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The rural history of the Ottoman Arab provinces is a relatively new field of Arab and western historiography (Michel 2005: 1-16; al-Bakhit & al-Kahawati 2013). However, numerous studies have been carried out on the local level showing the importance of land for social history as well as from an economic point of view (İnalcık 1994; Rafeq 2002; Sa’īd 2003). Other studies have concentrated on showing the impact of land reforms in Ottoman rural areas by examining sources from local traditional legal institutions (documents from religious courts, legal texts and fatwa-s). Yet, no research on the level of the Bilād al-Shām as a whole has been carried out on the transformations in land ownership that took place at the end of the 19th century. In order to shed more lights on the Ottoman land tenure system in the Arab provinces at the beginning of the 20th century, this paper examines two neighboring areas. The aim of this comparative approach is to add nuance to the concepts of “ownership” and “property,” to evaluate and define the tenure environment, to examine the varieties of the areas concerned, and finally to look at the role of local actors in the application of laws relating to the land tenure system. In the 19th century, rural areas made up the greater part of the territory of the Ottoman Empire, and people living in rural areas made up around 60 per cent of the total population.2 Revenues from land were

1 IREMAM, Aix-en-Provence, France.
2 For the administrative district (qadâ’i) of Homs at the very end of the 19th century, the total population of the qadâ’i was set at 53,401 inhabitants in the Ottoman census of 1881/82 (Karpat 1985: 242). In 1893, Karl Baedecker in his tourist guide noted that the town of Homs alone had 20,000 inhabitants (Baedecker 1893: 378).
the Empire’s greatest economic resource (Owen 2000: ix). As a result, the changes in land ownership that came about after the major series of reforms (Tanẓimāt) carried out by the Porte represent a major turning point in the history of Ottoman rural areas, both in the exploitation and division of land at the individual, local and provincial levels.

Carrying out an empirical investigation of “law and property in Lebanon” means addressing two unavoidable preliminary questions, the one having to do with the area involved and the other relating to the definition of the term “property.” The research presented here raises the question of the pertinence of the target area of Lebanon. This geographical area is included in the Bilād al-Shām translated as “the Syrian Land”, a “region limited in the north by the Taurus Mountains, bordering in the east on the Syrian Desert, stretching to Aqaba and the Sinai in the south, and opening in the west to the Mediterranean” (Philipp & Schumann 2004: 4). Taking Lebanon out of this ensemble and analyzing the “Lebanese” system of land tenure by considering this area as a coherent unity (Serghy 2010: 21) would necessarily have meant placing it in the context of the major Ottoman reform movement that aimed to homogenize the Empire as a whole, thus bringing out Lebanese special features. But covering the whole of the Bilād al-Shām would have meant describing the main lines of the Ottoman land reforms by drawing on the extensive legal literature produced during the period of the Tanẓimāt (re-organization) and the period following it that was marked by the application of earlier reforms under the authoritarian rule of Abdul Hamid II, the last great Ottoman sultan.

In order to avoid the risk of either particularism or generalization, this paper puts forward a comparative approach to Syria, or more precisely the wilāyat Sūriyya of the second half of the 19th century, Mount Lebanon (Jabal Lubnān) and the Plain of the Beqa’ from 1861 onwards, the date when the autonomy of Lebanon was established through the successive Mutaṣarrifiyya

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3 This article came out of a contribution to a study day entitled “Droit et propriété au Liban: Explorations empiriques” (Beirut: Ifpo-Centre Jacques Berque, 2012) as part of a research programme on “Anthropologie du droit dans les mondes musulmans africains et asiatiques” (ANDROMAQUE, ANR Suds II et PROMETEE, ANR FRAL).

4 In 1864, the provinces law divided Syria into two provinces (wilāyat), Aleppo (wilāyat Ḥaleb) and Damascus (wilāyat Sūriyya). In 1888, the wilāyat Sūriyya was divided into a further two provinces, one coastal and centered on Beirut and the other one being the province of Syria administered from Damascus (Georgeon 2003: 171175).
agreements made by the central government at the demand of the western powers of France, Britain, and Russia. The study is divided into three parts linked by an examination of the central policy of the rationalization and homogenization of all the imperial territories. Can characteristics proper to the Lebanese Mutāṣarrifīyya be identified? Was Lebanon really so very different from the other Ottoman Arab provinces?

**Land tenure in the Ottoman Empire**

In the Ottoman Empire and more particularly in Syria and Lebanon, the super-imposition of laws and customs led to confusion among the actors in the field, who used the same terminology for different practices. This multiplicity of meanings is indicative of how the uses of the same vocabulary developed over time.

*The meanings of property*

In its everyday usage, the generic term “property” designates various things, including real estate, movable goods, land, estates, various objects, ideas, and intellectual and artistic productions.

According to article 544 of the Napoleonic Code, “property is the right to make use of things in the most absolute manner, so long as no use is made of it that is prohibited by law or regulation.” In this article of the Civil Code, “absolute individual ownership is recognized, which puts an end to feudal ownership and to its ‘simultaneous proprieties’ as well as to community ownership” (Beaud 2014: 136). In Islamic law, property is divided into two categories of material goods, movable objects or furniture (*manqūla*) and immovable goods or real estate (*ghayr manqūla*), among the latter being “land, houses, etc. or, according to their aim, ploughing equipment, trees,

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5 A. Heidborn writes that “according to the official journal, the Porte also counted the Island of Crete and Lebanon among its direct possessions, with the later included among the independent districts” (Heidborn 1908: I, 7).

6 Article 544 of the French Civil Code says that “propriété est le droit de jouir et disposer des choses de la manière la plus absolue pourvu qu’on n’en fasse pas un usage prohibé par les lois ou par les règlements.” This article has remained unchanged since 1804. The concept of property thus appears to be unchangeable.
and anything that in general is so inherent to the land that it cannot be
detached from it without damaging both the land and the object concerned”
(François-Alphonse 1862: I, 21). These two categories of immovable goods
are designated by the term *mulk* or *milk*, depending on the dialect or regional
accent employed. The word means “property” as well as “property rights”
(*ḥaqq al-milikiyya*).

However, while the Ottoman Civil Code (*Mecelle*) promulgated in
1869 was inspired by the French Civil Code (1804), “the Ottoman notion
of property seems much closer historically to English feudalism,” (Ghazzal
2007: 10 fn 8) “because the common law perceives property rights as an
abstract entity (such as an estate or a term of years)” (Mattei 2000: 9). Thus,
the new legal transformations “took place with all kinds of old property
rights still protected” (Ghazzal 2007: 10 fn 8). These older laws originated
not only from older Muslim and Ottoman laws, but also from local customs,
and despite their being recorded in written form, confusions and litigation
surrounding property rights and usufruct continued to occupy the Ottoman
civil and religious courts. Owners claimed their property rights (*ḥaqq al-
milikiyya*) in the local courts against the demands by those occupying the land
of their right to make use of it (*ḥaqq al-taṣarruf* or *mashadd maska*)
7. Such cases raised the central question of the relationship between the owner of the
land (*ṣāḥib al-ārḍ*) and the user in possession (*yad*) of it.

Such cases, ordinary though they may have been, reveal deep confusion
in the understanding and application of the laws at the local level as a result
of their recurrence in the court records. The misunderstandings of the parties
involved were exacerbated by the variety of different dialects used,8 nuances
in the uses of the same terminology according to the origins of the people
using it (people from rural areas, city-dwellers, government employees,
etc.), and finally by the range of formal and informal categories of land that
coeexisted and were sometimes super-imposed one on top of the other.

In this framework of linguistic, legal and customary variations, is it
accurate to think of Lebanon as being a particularly special case?

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7 *Mašadd maska*, “a term whose origin is obscure, and which may or may not have predated the
Ottoman conquest of Bilād al-Shām in 1516” (Taylor 2012: 430). See also, (Mundy and Saumarez-

8 A. Barthélémy, in his dictionary gives detailed definitions of dialect terms by giving a list of
geographical variations for each entry (Barthélémy 1935).
An outline of the legal debates

“In classical Islamic Jurisprudence, ownership of land was based on the concept of conquest and the right of the Islamic community as God’s trustees” (Joseph 2012: 33). Land was divided into the two categories of ušr9 (tithe) land and kharāği (tribute) land for tax purposes.10 According to Hanafi jurists, most of the arable land in Iraq, Syria and Egypt was land of conquest, in other words tributary land (kharāği) (Joseph 2012: 35-39). The Hanafi jurists, unlike those of the other legal schools, considered the kharāği to be a tax on ownership, making the payer of the land tax the exclusive owner of the land (Cuno 1995: 124). However, the Hanafis also recognized the transfer of tributary land into the hands of the state and particularly into those of the treasury (bayt al-māl) in cases where the land had been abandoned or had no heir, or where it had been sequestrated as a result of unpaid taxes. In order to fill the state coffers, the last Mameluke sultans also authorized the sale of public land. As a result, by the end of the 15th century the land tenure situation in the Arab provinces had taken on a new form, with smallholdings disappearing and being replaced by large estates often made up of waqf (Joseph 2012: 42-45) and the tax on property being replaced by rent paid by cultivators (Islahi 2008: 32). Baber Johanssen calls this phenomenon, analyzed and justified by Ibn Humam (1388-1457) (Johanssen 1988: 84-85) “the death of the proprietors” (Johanssen 1988: 98).

This brief sketch of the arguments over the status of the land and the rights of its possessors leads to questions about the term property itself in the legal texts and in legal and customary practice. Older Ottoman law based on the distinction between the public domain (mīrī) and the private domain (mulk) (Aytekin 2009: 937) was superimposed on traditional Islamic law and Hanafi jurisprudence. As early as 1541, the declarations and fatwa-s of Şayḫ al-Islam Ebu’u Su’ud (1491-1574) tended towards the harmonization of Islamic law and Ottoman qanūn. With the support of Hanafi jurists such as Fadl Allah al-Rumi (1619-1629) and Ala’ al-Dīn al-Haskaft (1616-1677), the reorganization of the classical Ottoman land tenure system was

9 Tithes (′ušr) were taxes levied on Muslim land.
10 “The main land tax was called kharāği: the tax, imposed on the land of conquered populations who had not accepted Islam before the conquest and had not signed a special agreement (ṣulḥ), was levied on most of the conquered areas” (Campopiano 2011: 250).
legitimated. Khayr al-Dīn al-Ramlī defined three major legal categories of land: land in the state domain (sultānī or mīrī), land making up a religious endowment (waqf), and land held as private property (mulk). Despite the disparity of the customary laws in the Ottoman Empire, inspired by various legal arguments and notably those of the ‘ulamā’-s of Damascus, a collection of laws giving the general outlines of the Ottoman land tenure system was promulgated in Istanbul in 1673 in the form of the Kanun-i Cedid Osmani. This contained Ottoman decrees and fatwas relating to land issued between 1540 and 1655 and then recorded, organized and brought together in the form of a single text that recent studies have shown formed the basis of the Ottoman Land Code promulgated in 1858 (Taylor 2011: 79-90). This sporadic introduction of Islamic legal principles into the heart of the qanūn shows both the state’s need for administrative legitimacy and the adaptive capacity of Islamic jurisprudence, and particularly Hanafi jurisprudence, in the face of economic and political change.

According to local religious courts, most of the arable land in Syria and Palestine was in the public domain (mīrī). The status of mulk seems to have been restricted to buildings and irrigated gardens (kitchen gardens, vineyards, and orchards) (Rafeq 1992: 307-308). Those who worked the land were therefore simply holding it as usufruct and thus only benefitted from a right of use (ḥaqq al-taṣarruf), a right that in Damascus was generally designated by the expression “mashadd maska” in the records of the local courts - the right to work state land (mīrī) or waqf land (land belonging to a religious endowment) (Taylor 2012: 430-434).

However, if the Kanun-i Cedid Osmani was applied throughout the Empire, linguistic differences still existed. The expression “mashadd maska” was not only used in the Damascus region. The mufti-s of Damascus handled problems arising from patrimonial transfers by distinguishing between the right of use of mīrī or waqf land (mashadd maska) and the ownership of it (ḥaqq al-mulkiyya). By juggling with the terminology, the right of usufruct was transmissible by means of transfer (intiqāl) while property was transmissible by inheritance (irtīh).
Ownership questions

In the 19th-century Mediterranean, legal rules were secularized, rationalized and modernized, and all aspects of the Ottoman institutions were transformed. Those who worked the land had to adapt to changes in the land tenure system that were redefining the “conditions of access to the land” (Guéno & Guignard 2013: 9). The laws governing possession for those working state land (arāḍī amīriyya) were consolidated, and property (mulk) was redefined. The Land Code (1858) redefined the legal status of the land, but it only applied to land in the state domain (amīriyya). The Ottoman Civil Code or Mecelle or Majallat (1869), on the other hand, which was both the result of western influence (notably of the Code Napoléon) (Mattei 2000: 37) and the written version of part of the shari‘a, defined all the fundamental principles of Islamic jurisprudence (fiqh) (Yildirim 2005: 353), set out the legal mechanisms for various acts (sale, rent, security for a loan, guarantees, etc.), and in its various articles reiterated the concepts of ownership and the right to make use of an item of property. Article 125 of the Mecelle defined property (mulk) as that which belongs to an individual, “whether an object or […] its fruits” (Al-Majallat 1887-1888: 20 & Young 1905, vol. VI: 187). Usufruct is not clearly defined, but the concept emerges through various articles limiting property rights, such as article 96 which says, “it is not permitted for any person to use (yataṣarruf) the property of another (mulk al-ghayr) without permission (iḍin)” (Al-Majallat 1887-1888: 18). In this way, the concepts of the right of use and of the ownership of property were clearly defined.

However, if a first reading of the new legislation indicates the existence of a homogeneous administrative and legal system and one without ambiguity, certain articles in it nevertheless reveal the difficulties that were being experienced in making the law uniform. Article 36 of the Mecelle, directly inspired by Hanafi jurisprudence (Johanssen 1993: 3031), reiterates that while the Civil Code is from now on to be considered the common source of the laws, older usages are nevertheless still considered valid if these are locally followed in specific cases. Thus, in the nine following articles (37

11 Art. 36: “Usage has the force of law, meaning that usage and custom, whether general or particular, can be taken as the basis for a judgment (Cf. law of 30 Ventôse of Year XII, art. 7)” (Young 1906, vol. VI: 180). Young draws a direct connection between article 36 of the Mecelle and article 7 of the law of 30 Ventôse of Year XII that established the French Code Civil. Article 7 of the law of
to 45) customs are legitimated and that which is validated by custom (‘urf) is considered equal to the text of the law (nas) (Al-Majallat, 1887-1888: 1415)\textsuperscript{12}. “The general rule here is that custom and habit become in themselves a ruling to lay down foundations for a legal ruling in particular when there is no equivalent of a text to proceed with the ruling” (Ghazzal 2007: 95).

These remarks are intended to introduce an examination of the practice of law, and the application of the law, in the provinces of the Empire, in this case the wilāyat Sūriyya and the mutaṣarrifiyya of Mount Lebanon. If the Mecelle redefines certain concepts precisely, such as property (mulk) (art. 49), usufruct (taṣarruf) (art. 58), indivisibility (mashā’) (art. 54), movable and immovable objects (manqūla and ghayr manqūla) (art. 128), and merchandise (‘urūḍ) (art. 131), articles 3, 12, 36, 40, 61 and 62 of it also emphasize the importance of differentiating the proper or literal meaning of these terms (kalām al-ḥaqīq / al-ḥaqīqa) from their figurative meaning (al-maǧāz) or from the intention behind the usage (‘adat) of the terminology. In this way, the new legislation reserves a place for custom and thus for exceptions. By providing greater space for interpretation, each locality or regional entity is allowed to understand the meaning of the terms used in the law or designated by the law according to its own linguistic usage. However, such usages or linguistic nuances varied across the vast territories of the Empire, as well as within the administrative provinces or regional entities concerned. This is shown by the Dictionnaire Arabe-Français, dialecte de Syrie: Alep, Damas, Liban, Jérusalem (Barthélemy 1935) which while indicating the existence of a common language in the areas studied, also gives variant linguistic usages from one area to another in the definitions given for each term. Regional exceptionalism thus appears to be a general phenomenon.

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\textsuperscript{30} Ventôse says that “from the day these laws come into force, Roman laws, orders, legal or local customs, statutes and regulations cease to have the force of either general or particular law in the matters covered by the said laws making up the present code”. This article therefore says literally the contrary to what is said in the article of the Al-Majallat. It should also be noted that the Arabic translation of the Ottoman text of the Mecelle published by the Ottoman printing works reveals shortcomings in the translation and therefore in the comprehension of the Ottoman law: “‘al-‘āda muḥakkama, ya’nī ana al-ʿadat ‘āmat kānat aw ḫāṣat taqʿala hukmān li-iṯbāt hukm sharʿī”’. In other words, “custom has the status of law, meaning that general and particular usages confirm legal judgments” (Al-Majallat, 18, art. 36).

\textsuperscript{12} Young’s translation is sometimes imprecise, and the Arabic translation has been used in preference.
Inheritance or transfer

As early as 1839, the need for reform of the land tenure system was announced in the Imperial Rescript of Gülhane (or law of the Tanẓimāt). In it, the sultan denounced the “harmful use [made] […] of the venal concessions known as iltizām” (Aristarchi Bey 1874: 9). In other words, “the Rescript underscored the relation between the power of the state and the wealth of individuals as the basis of tax assessment; it called for an end to the personal administration of tax collection and for an expansion of official administrative departments” (Mundy & Saumarez 2007: 41). Twenty years later the central government implemented the planned changes in the land tenure system by promulgating the Land Code in 1858. The system of tax farming (iltizām) was abolished, and the status of private property (mulk) was reaffirmed as early as the first article of the Code. “Land is classified into five categories: the first category is land that can be owned completely (mamlūka), the second category is state land (amīriyya), the third category is land owned by religious endowments (mawqūfa), the fourth is land given over to public use (matrūka), and finally the fifth category is waste land (mawāt)” (Young 1906, vol. VI: 45 & Khāliṣ 1899-1900 & Jamāl Al-Dīn 1913-1914: 9-10 art 4)\(^{13}\). These five categories of land were regulated by new legislation brought together in various compilations of laws, including the Land Code, the Mecelle, and the regulations of the Defter Khané (the ministry of the cadastre).

The Land Code originated in 1673 in the famous compilation of legal texts called the Kanun-i Cedid Osmani. The Mecelle was legitimated by the one hundred articles reiterating the fundamental principles of the Sacred Law. From now on, judges were instructed to conduct investigations and decide disputes according to the imperial laws while at the same time remaining attentive to local usages (art. 36, 40-45 of the Mecelle). In different parts of the corpus of the laws similarity between the processes of the acquisition and the alienation of mulk, amīriyya, and waqf land could be seen, as it could for mawāt land (waste land). State land (mīrī) was “conceded to each inhabitant separately, and a deed of possession (tapou) is given to him for it” (Young 1906, vol. VI: 48-49). Right of ownership was thus established. An

\(^{13}\) In the late Ottoman edition, three articles come before the categorization of the land. Articles 1 and 2 emphasize the development of the Codes and the amendments to them, particularly those to the Land Code, and article 3 deals once again with proof of ownership and the rights of the landlord.
individual possessing a concession to exploit a piece of land could sell his title to it. Elsewhere it is stated that possession could also be “transmitted by inheritance” (Young 1906, vol. VI: 91-95). The law of 17 Muharram 1284 (21 May 1867) modified the articles relating to the inheritance of state land in the Land Code and the Defter Khané regulations (Young 1905, vol. I: 316-318). It extended the right to inherit miri land owned by ťābū title to all the relatives of the deceased former owner. However, while the French translations (Young 1905, vol. I: 316-320 & Aristarchi Bey 1873, vol. I: 254) use a term taken from inheritance law — of legitimate heirs — it should be noted that the Ottoman expression established by this law is “tevsi intikal,” or “extension of the transfer.” In addition, a vacant plot of amīriyya land could also be mortgaged (right to mortgage because of debts) and sold at public auction in the same way as land that was fully privately owned: “the mulk estates of those who have died without heirs and intestate will be sold at auction for the best available price in the same way as vacant mirié land (mahloul)” (Young 1906, vol. VI: 96-98). State land could thus become mulk land.

The modernization of the law, intended to clarify land tenure, led to a debate over the distinction between useful property (taṣarruf) and raw property (rakaba). “Private ownership (mulk) of state assets was divided into raw property (rakabé) reserved to the state and useful property (tessarruf) given to the individual concession-holders of the land. Useful property gave a very extensive right to use and exploit the land, making it alienable and transmissible by inheritance and only distinguishable from complete ownership as a result of certain restrictions originating in the right to hold raw property belonging to the state” (Heidborn 1908, vol. I: 327-328). This explanation, given by Heidborn, lacks precision, however, and once again reveals problems of interpretation and translation, and therefore of comprehension, of the legal vocabulary concerned. The alienability of the right to usufruct is not assimilated to inheritance (irṯḥ), but instead is a transfer (intiqāl) made under certain conditions.

In each case, acquisition of land had to be registered with the relevant government department, in this case the Office of the Cadastre (qalām ţābū). The first article of the Defter Khané relating to property (mulk) notes that “new titles headed with the Imperial Seal (toughra) will be given for all mulk property in towns, villages, and nahiéés (sub-district), and from now onwards mulk ownership without a title is forbidden” (Young 1906, vol. VI: 100-101 art.1). Other titles of ownership were given for amīriyya land and for land
that was an inalienable part of religious foundations (waqf). Regarding waste land (mawāt), once this had been cleared with the authorization of the local cadastral authorities “the provisions of the civil law for sown (mezroua) mīrī land are applicable” (Young 1906, vol. VI: 73-74 art.103). Martha Mundy comments that “in constructing a single form of property in mīrī (state) land, in lieu of dual property rights of management of revenue production and possession for cultivation, the legal language of the reforms culminating in the 1858 Land Code adopted the idioms previously employed to frame the latter form of right” (Mundy 2000: 64).

If the introduction of titles of ownership (sanadāt mulkiyya) and of possession (sanad ṭābū) (Minkov 2000: 69-71) seems to have been enough definitively to decide litigation over the nature of the property possessed, the reaffirmation of the right to transmit a piece of property (ḥaqq intiqāl) and the extension of this to a large number of direct (male and female children and father and mother) and indirect (grandchildren and uncles and aunts) heirs by paying a land tax (ḥaqq al-ṭābū) meant that there was still debate over the nature of that possession (Minkov 2000: 73-74).

**Actors in the field**

The application of the laws took place through the introduction of the necessary bureaucratic framework, leading to “a ministerialization of institutions and a multiplication of offices” (Bouquet 2006: 28). The Office of the Cadastre (Defter-i Hakani) followed by the ministry of the cadastre (Defter-i Hakani Nezareti) set up in 1871 were ad hoc authorities. These offices, set up locally in each wilāyat, liwā’ (or sanjāq) and qaḍā, registered the land and delivered sanad ṭābū to each new acquirer. The cadastre was also in charge of organizing public auctions of vacant mulk or amīriyya land. The men employed by this authority, called ma’mūr al-ṭabū (employees of the ṭabū) or kātib al-ṭābū (clerks of the ṭabū), were present in the field and appeared before the local legal authorities particularly during cases relating to the status of land, intervening on behalf of one or other of the parties involved in such cases as expert witnesses. The new administrative framework was minutely laid out for each administrative area in the Ottoman yearbooks on a provincial basis: sālnāmāt wilāyat Sūriyya (1868-1901), sālnāmat wilāyat Trāblus (1870-1897) and sālnāmāt wilāyat Bayrūt (1894-1907). In 1868/69,
there was an employee of the cadastre (ṭābū ma‘mūr) at the provincial level and at the level of the sanjaq or liwā’, and in 1873/74 there was also such an employee at the level of the qaḍā’ (district). Five such employees were in charge of the office in each district. In spite of the promulgation of the autonomy of Lebanon in 1861, the Ottoman cadastral authorities were still represented and employees of the ṭābū were still recruited in each subdivision of the mutaṣarrifīyya. In the Lebanese and Syrian provinces, a single institution represented by local actors was supposed to apply a law that was the same across the Empire — the law of Istanbul.

Other experts that were part of the new land tenure system were not listed in the official directories but were present at the local level. Expert witnesses from among the village headmen (mukhtār), people having knowledge of the villages (alhal al-khibra), and surveyors (muḥaddidīn or masaḥīn) (Guéno 2013: 154-155). Were summoned to appear before the tribunals. As far as linguistic variations are concerned, it should be noted that the term “muḥaddidīn” has been found in the minutes of a session of the Homs civil court when the Dictionnaire des métiers damascains gives the term “masaḥīn” (al-Qāsimī, al-‘Azem & al-Qāsimī 1960, 2 vol.). The surveyors marked out the land in the field, registered all the land attached to each village, and acted as expert witnesses when demanded by the local courts. The Lebanese cadastral records analyzed by A. I. Sa‘īd are simply ordinary records authenticated by the seal of the qaḍā’ tax authorities (Sa‘īd 1995: 30, 287-290). Government employees registered all the land attached to each village in these records, giving the name and religious confession of each owner. However, neither the specific rights attached to each plot of land (right of passage or right of use) nor the land set aside for communal use (such as forested areas) were mentioned.

The village headmen, the surveyors, the employees of the land cadastre and other experts all knew the laws and the administrative and legal procedures that went with them. They were the representatives of the land reforms on the local level. But who were these individuals? Were they to be trusted? Article 88 of the Land Code forbade “any agent of the tapou […] in his district and for the duration of his functions [from] acquiring vacant land or land coming under the procedures of the tapou. He [may] not cause it to be acquired by” his relatives either (Young 1906: 69-70). This safeguard against predictable abuses leads to a discussion of the way or ways in which the central reforms were practiced on the local level.
Land tenure and the concept of “property”

Ottoman legislation and land tenure changes in the Bilād AlShām

Land divisions

Legislation promulgated in Istanbul was applicable throughout the Empire and therefore in all the provinces that were directly dependent on Istanbul and governed by the administrative system established by the Tanẓimāt. (Georgeon 2003: 171) In 1906, the Ottoman Empire was divided into two parts: “immediate possessions in which [the] sovereignty [of the sultan] is unlimited” and mediate possessions that “were themselves divided into” autonomous territories (Samos and Lebanon), territories occupied and administered by foreign states (Bosnia-Herzegovina, Cyprus, and Ada Kalé), and half-sovereign states (Egypt, Tunisia, and Rumelia) (Heidborn 1908, vol. I: 6). The provinces of Damascus, Beirut and Aleppo were among the immediate possessions, while the Jabāl Lubnān was an autonomous province among the mediate possessions over which the sultan still exercised significant authority unlike over the two other types of territory (Heidborn 1908, vol. I: 23). Lebanon was given autonomy under Ottoman suzerainty in 1861. Under the agreement signed in May 1861 and then amended in 1864, (Young 1905, vol. I: 113ff) the sultan appointed an Ottoman mutaṣarrif (governor) of Christian confession at the head of Lebanon for five years, the territory being composed of the town of Deir ul-Kamr and seven administrative subdivisions (qaḍā’) (Heidborn 1908, vol. I: 25-26). Despite Lebanon’s autonomous status, the governor was directly appointed by Istanbul and was not of local origin. (De Clerk 2014: 171-190) Lebanese and particularly Christian Lebanese historiography tends to refer to the establishment of the State of Lebanon in 1861 by using the expression “al-mutaṣarrifiyə aw dawlat Lubnān aş-ṣaġır” (“the mutaṣarrifiyə or State of Lesser Lebanon”) in the official history textbooks (Sereghy 2010: 110). But according to the agreement the mutaṣarrifiyə of the end of the 19th century was in fact an Ottoman province that while benefitting from relative internal autonomy was still nevertheless under imperial control.

The law reorganizing the provinces was drafted by Fuad Pasha, the grand vizier, in cooperation with the celebrated reformer Midhat Pasha, then governor of the province of Nis (Serbia), in 1864. The “well-protected domains” (“Memalik-i mahruse”) (Bouquet 2006: 33) of the Empire were
divided into 27 provinces, among them the wilāyat Sūriyya, the wilāyat Trāblus and the wilāyat Bayrut. However, according to the 1894/95 yearbook for the province of Beirut, the province of Tripoli was only a sanjāq attached to the province of Wilāyat Bayrut. In 1896/97, the final yearbook, as far as one has been able to ascertain, for the province of Tripoli was produced, even though Tripoli was officially a sanjāq of the province of Bayrut. The limits of the administrative areas were not always clear, and the new organization was just at its beginnings (Guéno 2008: 58). Each province was divided into administrative areas (sanjāq) headed by a mutaṣarrif. Each sanāq was divided into subdivisions (qadā’). From now on, “the qādī retreated to his court, and the qā’imaqām, an Ottoman functionary appointed by the central government, became responsible for the application of the reforms in his district” (Guéno 2008: 112). The qadā’ was both the smallest legal unit in the Empire and a provincial administrative district of the third rank. This reorganization led to an “institutional atomization” that divided up responsibilities.

In the 19th century, the administrative organization of the Bilād Al-Shām, and particularly of Syria and Lebanon, led to the appearance of two types of administrative area in which the laws of the Empire were applied with greater or lesser degrees of flexibility. From this time onwards, whenever the particularities of Lebanon were mentioned, in reality the reference was to the mutaṣarrifiyya of Mount Lebanon.

Ottoman law in the Arab provinces

Laws promulgated in Istanbul had to be published throughout the Empire before they could be applied. However, according to Heidborn the publication of the laws only started with the promulgation of a decree in 1873 announcing that “the official journal (takvim-i-vekai) in Constantinople and the gazettes of the vilayets in the provinces would serve as the venues for publication and that the laws would be applied (doustūr ul-amel) fifteen days after their appearance in these journals unless there was indication to the contrary” (Heidborn 1908, vol. I: 102). He adds that these good intentions were never really realized, that the “legislative machine therefore worked in the shadows,” and that “whether published or not the laws were only intelligible to the tiny minority that was able to read official Turkish” (Heidborn 1908, vol. I: 103). A command of Turkish was obligatory for all those working in
the administration,\(^{14}\) in this case lawyers. But despite a campaign to spread the use of Turkish throughout the legal institutions, “employees were often completely uncertain” (Heidborn 1908, vol. I: 103-104) about the proper interpretation of the laws.

It is probably for these reasons that various translations of compilations of laws into Arabic (Guéno 2008: 63-64) were carried out by men who were well-versed in law, among them particularly Muḥammad Khālid al-Atāsī (1834-1908), the mufti of Homs. After resigning from his post, he translated and wrote a commentary on the whole of the Mecelle (al-Atāsī M. Kh. & al-Atāsī M. T. 1949: 6 vols.) and became a sort of expert to the civil court of the Homs subdivision. As a result, he was called upon in cases having to do with the status or the acquisition of one or several parcels of land. Coming from a family of notables in the town, he was the only mufti summoned to testify before the Homs civil court. His former status as the town’s mufti led to his being trusted, and his work translating the Civil Code meant that he was considered to be an expert in the acquisition of property. He was also a landowner and had been involved in litigation with the cultivators of his land northwest of Homs (al-Zahrāwī 1997: 252-284). His dual competence probably enabled him to manage the cases in which he was involved in such a way as to retain and legitimate his own land holdings.

The laws may have been translated on the local level, but there were definitely still different translations and interpretations of them owing to the problem of the linguistic differences that existed in one and the same region. It should also be noted that according to the Civil Code, customs (‘ada) and local practices could also have the force of law. The newly promulgated legislation therefore gave free rein to the continuation of older legal practices. Finally, those working the land, even if some of them were able to read Arabic, would definitely not have had the means to read the laws in Arabic and still less in Ottoman Turkish. Under such circumstances, only lawyers would have had access to the compilations of the laws, raising the question of how the reforms were applied and who the guarantors and beneficiaries of the new legislation were. The documentation produced by the local Ottoman courts sheds occasional, but nevertheless substantial, light on the administrative

\(^{14}\) “after the promulgation of the present regulation, the exercise of the profession of advocate in the nizamiés courts of the Empire is reserved to advocates who have received a diploma from the School of Law.” The School was in Istanbul and the exams were in Turkish (Young 1905, vol. I: 184).
practices of the people from different backgrounds who used them. The voices of peasants, artisans, country dwellers, townspeople, tenants and landowners can all be heard, all arguing their cases in the hope of winning.

**Origins of Lebanese particularism**

During the first half of the 19th century, three popular revolts took place in Lebanon under the rule of first Emir Bashir II al-Shihabi and then of Emir Bashir III. With the development of the silk industry in Mount Lebanon, “a new class of merchants emerged in the Mountain, one whose recently acquired wealth and rising self-confidence and expectations contributed to undermine further local political and social order based on the supremacy of the muqata’ji families in the hierarchy of family lineages. Finally, the new economic situation allowed a measured emancipation of the peasants from their muqata’jis and landlord” (Hakim 2013: 24).

As a result, “from 1820 to 1860, Mount Lebanon was the scene of a series of peasant uprisings led by the lower Maronite clergy. Organized in popular communes, the rebels shook up traditional rural society” (Kattar 1997: 671). These jacqueries, whose leaders described themselves as ‘āmiyya or ‘āmmiyat an-naṣāra al-fallāḥīn (members of the Insurrectionary Christian Peasant Movement), were divided into three periods. In 1820-21, peasants, most of them Maronites from the Christian districts of the center and north of Mount Lebanon, demanded equality before the law, the same tax liabilities as the Druze, and the autonomy of Mount Lebanon. There followed a second major period of insurrections that brought together economic, social and political demands and led to violent inter-communal conflicts between the Druze and Christians of Mount Lebanon. In 1840, a revolt began in Dayr al-Qamar, supported by the Ottomans and Great Britain, against the Emir Bashar II and the Egyptian occupying forces led by Ibrāhim Bāšā. The rebellion rapidly spread to the administrative districts of Matn and Kisrawan, and the Emir was overthrown (Hakim 2013: 24-25). Finally, in 1858 peasants supported by the Maronite clergy began a major revolt in the Kisrawan region and chased out the local Maronite notables. These movements led to divisions between the Druze and the Maronites and were one of the major causes of the bloody events that took place in 1860. The period, Lebanese, particularly Druze, and foreign historians most often called “movements” using the Arabic
and tenure and the concept of “property”

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term ḥarakāt (Raymond 2010: 72-94), culminated in the massacres of the Christians. While the revolts originally broke out because of the different tax treatment of Christians and Druze, little by little they led to other social and political demands. However, despite the support of some Shiites and other Muslims in the mountain they remained limited to Christians.

As the starting point for further reflection on the consequences of the central reforms it is useful to point out that these events, the original cause of which was a refusal to pay additional taxes by Christian peasants, came in the wake of the successive declarations of the Imperial Rescript of Gülhane in 1839 and Humayoun in 1856 and then of the promulgation of the Land Code in 1858. The two Imperial Rescripts announced the equality of all the confessional communities and the end of the system of tax-farming (iltiẓām), and the Land Code promulgated in 1858 allowed the peasants to register their land in their own names. While it is difficult to imagine that the Christian peasantry became immediately aware of the possibilities that were now open to them, it is not unreasonable to suppose that the members of the Maronite clergy who led the revolts were aware of them. This supposition leads us back to the muftī of Homs, himself a major landowner. Despite the view of Sabrina Joseph, who sees the muftis as the defenders of the cultivators, (Joseph 2012: 106-107) it is possible to argue that in the second half of the 19th century certain representatives of the religious elites of all confessions used their knowledge for ends that were either personal or communal. While the Ottoman reforms were supposed to homogenize the Empire, different ways of reading the new laws on the local level opened up a gulf between the different confessional communities (Makdisi 2000: 195-196).

In 1860, rebels in Mount Lebanon called into question the traditional socio-political or feudal system under which power was transmitted on a hereditary basis. “For the first time, the peasants elected their own representatives, demanded the defence of their common interests, and demonstrated the unity and cohesion of the majority of the people. Moreover, they expressed their demands in the Lebanese dialect”(Kattar 1997: 687). Elias Kattar emphasizes the use of the local dialect, seeing this as a particular marker of Lebanese identity. However, the local dialects were in common use, and in the archives of the Ottoman legal institutions while certain words in the documents are in Ottoman Turkish most of them are written in a Middle Arabic that is very often closer to the dialect than it is to literary Arabic.
In fact, the terms used are those that would have been employed by those using the courts, in other words by the country dwellers and townspeople who were defending their interests in the local courts in their own language (Guéno 2008: 235-294).

Under pressure from the European powers the Ottoman Empire gave autonomy to the mutaṣarrifiyya of Jabal Lubnān in an agreement made in May 1861. Not a single article in this agreement, amended and promulgated in 1864, refers to land legislation special to the mutaṣarrifiya (Young 1905, vol. I: 113ff). However, article 5 mentions the “equality of all before the law and the abolition of all feudal privileges, particularly those belonging to the Mokatadji” (Aristarchi Bey 1874, vol. II: 205). This article from the administrative agreement for the autonomous province of Jabāl Lubnān echoes the two Imperial Rescripts of 1839 and 1856 that put an end to the iltiẓām (tax-farming) system in the Empire as a whole, including in Lebanon. But article 13 of the agreement also reiterates that “the relationship between the administration of Lebanon and the respective administrations of other sandjaks shall be exactly the same as the relationships that exist and that shall be maintained between all the sandjaks of the Empire” (Aristarchi Bey 1874, vol. II: 208). Yet, in his “Époque des mutasarrifs au Liban,” Khatir Laḥd notes that the 1864 agreement implied the existence of certain specific characteristics: the privileges of the iqṭa’ were limited; all subjects had equal legal rights (raʿaya); a census was ordered of the inhabitants; and a survey (masaḥa) of property (amlāk) was undertaken (Laḥd 1967: 15). Article 16 of the 1864 agreement certainly stipulated that “a census of the population by commune and religious affiliation shall be carried out as soon as possible, along with the drawing up of a cadastre of all cultivated land” (Aristarchi Bey 1874, vol. II: 209). But while an examination of the agreement could lead one to believe that there was a single body of Lebanese legislation, comparing it to the mass of land, cadastral and civil laws and regulations issued by Istanbul reveals the opposite. In fact, “every square inch of territory was already demarcated into separate units called villages, and this same way of thinking was easily extended to the notion of landed property: all the land in a village had to belong to somebody, individually or in common” (Saumarez Smith 2000: 163).

On the other hand, some studies of the land tenure system in Lebanon that examine the physical geography of the mutaṣarrifiyya provide more
convincing evidence of the particularity of the Lebanese system. According to A. I. Sa‘īd, the 1858 Land Code and all the regulations and decrees relating to the management of the land were applied in regions such as the Plain of the Bekaa and the subdivisions (qaḍā‘) north of Jabāl Lubnān. As far as the articles of the Mecelle (Majallat al-aḥkām al-ʿadliyya) were concerned, these were altered in the Mountain areas. In surveys of the land in this region, the measures concerned could only be applied to fertile agricultural land (Sa‘īd 1995: 108-109, 287-292). This consisted of four types according to the survey records for the villages (dafāṭir masāḥa) of Jabāl Lubnān: land planted with seeds (ḥubūb) and tobacco (tabaḡ); land set aside for mulberries tree (tūt); olive groves; and lastly orchards (growing fruit, almonds, walnuts and carobs and containing poplar and willow trees) (Sa‘īd 1995: 109 fn1). The owners of these types of land had to pay taxes and tithes to the imperial government. All other land, in other words “non-fertile land,” was managed on a customary basis.

As a result, in the mutaṣarrifiyya land was divided into five categories:

1) Mamlūka land was land that could be owned outright (mulkiyya šaḥīha). Most of the land of the Mountain had this status;
2) Trust land (waqfiyya) belonging to monasteries, churches, madrasa-s and mosques;
3) Amīriyya land was made up of uncultivated land (saliḥ), gardens (bustān), orchards (karm) and forests. The author adds that this land was located in the subdivisions of Al-Batrūn and Al-Kūra;
4) Mashā‘ land, which was land held in common, such as pastures for raising livestock and forests for collecting wood. This system of non-enclosure was known throughout the Empire, but in Mount Lebanon it seems to have been limited to pasturage and forests. These consisted of land that was described as having been set aside for public use (matrāka) in the Land Code.
5) Waste land (mawāṭ): this land belonged to the municipalities (balādiyyāt) and was unsuitable for agriculture, in other words forests and land that had been left fallow.

The classification combines type of land, type of use, and status. Forests, for example, were considered to be at once amīriyya, mashā‘ and mawāṭ land.
Moreover, land that had been left fallow was considered to be *mawāt* land and therefore was not suitable for agricultural use, even though leaving land fallow was meant to improve its fertility. Lastly, this application of the Land Code in the autonomous province of Lebanon, taken from the local archives and particularly from the survey records, reveals a confusion between the legal status of the land and its nature. While the special characteristics of Mount Lebanon seem to have been the result of the mountainous nature of its agricultural land, they were also, and above all, due to the different uses of terminology.

**Empirical investigations**

Investigating such matters empirically is a way of signaling the difficulty of defining property outside the legal texts, given the many and various actual cases that go against the legal norms. In fact, going through the local sources very carefully, it is possible to say that understanding such documents from legal practice is made far easier by reading the various compilations of the laws. The laws are made to appear more flexible, and the local actors more willing to make use of the written texts in order to better make use of or even to get round the law, as a result of a constant back-and-forth between the legal documents produced by the courts and the legislative texts.

**Documents from the reformed legal institutions**

Sources from legal practice are vital to finding out more about the practices of past centuries and particularly about the *Bilād Aš-Šām* during the final century of the Ottoman Empire. Involving users coming from a wide range of social origins (peasants, garden workers, notables, landlords, tenants, holders of usufruct, artisans, merchants, bedouin, country dwellers, townspeople and government employees, among others), the Ottoman courts of justice that existed in all the provinces and subdivisions of the Empire “gave voice” to users who set out their own claims in their own language. From 1879/80 onwards, the judicial reforms were applied through the establishment of the new civil courts (*maḥākim niẓāmiyya*) which were efficient in cases covering every area of law apart from personal status.
Religious courts (*mahākim șarʿīyya*) and civil courts (with commercial, civil and penal sections) operated jointly in each subdivision. The lawyers appointed to these two types of court were apparently the same people. But the cases the two types dealt with were very different, and different legal procedures were used in each court (Guéno 2008: 84-146, 235-294).

In Mount Lebanon, there were three first instance courts employing defense counsel designated by the different communities in the province (Druze, Maronite, Shiite, Sunni, etc.), among others. Articles 6 to 13 of the 1864 agreement dealt with the legal system in Mount Lebanon as far as its institutional structure was concerned, and they tirelessly repeated that the laws must be applied. Those brought to trial will be “punished in conformity with the law” (Aristarchi Bey 1874, vol. II: 208). In the absence of any mention of laws only applicable to Mount Lebanon, and in the light of article 17 of the agreement stipulating that “in all cases where members of the secular or regular clergy are solely concerned, the charged or accused parties are to remain subject to ecclesiastical jurisdiction, except in cases where the episcopal authorities ask that they be sent to appear before the ordinary courts,” (Aristarchi Bey 1874, vol. II: 210) the laws applied in the ordinary courts were those of the Empire and were the responsibility of the ministry concerned. The difference between the Ottoman courts of the wilāyat Sūriyya and the Lebanese legal institutions was not a matter of the law that was applied but of the internal structure of the courts themselves since members of all the religious confessions appeared in the Mountain’s first instance courts. Moreover, according to article 7 of the agreement, “all cases will be judged by all members of the Medjliss. However, when all those involved in a case belong to the same confession, they have the right to exclude a judge belonging to a different confession” (Aristarchi Bey 1874, vol. II: 205-206).

It was not so much the Ottoman law that was being called into question as the internal organization of the legal system, which was subject to modification in order to deal with the confessional mosaic of the Mountain.

Furthermore, the first instance *mahākim niẓāmiyya* were made up of local members who came from the *qadāʾ* concerned, all of them Muslim except for one or two members representing the minor religious communities, two Christians in the case of the *qadāʾ* of Homs. In order to make the operation of the new Ottoman legal institutions more efficient, “the Tanzimat leaders, especially Ahmet Cevdet Paşa, advocated the creation of a school of law that would teach modern legal subjects, e.g. *Mecelle* and Land Law (Arazi
Kanunu), in addition to Ottoman kanuns, a project that was realized in 1874 with the establishment of a new school of law, *Mekteb-i Hukuk*” (Bedir 2004: 383). However, it was necessary to wait until the opening of the Istanbul School of Law in 1880, which used Turkish as the language of instruction, and the appearance of the first graduates from its four-year period of study, before it was possible to find new lawyers for the civil legal institutions. From the establishment of the Judicial Council (*maġlis al-daʿawi*) in 1869/70 to the years 1885/86, the yearbooks of the wilāyat Sūriyya show that the Judicial Council and the court of first instance were similarly organized. Moves towards the secularization of the legal system took place over time through the intermediaries of local functionaries who were knowledgeable in Islamic law, local customs, and, of course, in modern Ottoman legislation.

In these courts, each case and each act was taken down by a clerk (*kātib*) and placed in individual files. The records of the religious courts dating from after the promulgation of the laws dealing with the management of property provide important information about types of land and the crops grown on them. Inventories of goods, orders regarding maintenance allowances, and documents regarding successions to the property of charitable trusts provide information about the property of various notables of the time. Gardens and buildings were systematically considered to be the property (*mulk*) of their owner in conformity with the older laws, for example. Watermills that provided substantial revenues were generally made part of a private *waqf* and rented out to a villager who was made responsible for maintaining them. Gardens (*bustān*) were cultivated by gardeners who rented the land but who were sometimes, though not always, the owners of the crops grown in them. The importance of the gardens in the towns of Qousseir, Homs, and Hama should be noted here (Boissière 2005). While the traditional court dealt with cases having to do with the transmission of land (inheritance, purchase, and sale), the first instance civil court dealt with complex litigation arising from land transfers that were not of the usual kind. The different forms of rural litigation found in the records of the Ottoman civil courts shed light on the application of the new Ottoman legislation and the uses that were made of it by local rural and/or urban actors.

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15 On the documents (acts, judgments, requests, court minutes, adjournments, decisions, and income statements) in the records of the *sharʿi* courts and the courts of civil justice, see (Miura 2001: 113-150); (Guéno 2008: 261-262) and (Young date, vol. VII: 175 art.6).
The Land Code gave the cultivator of a plot of state land (amīriyya) almost all the rights of a landowner (sāḥib al-ārḍ) if the latter had registered his possession (yad) in line with the land register regulations. This detail, of major importance, was scrupulously brought to the attention of the peasants of the Lebanese mutaṣarrifiyya.

Legal vocabulary

The concept of ownership had different meanings at different times and in different geographical areas. Some landowners could produce a deed of ownership (sanad tamlik), while others declared their right to the land with the support of an entry in the cadastral register (sanad ṭābū). Still others proudly presented themselves as the owners of the earth (sāḥib amlāk or sāḥib al-ārḍ) or to have been in obvious possession (bi-yadi-i) of parcels of it for decades or generations. Each appropriated the idea of ownership in his own particular fashion. The right to property, “like every right, is a human artefact, a legal construction linked to legal norms and laws, the latter being able to take the form of customs quite as much as of legislative acts imposed by a higher authority” (Halpérin 2008: 3). Since law is a human construction, it can be used, abused, got round, or adapted according to human needs (Halpérin 2008: 3 fn3). It was by using such universal methods of getting round the law, and by taking advantage of the flexibility that the Ottoman law codes and regulations brought to the management of the land, that those making use of it were able to turn it to their own advantage.

Among other things, the courts of the Wilāyat Sūriyya and Mount Lebanon produced documents of sale and purchase as well as of the transfer of land in the areas within their jurisdiction and were responsible for deciding conflicts over land ownership. In this mass of documents, the terminology that was carefully selected by the legal experts does not only reveal the different ways in which land could be alienated according to category, as stipulated in the first article of the 1858 Land Code. In the qaḍā of Homs and the seven districts of Mount Lebanon the terms used were identical. For land that was owned outright (mulk), alienation could be carried out by sale (bi‘) or purchase (shirā‘) of land identified in advance. Once the agreed amount had been exchanged from the hand of the buyer to the hand of the seller (qabaḍa min yad al-mushtara li-yad al-bā‘), the land was ceded to the
acquirer (taslīm), and the buyer became its legal owner (qad šār kāmil ḥadā al-mabī‘ mulkān shar‘iyān).16

In cases where state land (amīriyya) was concerned, the process of alienation differed not so much in terms of the form employed as in the terminology that was used. In March 1887 (raḡāb 1304), (SMŠH 1303-1305: 270-273) an act (qayd ḥujja) of procuration (wakāla) was drawn up in the name of a notable from Homs who was in charge of managing the property of ten villagers from the village of Maḥfūra to the north-west of Homs in the qadā‘ of Ḥuṣn Al-Akrād. The villagers were in possession of land spread out throughout the village, and with their consent the notable took care of selling it in plots. The act, two pages long, describes the property, made up of orchards (karm), houses (dār) and agricultural land (ard falaḥā). The orchards and houses were sold, fī bi‘ mā huwa jār fi mulk. But the agricultural land was transferred, firāgh mā huwa jār taṣarruf. The amīriyya land could not be sold because of its status, and only its usufruct was alienable against the payment of a sum of money called a badil. The price of the property that was owned outright was designated by the term ūman, this meaning “price,” whereas badil means “exchange.” State land was thus exchangeable. The same terminology was used in the Lebanese mutaṣarrifiyya. In the subdivision of Al-Kūra, for example, an act of transfer (fārigh) of a piece of amīriyya land gives the “exchange” (badil) as being the equivalent of 5,000 ghurš. The clerk describes the transaction as al-ṣak min al-tafrigh wa qabaḍā al-badil al-shar‘ī (Sa‘īd 1995: 295-296).

With regard to the category of mušā‘ (indivisible) land which A. I. Sa‘īd discusses in the context of Mount Lebanon, the documents produced by the Lebanese legal institutions confirm the confusion between the category of land and the type of use made of it. A. I. Sa‘īd publishes a document concerning the purchase of a piece of land that he calls mashā‘iyya in the qadā‘ of Matn. Reading the document, it seems that a certain ʿUṯmān Mashraf Sa‘īd was buying a share in a piece of indivisible land (ḥuṣat fī al-mashā‘) which was surveyed and ceded to him in exchange for a payment (ūman) of 55 ġurš. Once the seller had received this sum, the piece of land became the property of the buyer within the established limits, and the seller no longer had the right to use it (dūn al-bā‘ yataṣarruf fī-him). The land in question was a piece of collective land. However, this did not mean that it was a category apart.

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16 Act of sale from Qadā‘ Matn in 1880 (Sa‘īd 1995: 312-313).
It simply meant that the cultivation of the land was shared among different beneficiaries, in general men from the village where the land was located. Land cultivated collectively was generally state land. Yet, amīriyya land, by definition inalienable, was nevertheless not only sold at auction (mazad ʿalani) during the second half of the 19th century, but was also subject to being taken over in ways that bordered on the illegal (SMBH 1 date: doc16).

What would happen was that peasants did not systematically register their possession (yad) of land with the cadastral, fearing having to pay heavy taxes on it, and they preferred instead to rent land that they had worked for generations. The notables acquired plots of state land either through public auction or, probably more straightforwardly, by oral agreement (ṣulḥ) with those working it. Whether it was a matter of registering or not registering land with the cadastral services, of purchase or transfer, or of simple agreements among local actors, such arrangements led to multiple cases of litigation. These could be resolved on a friendly basis, but around 30 per cent of the cases coming before the first instance civil court in Homs were nevertheless of rural origin (Guéno 2008: 81). The long speeches that were made in the court sessions show not only the complexity of the relationships that obtained between the possessors and the cultivators of the land, but also the institutional and legal confusion that reigned on a local level after the introduction of the land reforms. The rural cases heard before the civil section of the court of first instance were always long (three to six pages in the records) even for cases that were often of minor importance, such as unpaid rent, stolen land, or an inheritance that had not been received by its legal heir. Strangely enough the final judgments do not make any reference to the initial complaints. They simply confirm the legal right of one or more notables of the district to a piece of land and set out the limits (ḥudūd) of the land subject to the litigation, thereby legalizing an illegal monopoly.

Land surveys are common to both the Lebanese and the Syrian documents. In all administrative, notarized or legal documents having to do with one or more pieces of land, the limits of it (north/south/east/west) are always defined. These limits are either marked by neighbouring pieces of land, identified by the names of their owners, or consist of a road or river. The identification of these limits in the Homs records appears quite vague to the contemporary reader, whereas the surveys that were carried out in Mount Lebanon seem to have been more exact. In the documents from the survey
records (*daftar masāḥa amlāk*) examined by A. I. Sa‘īd, each parcel of land is not only defined in terms of its limits, but is also given a number as a sign that a cadastral survey map has been drawn up. Deeds of ownership (*sanad amlāk*) and of possession (*sanad ṭabū*) to the land in Mount Lebanon were also drawn up by the office of the Ottoman cadastre, and the documents produced by this institution were the same for all the Empire’s provinces. They consisted of printed forms that had to be filled in with reference to the legal situation concerned. Ottoman land categories were thus applicable and were applied in the province of Syria and in the autonomous province of Lebanon.

**Conclusion**

During the final decades of Ottoman rule, the geographical entity of *Bilād Al-Šām* was slowly but surely being divided up in administrative terms, eventually giving rise to the states of Syria and Lebanon. However, this historical and administrative process by no means signifies that the contemporary boundaries of Lebanon and Syria have always existed or that the local actors in them are very different from one another. According to the legal texts and the documents produced by local legal practices, Lebanese particularism as far as the land tenure system was concerned only existed because the exception was the rule in the whole of the Ottoman Empire. Each province, each area and each district exhibited significant differences from one another, not only as a result of older usages, but also because of the language and therefore of the terminology used. Such linguistic differences were felt not only in spatial terms in the form of dialectical nuances, but also in the various registers of the language that were used depending on the category of users concerned. Different forms of expression are found in the pleas made in the courts. When a notable described his land, he used the term *mulk*, whereas when a villager claimed his right to his land, he said that the land had been in his hands for a long time (*bi-yadi-hi min al-qadīm*) or that it was his (*ḥada arḍī*). From oral expression to local legal practice, and through examining the transcriptions made by clerks at the local level of oral statements, the study of the applicable legislative texts and of the documents produced by the local legal institutions reveals the legal landscape of the Empire. The Ottoman context, and particularly that in the Arab provinces,
was a generalized state of exception driven by the actors responsible for the changes in the land tenure system.

Finally, the Mandate system that was later imposed on the different regions of the Bilād Al-Šām added a new layer of legal superimposition. Traditional, confessional, Ottoman, and now western legislation were all mixed up together. The question now became how the French would be able to use the local terminology and their own legislation to introduce a land tenure system that suited them in the former Ottoman province of Syria and the mutaṣarrifiyya of Lebanon.

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