

Land Law and Economic Development in Arab Countries

by

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Comment

LAND LAW AND ECONOMIC DEVELOPMENT IN ARAB COUNTRIES

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This article will discuss some of those aspects of land law in several Arab countries that might have a direct bearing on economic development or economic retardation. In so doing it will follow a historical-developmental approach to questions of legal doctrine, thereby pointing in the direction to which legal development is proceeding.

The law governing land and rights to land in the countries under discussion is an heir to the doctrines of Islamic law and to the various *qānūns*, or secular decrees, issued by the Ottoman sultans or the rulers of Egypt since the time of Muhammad ᶜAli (d. 1849). We would go beyond the scope of this paper were we to review all those doctrines and decrees that shaped the pre-modern laws of land and land rights; suffice it to describe the resultant system before the period of reform in the 19th and 20th centuries.

The rules of Islamic law concerning land, extracted from various parts of the legal texts such as those dealing with contracts, taxation, conquest and division of spoils, etc., do not reflect a systematic treatment of property rights vesting in the owners or possessors of land. Further, the categorization of lands was not made, as elsewhere, exclusively on the basis of property rights. The Islamic system of land tenure was a result of constant interaction between the desire for complete control of land as an income-producing asset, the needs of the state for revenue, and the requirement of keeping the military classes well paid from a dependable source like land taxes or revenue. As a result of this interaction it was not always clear whether the categorization of land holdings represented differences in the rights of ownership and disposal attached to the land, differences in the amount of mode of taxation levied on that land, or differences as to who was the ultimate beneficiary of the taxes levied on it. Indeed, a categorization could involve all these factors taken together.

Nevertheless, an examination of the rules pertaining to land re-

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veal three basic and distinct forms of land tenure: holdings of private property held in full ownership; holdings of *waqf* lands, being holdings in the nature of mortmain; and holdings of state-owned properties held as different kinds of estates in land and subject to different conditions of tenure.

From the point of view of economic development, each of these forms or categories presents advantages or disadvantages, depending upon the extent of the rights that the holder or possessor enjoys. The category with the most power to the holder is private property held in full ownership (*milk*, popularly known as *mulk*). This category dates back to the *ᶜushri* land of Islamic law. The *ᶜushr* was the tithe payable by the Muslim holder of land as a part of the *zakāt*, or almsgiving, levied upon the property of Muslims whether agricultural land, gold, silver, merchandise, or income-producing animals. The law books classified *ᶜushri* land as land belonging to a Muslim at the time of his conversion or distributed to a Muslim soldier as his share of the spoils of war. All land in Arabia proper was considered as *ᶜushri*, since the inhabitants were converted in the first stages of Islamic history. Land located in the cultivated areas of the Fertile Crescent and Egypt and retained by their non-Muslim holders against a payment of a tax or tribute much heavier than the *ᶜushr* was designated as *kharāji* land. Although most of *kharāji* land was taken by force, some, taken peacefully or pursuant to treaties, was considered *mulk*. Thus the *mulk* category comprised *ᶜushri* land as well as the peacefully-acquired *kharāji* land.[1]

The property interest in *mulk* is comparable to the common law fee simple or the French *propriété*. The owner of such property can physically use or enjoy it to the fullest extent consistent with the public interest. In addition, he can dispose of it in a variety of ways including sale, exchange, gift, lease, loan, pledge, and testament. Moreover, he can even designate it as *waqf* property so it becomes irrevocably immobilized in perpetuity and consequently inalienable. Thus, the powers of a *mulk* property owner are equal, or even superior, to the rights of a private property owner under modern Western law. Small wonder, then, that many desired to transform lesser forms of tenure to *mulk*, or at least to increase the powers of the holders of those tenures to approximate those of *mulk*.

The second form of land tenure is *waqf*. Although Islamic jurists did not discuss *waqf* in connection with the types of land holdings, it nonetheless created a property interest distinct from other interests, thereby constituting a separate type of land tenure. What is of particular interest is how the nature and incidents of *waqf* encourage or impede economic development. *Waqf* may be described as an irrevocable trust of property—mostly realty, but in some cases personalty—with the following characteristics: (a) it must be created in perpetuity by the *mulk* owner of such property through an

1. On this most jurists agree. Hanafi jurists, however, maintain that all *kharāji* lands are *mulk*. See Abu Yūsuf, *Kitāb al-Kharāj* 35 (1302 A.H.).

instrument of trust (*waqfiyah*); (b) it is to be administered by a trustee or trustees designated by the grantor, provided that the grantor might designate himself as a trustee; (c) the income or usufruct of the property is applied to beneficiaries, who might be the grantor's descendents or other ascertainable individuals, provided that the ultimate beneficiary is a charitable institution or cause (private or family *waqf*), or for the immediate benefit of a charitable institution or cause (charitable *waqf*); (d) such income is to be payable to such beneficiaries in the manner prescribed by the grantor for as long as the corpus of the property lasts. What distinguishes *waqf* from the common law trust are the qualities of perpetuity, irrevocability, and inalienability, qualities that are pertinent to the question of economic development. As the term "*waqf*" implies, the property is truly "immobilized".[2]

The third form of land tenure, and the most important throughout Islamic history, is state-owned land held in the possession of private individuals. It is difficult to generalize about this form of land tenure because of the variety of land holdings in different periods of Islamic history. A further complicating factor is that Islamic law, the *sharī'ah*, never defined the rights or interests attached to these lands; such definition was left to the state to regulate through *qānūns*, or decrees issued to supplement the *sharī'ah*, as was done by the Ottoman Empire.

The former *kharāji* land that was not considered the *mulk* (or private property) of the holder, and grants made to individuals by the state with less than full ownership rights (*iqtā' istighlāl*, as distinguished from *iqtā' tamlīk*, or grant with full property rights) constituted the bulk of state-owned land in the possession of individuals. There is no indication that the distinction between *kharāji-mulk* and *kharāji*-state-owned was maintained in later centuries; since both paid the *kharāj* tax they came to be treated as state concessions of land entailing less than full ownership.[3] The conditions imposed by the state with respect to such land were far from uniform; sometimes the rights granted were limited, but at other times they were extensive, almost approaching those of a *mulk* holder. In the Ottoman Empire such land came to be called *mīri* land, where the full ownership (*raqabah*) continued in the hands of the state, with only possession (*taṣarruf*) vesting in an individual.

Such, in brief, were the main traditional forms of land tenure in the countries under consideration. Except for *mulk* lands, with the rights of their holders to full enjoyment and disposal, the other forms of tenure were not conducive to economic development because of their limited rights to either enjoyment or disposal. But by

2. Debs, *The Law of Property in Egypt: Islamic Law and Civil Code* 20-21 (Princeton: unpublished Ph.D. dissertation, 1962).

3. Lokkegard, *Islamic Taxation in the Classical Period* 56-62 (1950).

the end of the 19th century economic forces were at work to expand the rights in *waqf* and state-owned properties.

Developments in Waqf Law

The qualities of perpetuity and inalienability of a *waqf* precluded the sale, or even the mortgage, of the property to raise cash. Also, since the laws of *waqf* did not allow the lease of *waqf* property for more than three years, there was no incentive for the lessee to improve the property leased. Furthermore, the beneficiaries of a family *waqf*, whose number increased in succeeding generations and whose beneficial share steadily decreased as a consequence, lost interest in its maintenance. But lawyers devised legal strategems that allowed the long lease of *waqf* property, thus creating a form of tenure that encouraged the lessee to improve the property in anticipation of future gain. The lessee carried out extensive repairs or renewed the cultivable land, recouping his investment with the passage of years. Various types of such arrangements arose, the most important of which was the *ḥikr*, with its two special categories, perpetual lease *(ijāratayn)* and lease for an indefinite period (*khulūw*). *Ḥikr*, therefore, was to *waqf* property what usufruct was to *mulk*, although *ḥikr* could be allowed on private property if it was in need of extensive repairs. *Ḥikr* could only be concluded for reasons of necessity or expediency, and with the permission of the judge. The grantee of *ḥikr*, his interest being a real interest, could dispose of his right. Constructions, plantations, and other works carried out by the grantee belonged to him absolutely, and he could dispose of them separately or together with the right of *ḥikr*. This institution imparted much economic flexibility to *waqf* land holdings.

Of the two types of *ḥikr*, *ijāratayn*, "two rents," usually pertained to *waqf* buildings that were in need of repair. It was granted in consideration of immediate payment of a sum of money equal to the value of these buildings (i.e., the "first rent") and the payment of an annual rent for the land equal to the rental value of similar land (i.e., the "second rent"). The other type of *ḥikr*, *khulūw*, was a contract by which a *waqf* granted a lease of a property even without the permission of the judge in consideration of a fixed rent for an indefinite time. The *waqf* could, at any time, rescind the contract by due notice, provided that the *waqf* compensated the lessee for his expenses. From the incidence of these two types of *ḥikr* it can readily be seen that *ijāratayn* is a real right, while *khulūw* is a personal right.[4]

Modern legislation in Arab countries sought to regulate this institution. The Egyptian Civil Code of 1949 limited its scope because it constituted a restriction on the right of ownership, especially as applied to *mulk* land. It limited the period of the *ḥikr* so that it

4. For a more detailed discussion of this subject, see Ziadeh, *Property Law in the Arab World* 64-68 (1979).

would not exceed sixty years (Art. 999). It stipulated that no *ḥikr* could, after the Code came into force, be established on land that was not designated as *waqf*. Following the Egyptian Revolution of 1952, the great majority of *ḥikrs* came to an end by virtue of Law No. 180 of 1952, which abolished private *waqfs* and, in effect, abolished *ḥikrs* on land belonging to them. Law No. 92 of 1960 provided that all *ḥikrs* on charitable *waqf* land were to be terminated within a certain period. In Iraq, Law No. 138 of 1960 extinguished all real rights over *waqf* land including the rights of *ijāratayn* and long lease (*muqāṭaᶜah*), which is like *khulūw* if the period of such rights was not specified. In Syria, since private *waqfs* were abolished by Law No. 76 of 1949, the articles of the Civil Code which regulated *ijāratayn* and *muqāṭaᶜah* pertain to charitable *waqfs* only. Even the creation of these two real rights over *waqf* property after 1958 was no longer possible as Law 163 of 1958 prohibited the creation of any real rights with regard to *waqf* lands. Consequently, only such real rights created before 1958 are still valid. In Jordan, the Civil Code of 1977 limits *ḥikr* to *waqf* property (Art. 1249) and provides that the period of the *ḥikr* may not exceed 50 years. In Lebanon and Syria, while under French mandate, Decree No. 3339 of 1930 empowered the holder of the right of *ijāratayn* to buy the fee simple of the land subject to the right by paying an amount equal to thirty times the yearly "rent"—a rather novel way to extinguish *waqf* over land.

As mentioned earlier, ways were found in pre-modern times to evade restrictive laws to allow long leases of *waqf* land by means of *ḥikr* and its variants. But such long leases were themselves restrictive, especially in view of the modern drive for agrarian reform, and hence were limited or abolished altogether by modern legislation.

Developments in Law of State-Owned Lands

Expansion of the rights of holders of state-owned land was another economic factor that gave land-holders a freer hand. In Egypt, for example, the powers of holders of state-owned property gradually increased so that such property eventually assumed the character of *mulk*. Most state-owned land in Ottoman Egypt was distributed as concessions, termed *rizqah*, to private individuals who were often military fief holders. Furthermore, the state allowed a form of *waqf* on the usufruct of these state-owned lands, called *rizqah aḥbāsīyah*. Such holdings continued to the modern era and constituted the primary form of land-holding at the beginning of the 19th century.

The first important step to enlarge private property in Egypt was taken by Saᶜīd (1854-63) with his promulgation of the Law of 5 August 1858, popularly known as the *Saᶜīdīyah*. By that law the property rights of *ibᶜādīyat* (lands farmed out for their usufruct rights) holders were confirmed as full rights of ownership. Furthermore, property improvements constructed on *kharāji* land were declared to be the private property of the holder. Under Ismāᶜīl (1863-

79), a decree of 10 January 1866 permitted *kharāji* landholders to bequeath their land by will, a step contrary to general Islamic practice, which allowed only *mulk* land to be so bequeathed. Later, the *Muqābalah* law of 30 August 1871, in order to relieve state indebtedness, allowed *kharāji* landholders to buy the fee simple (*raqabah*) title of their land. The law freed from half-tax liability anyone who paid six years' taxes in advance, and accorded him full ownership rights. Three years later, such payments were made compulsory and most of the affected lands were thus brought under the full ownership of their holders. In 1891 a decree made landholders full owners in any case, and five years later the distinction between *kharāji* and *mulk* land was removed. Even the difference in taxation of the former two categories was removed early this century with the completion of a new cadastral survey.

A parallel development, although by no means as profound, was taking place in the Ottoman Empire outside Egypt. As part of the legal reform (*tanẓīmāt*) in the Empire, the Land Code of 1858 was promulgated. The Code defined the various categories of land, and particularly regulated the state-owned land called *mīri*, whose possession or usufruct (*taṣarruf*) was in the hands of individuals. Such individuals were to receive a title deed, called *tapu*, upon payment of a prescribed fee. From then on the differences between *mulk* property and *mīri* property became rather slim: *mīri* land could be sold, the prescribed permission of the appropriate government agent becoming, in time, a formality. Such land could also be inherited, but the order of devolution departed from the accepted rules of the *sharīᶜah*. The only limitations on the *mīri* title were that: (1) the state could theoretically deprive the *mīri* title holder of his possession if the land was left uncultivated for a period of three years (Art. 103); (2) the *mīri* holder, because he lacked title to the full ownership (*raqabah*), could not make his holding a true *waqf*; and (3) the *mīri* holder could not dispose of his interest by will.

Unfortunately, the Land Code did not fulfill its promise. It was intended to introduce a general system of individual ownership following the abolition of military fiefs and tax-farms. In order to do so, it was necessary to establish the ownership of every piece of land by means of registration of title by *tapu*, but no general registration was ever carried out. The villagers falsified the returns, fearing either the imposition of taxes or call-up for military service, for which they thought registration was a preliminary step. Thus, they registered the property either in the name of the head of the tribe or in the name of a trusted city merchant. The result was a near total divergence between registered titles and actual possessory titles that could be supported at law by the doctrine of prescription. The survey and registration that took place in Syria and Iraq between the World Wars merely consolidated the property of large landholders. Agrarian reform had, therefore, to depend on the assignment of state lands to small cultivators, at least in the early stages of the

reform.[5]

A considerable part of the cultivated land in Labanon had become *mulk* even before the period of modern reform. This is attributable to the fact that Mount Lebanon, the central part of modern Lebanon, had enjoyed a large measure of autonomy in the Ottoman Empire. The lands of Mount Lebanon as defined in the Protocol were, therefore, not subject to the Ottoman Land Code which regulated *mīri* lands. They were, instead, understood to be *mulk* and subject, therefore, to the *sharīᶜah* and some customary practices, as well as to some special provisions contained in the Protocol. The other areas, however, that were joined to Mount Lebanon to form Greater Lebanon (the present Republic of Lebanon) following World War I had been part of the Ottoman provinces (*vilayets*) and were, therefore, subject to the Ottoman Land Code, which considered practically all cultivated land as *mīri*. The distinction in land classification between these two areas of modern Lebanon still persists.[6]

Preemption

Another aspect of land law pertinent to the free disposal of land is the institution of preemption (*shufᶜah*), which still constitutes a part of modern land law in some Middle Eastern countries. It may be defined as the right of a person to substitute himself for the purchaser in a completed sale of real property (by virtue of an interest he has in the property sold as a co-owner, or of being a sharer in a right-of-way or a course of water, or of being an adjoining neighbor) whereby he would acquire ownership of such sold property upon certain conditions. The most extensive right to *shufᶜah* is given by the Ḥanafi school of jurisprudence, whose doctrine holds sway in Egypt and the Fertile Crescent. Two of the early schools of law, the Mālikī and the Shāfiᶜi, restrict this right to the co-owner.

The jurists have always held that *shufᶜah* was a "weak" right that lapsed if the rigid procedure for its enforcement was not followed, presumably because, as developed by Ḥanafi jurists, it restrained freedom of contract and tended to keep strangers and outsiders excluded from communities that wanted to keep them out. Indeed, such a situation had been predicted by the Umayyad Caliph ᶜUmar ibn ᶜAbd al-ᶜAzīz (717-720), who wrote to his chief judge in Egypt saying, "We say that we used to hear that *shufᶜah* belongs to the co-owner and to nobody else. . . If *shufᶜah* were to be exercised by a neighbor. . . then no sooner would a person [buy] a piece of land than it devolves to his neighbor until a stop is put to all development."[7] We do not know how this institution fared in later centuries because of the paucity of law reports. But the Ottomans gave it

5. Warriner, *Land Reform and Development in the Middle East* 65-70 (1962).

6. Ziadeh, supra n. 4 at 10.

7. Al-Kindi, *Kitāb al-Wulāt wa Kitāb al-Quḍāt* 334-335 (Guest, ed. 1912).

wider scope by their propagation of the Hanafi rite until it was codified in the Civil Code of the Empire, the *Majallah*, in 1869.

Its inclusion in the Egyptian Civil Code of 1949 was subject to controversy in the committees studying the codification. The major argument against it was that it restrained freedom of contract. When it was finally adopted, it was modified and severely restricted. The exercise of *shufᶜah* by neighbors has been restricted, and *shufᶜah* is not to be exercised in the following cases: (a) if the sale is made by public auction; (b) if the sale is made between ascendents and descendents, spouses, relatives to the fourth degree, or relatives by marriage to the second degree; and (c) if the property sold is destined for religious purposes (Egyptian Code, Arts. 936-939). One innovation which further restricts the right of preemption is the requirement that the actual sale price must be deposited in full at the *caisse* of the district court in which the property is situated before the introduction of the action in preemption (Art. 942). This was designed to discourage actions whose main aim was to extort money from the parties to a sale by threatening to initiate an action for preemption.

In Syria, the Civil Code of 1949 abolished this institution completely, the Explanatory Memorandum accompanying the Code declaring, "It is, in fact, a weak right, and the social and economic life in Syria does not necessitate its adoption."[8]

In Lebanon, preemption was regulated by Decree No. 3339 of 1939 as amended by the Law of 5 February 1948. But preemption in Lebanon has a wider scope than in Egypt, for it applies not only to sale of ownership, usufruct, and *hikr*, but also to the sale of other real rights—e.g., *saṭḥīyah* (right of support), *ijārataynِ*, and *taṣarruf* (possession). Since *taṣarruf* applies to *mīri* land, preemption in Lebanon embraces such land also, although in other countries it is subject to a right similar to preemption, but distinct from it, called the right of preference (*awlawīyah*). As in Egypt the right is personal and therefore cannot be sold, but contrary to Islamic law and the dominant practice in Egypt, it can descend to the heirs by inheritance.[9]

In Jordan and Iraq the law is almost the same as in Egypt in all essentials save for some differences which pertain to the priority of persons having the right of preemption. The right of preference to *mīri* land, known in full as *ḥaqq al-awlawīyah wa al-rujḥān*, or *awalawīyah* for short, was first regulated by Arts. 41-45 of the Ottoman Land Code and later incorporated in the Iraqi Civil Code (Arts. 1216-1217) and Jordan Civil Code (Arts. 1150-1170). It departed from preemption in that it did not recognize a neighbor among the persons entitled to exercise it.

In the absence of statistics on the exercise of preemption rights, it is difficult to assess their effect on the free disposal of land; how-

8. The Syrian Republic: Ministry of Justice, *al-Qānūn al-Madani*, 10 (1949).
9. See Tyan, *al-Niẓām al-ᶜAqāri fi Lubnān* 85-87 (1954).

ever, there is a *prima facie* case, as the Syrian Code perceived, that such rights are not in the interest of a dynamic economic life.

Mortgages

If preemption and preference retard economic development, the institution of mortgage should enhance it by making possible the raising of capital through loans secured by mortgages. The *sharīʿah* knew only the possessory pledge whereby the creditor entered into possession of the property of the pledgor and applied the income from the property against the amount due on the debt, remaining in possession until the debt was paid. A similar contract known to the *sharīʿah* was sale with a right of redemption (*bayʿ bi-al-wafā'*), which operated like a possessory pledge. But both the Egyptian and the Syrian codes provided that when a vendor reserved to himself at the time of sale the right to take back the thing sold within a fixed time the sale would be void (E.C.C. 465, S.C.C. 433). The Jordanian Code does not include this provision, presumably because its provision for possessory pledges made this kind of sale superfluous. All modern codes in the countries concerned now provide for possessory pledges of immovables, as well as for formal mortgages where the creditor does not get possession of the immovable but acquires over it a real right by which he obtains preference over other creditors for the repayment of his claim out of the price of the immovable. The preference of the right of a mortgagee as against that of another is of course determined by precedence in the inscription or registration of the mortgage instrument at the appropriate governmental office. This principle gave rise in Syria and Lebanon to a novel kind of "deferred" mortgage that enabled businessmen to raise capital but at the same time made allowance for their sensitivities about being widely known to have mortgaged their property, especially in the closely-knit societies of the Levant.

A deferred mortgage is essentially a device to protect the credit standing of businessmen in the community while at the same time endeavoring to protect the interests of creditors who lend them money. Since mortgages, to be effective, must be registered on the page assigned to the particular property in the Land Registry, and since all such registrations are public and can easily be seen even after cancellation following the repayment of debts (a permanent record of one-time financial difficulties resulting in indebtedness and mortgaging of property), a way was found to secure the debt but avoid publicity. The deed of the debt and mortgage, together with the title deed of the property mortgaged, are turned over to the creditor who deposits them both with the Director of Land Registry with the instructions that he should not register any other right that affects the creditor's priority before registering the creditor's own right. These instructions are registered in the Daily Register and also, temporarily, on the page in the register pertaining to the property, but without being inscribed on the title deed. If, within the

next ninety days, which is the period during which the instructions remain in force, a third party comes forward to register a real right over the property, the Director of Land Registry would inscribe the mortgage before inscribing this latter real right, and the inscription of the mortgage would bear the date of the original instructions. At the end of the ninety days the creditor would either withdraw his instructions or proceed to inscribe his mortgage in a final form. In this manner the interests of the creditor-mortgagee are protected, and the debtor, if he pays the debt within ninety days, avoids all publicity.[10]

Modern Agrarian Reform

Post-war agrarian reforms brought about changes in land tenure and land use that had the double aim of establishing social justice and bringing about an upsurge in economic development. Even before the Egyptian Revolution of 1952 political leaders were keenly aware that land reform was necessary for diversification in investment opportunities, as the Explanatory Memorandum of a 1948 bill for agrarian reform revealed:

> There are strong reasons for limiting agricultural-land ownership. . . . The first is that agricultural land should not be considered a mere means for the investment of capital. It is first and foremost a means for earning a living and a way of life which should not be put beyond the reach of those who live on the land or who till it. In addition, its value in Egypt is many times the value in other countries because its extent is limited and the demand for it is very high. Justice demands that it not be concentrated in a few hands and that a large number of people should enjoy it.
>
> The second reason is that the time has come to desist from that well-known competition for buying agricultural land and for accumulating most of the available capital for securing it, while national industry is in dire need of Egyptian capital and Egyptian efforts. There is no way of realizing this except to constrict the opportunities before those who desire to invest their monies in agricultural land while residing away from it. It is to be noted also that this constriction would provide a practical solution to the problem of foreigners owning agricultural land because foreigners who desire to buy it are for the most part capitalists who look for extensive areas and who, therefore, will not find what they need under the circumstances of limited ownership. Thus it would be unnecessary to promulgate special legislation concerning this matter.[11]

The post-Revolution Decree Law No. 178 of 1952, which actually

10. Id. at 63-64.

11. See the Memorandum in ᶜAli Barakāt, *al-Milkīyah al-Zirāᶜīyah bayn Thawratayn: 1919-1952*, 109-118, esp. 114 (1978).

launched agrarian reform in Egypt, echoed the twin aims of social justice and economic development. The Explanatory Memorandum demonstrated how the extraordinary rise in the price of agricultural land led purchasers to try and extract from it an income commensurate with the high price they had paid. Since they could not increase their income by raising the price of agricultural products, which is governed by the laws of the market, they sought to cut expenses by squeezing the wages of agricultural workers.[12]

The 1952 Law limited landownership to a maximum of 200 *feddāns*[13] per person, and an amendment of that law in 1958 limited the maximum area which could be owned by a person and his dependents to 300 *feddāns*. In July 1961, however, further limitations were imposed by Law No. 127. Landownership was limited to an area of 100 *feddāns* per person (of fertile or uncultivated land), but the total allowed for a family continued to be 300 *feddāns*. In addition, whereas the former law allowed a person to rent an area equivalent to that which he could own, the 1961 Law limited the maximum that a person and his family could rent to 50 *feddāns*. Finally, Law No. 50 of 1969 removed the discrepancy between the area of land that a person could own and the area he could rent by decreeing that no single individual could own more than 50 *feddāns* of agricultural land or its equivalent of uncultivated and desert land, and that the maximum that a family could own would be 100 *feddāns*. Land in excess of these limits were to be taken over by the Ministry of Agrarian Reform to be distributed or leased to small farmers. Owners were compensated for their lands by bonds set at fifty times the land tax. By Law No. 138 of 1964 small farmers, who were the beneficiaries of the land distribution program, were to pay only one-quarter of the value of the land sold to them, payable in forty annual installments and free of interest charges.

By other laws all *waqf* agricultural land administered by the Ministry of *Waqfs* were turned over to the Ministry of Agrarian Reform for distribution, and all land owned by foreigners were likewise taken over by the same Ministry, as foreigner were henceforth prohibited from owning agricultural land (Law No. 15 of 1963). By 1965, 94.5 per cent of the landholders of Egypt owned less than 5 *feddāns* each, amounting to 57.1 per cent of the total agricultural land. Those owning up to 100 *feddāns* constituted only 0.1 per cent of the landholders and owned 6.5 per cent of the total agricultural land.[14]

The principle of social justice, which aims at making landowners of the greatest possible number of peasants, conflicts with the principle of the free disposition of land as a factor in a dynamic economy and with the obvious advantage of large-scale agriculture in effectuating economies in production and distribution. The 1969 Law specifically voided any contract transferring a property right in vio-

12. See Salāmah, *al-Qānūn al-Zirāʿi* 50-51 (1976).
13. A *feddān* is approximately one acre.
14. See Ziadeh, supra n. 4 at 89-90 and authorities cited there.

lation of the forementioned limitations (Art. 1, para. 3). Property devolving by will or by inheritance, where the legatee or heir comes to own more than the set limit, is considered properly devolving, but a notification should be made of that to the proper agrarian reform office, and the necessary adjustment made among the members of the family within one year so that the limitation be maintained (Art. 7). Thus, the principle of social justice should, and did, prevail.

Exceptions to the maximum limitations were made in favor of corporations and societies that improved desert land for purposes of eventual sale or distribution to individuals, industrial corporations that need extensive land for their operation (e.g., sugar corporations, dairies, and wineries), and agricultural research societies that were in existence before the 1952 Law.[15]

As for the question of fragmentation of holdings and its deleterious effect on the agricultural economy, two measures were taken to combat it. In the first place, the 1952 Law (Art. 23) provided that should fragmentation take place as a result of any legal disposition whereby an individual holding is less than five *feddāns*, those concerned must come together to determine to whom the property should devolve in conformity with the law; otherwise, the court would decide to whom it should devolve or order its sale.[16] Secondly, the 1952 Law (Arts. 18-19) provided for a system called "organization of agricultural production". Under this system a chosen area is divided into large plots and each plot planted with a certain crop in rotation. Each plot would include many individual holdings whose owners continue to keep their property rights, work their individual holdings, and receive their crops. This cooperative system allows the use of mechanization on a large scale and brings about various improvements in agriculture, such as a proper choice of seeds, fighting pests, digging and maintaining canals and enforcing crop rotation.[17]

Between 1952 and 1975 the area under cultivation increased by 8% and the cropped area by 14%; the production index of agricultural products rose (1961-1965 = 100) from 88 in the year 1961 to 102 in the year 1971. However, in view of the great increase in population, the production index decreased relatively. Although Egypt, between 1950 and 1965, was successful in increasing food production by a ration surpassing that of the increase in population—the first time it did so since the 1930s—the ratio of population increase has surpassed that of food production since the mid-1960s.[18]

Closely associated with the Egyptian Agrarian Reform Program was that of Syria, which had joined Egypt to form the United Arab Republic on 1 February 1958. Law No. 161 of 27 September 1958

15. See Salāmah, supra n. 12 at 201-212.

16. For the difficulties encountered in enforcing this provision, see id. at 218-221.

17. See Abu-Oaf, "Legal Aspects in Implementing Land Policy," in El-Ghonemy (ed.), *Land Policy in the Near East* 124-133, esp. 130 (1967). For the beneficial effects of the cooperatives, see the excellent chapter on land reform in Mabro, *The Egyptian Economy: 1952-1972*, 56-82, esp. 74-82 (1974).

18. Al-Giritli, *Khamsah wa-ᶜIshrun ᶜĀman: 1952-1977*, 92-93 (1977).

launched agrarian reform in the Syrian region of the Republic, following the Egyptian reform rather closely with regard to expropriation and distribution of land. Other subjects of agrarian reform were incorporated in the Law on Agricultural Relations of 4 September 1958. But following the secession of Syria from the United Arab Republic in September 1961, the agrarian reform program faced difficulties due to the influence of large landholders, and was in fact completely abolished in February 1962. The army coup of March 1962 led to the program's restoration in May. Finally, the Revolution of March 1963 facilitated the promulgation of Law No. 88 of 1963, which amended the original law, particularly with reference to the upper limits of allowable landholdings. This law set a variable upper limit ranging between 15 and 55 hectares for irrigated land, depending upon the location of the land and upon the means employed in irrigation, between 35 and 40 hectares for lands planted with olive or pistachio trees and between 80 and 200 hectares for rain-fed lands, depending upon the average amount of rainfall in a particular area. An additional area of 8 per cent of the allowable maximum could be assigned for each wife and child. Land in excess of these maximums was to be assigned to small farmers in plots not exceeding 9 hectares for irrigated land or land planted with trees, and not exceeding an area ranging between 30 and 40 hectares for rain-fed land, depending upon the average rainfall in a particular area. Small farmers benefiting from this program were to pay one-quarter of the value of the land in ten annual installments. By 1969 an area of 3,055,000 hectares was distributed among 43,037 families. In addition, 600,000 hectares of state-domain and 85,000 hectares of improved land in former swampy areas were distributed.[19]

In Iraq, too, agrarian reform followed in the wake of the Revolution of 14 July 1958. The Law of Agrarian Reform of 30 September 1958 followed the Egyptian model in its broad outline and philosophy. Its goals were the destruction of the "feudal" economic and political hegemony, the raising of the standard of living of the *fellahin*, and the raising of the level of agricultural production in the country. As amended by Law No. 117 of 1970, the agrarian reform program limited holdings to figures ranging between 2000 *dunums*[20] for rain-fed lands in areas where the average rainfall is 400 millimeters per year, and 40 *dunums* of the most fertile areas irrigated by natural flow. No compensation was to be paid for expropriated land, and no payment was to be made by the peasants for land distributed to them. Distributed holdings ranged between 200 *dunums* for not-too-fertile, rain-fed land to 4 *dunums* for land irrigated by natural flow. Although it was at first thought that distributed land became the full property (*mulk*) of the holders, the 1970 Law put the matter to rest by declaring such holdings as *mīri*.

In Jordan the important development has been not so much agrarian reform as a concerted effort to bolster property rights in ur-

19. See Ziadeh, supra n. 4 at 90-92 and the authorities cited there.

20. A *dunum* is 1,000 square meters.

ban areas, as well as in the East Ghor Canal Development, a project built around an irrigation scheme from the Yarmuk River. Law No. 41 of 1953 provided for the conversion, under certain conditions, of *mīri* land to that of *mulk*, and in particular for the conversion of all land falling within present and future municipal boundaries to *mulk*, no matter what the previous categorization might have been. The East Ghor Canal Law (No. 14 of 1959) converted the whole area of the East Ghor Canal to *mulk* land. One further provision of this law, which acts as a limitation on the right of ownership, is that land units, whose minimum area is 30 *dunums* each, may not be fragmented.

The Jordanian Law No. 31 of 1966 empowers the Natural Resources Authority to expropriate land benefiting from a major public irrigation scheme and to redistribute it according to certain principles and in plots ranging between 30 and 200 *dunums*, depending upon the fertility of the land and the crops that can be raised.[21]

The importance of agrarian reform in combatting rural poverty and in strengthening the national economy can be better appreciated when it is pointed out that in the countries of the Near East, 50-80 per cent of the population are employed in agriculture, which, with the exception of the major oil-producing countries and trade-oriented Lebanon, represents 30-60 per cent of the total gross national product.[22]

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In the one-hundred years or so between the promulgation of the Land Code in the Ottoman Empire and the major agrarian reforms in the beginning of the second half of this century major developments in land ownership and land law took place, which can be summerized as follows: (1) A shift in land ownership and control from the comparatively few notables and members of military classes to the many farmers and peasants who actually work the land; (2) Land is no longer primarily a resource for the payment of stipends for military officers, but a national resource on which the national economy depends to a considerable degree; (3) A liberalization in land law looking toward (a) enlargement of the powers of the landholder over this land and the transforming of *mīri* or state-owned lands to *mulk* lands, (b) devising ways and stratagems to defeat the stranglehold that *waqf* had over agricultural land and finally removing that stranglehold in some countries, (c) weakening or abolishing the institution of preemption which restricts freedom of contract and economic development, (d) allowing non-possessory mortgages and even deferred mortgages to liberalize the conditions for obtaining credit, and (e) instituting programs of agrarian reform to benefit both the greatest possible number of peasants and farmers and the national economy.

21. Id. at 95 and the authorities cited there.

22. El Ghonemy, "Land Reform and Economic Development in the Near East," 44 *Land Economics* 36 (1968).