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Land as a Cash Machine: The case of Lebanon

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LAND AS A CASH MACHINE

THE CASE OF LEBANON

RESEARCH PROJECT ON LAND GOVERNANCE IN THE ARAB REGION

Petra Samaha

LAND AS A CASH MACHINE: THE CASE OF LEBANON

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ABOUT THIS PAPER

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GLTN and the Arab Land Initiative - GLTN is a multi-sectoral alliance of international partners committed to increasing access to land and tenure security for all, with a focus on the poor, women and youth. The Network's partners include international rural and urban civil society organizations, research and training institutions, bilateral and multilateral organizations, and international professional bodies. In 2016, GLTN Partners, led by UN-Habitat and the World Bank, launched the Arab Land Initiative to promote equal access to land, peace, stability and economic growth in the Arab region through good land governance and transparent, efficient and affordable land administration systems. The Initiative aims at empowering land champions from the region by developing capacities, increasing collaboration and promote innovation, learning and sharing of best practices. It also supports the implementation of land gender-responsive and fit-for-purpose land tools and approaches at national and local level. The Research Innovation Fund is one of the streams of work of the Arab Land Initiative.

For more information, please consult the referenced documents, visit www.gltn.net or write to unhabitat-gltn@un.org

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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
GDP	Gross domestic product
LBP	Lebanese Pound
MoE	Ministry of Environment of Lebanon
NPMPLT	National Physical Master Plan for the Lebanese Territories
UN-Habitat	United Nations Human Settlements Programme
UNDP	United Nations Development Programme
USD	United States Dollar





EXECUTIVE SUMMARY

Introduction

In the past century, there have been strong efforts to systematically register any piece of land and enclose it as a private property that is only accessible through the market. Then a new model for organizing society was strengthened – mainly through different forms of colonialism – transforming most existing tenure systems that stemmed from the local social organisation.

Today, with the rise of financialisation, land value, especially in urban areas, has been reduced to its capital surplus potential often defined by its surroundings' level of economic development and infrastructure. Real estate developers push for land investments to accumulate profit. Without adequate fiscal policies and land use regulations, any productive economic activity is deemed non-profitable and is substituted by rentier speculation.

Objectives

The paper presents a brief historical overview to help understand the processes that led to the current controversies in land management in Lebanon. The basis of land property and cadastral registry with the legal framework is briefly explained addressing questions of how private property took form. The socioeconomic section looks at the main causes and impacts of the financialisation of lands in post-war Lebanon, highlighting the role of warped taxation schemes and regulations.

Research question

The research questions are: what were the main instruments and who were the actors that shaped the privatisation and financialisation of land in Lebanon? What was the impact of privatisation and financialisation of land on the social order and on society's relationship to the land?

Methodology

Some researchers have worked on Ottoman archives to analyse the political economy of property especially from 1860 to 1920. The research consulted these references and the land codes as a primary source to draw from and understand the current and historical legal framework of land governance in Lebanon. The desk review covers the legal framework, historical references, dating from the French mandate, and available published economic indicators.

Ottoman and French legacies of land governance in Lebanon

Before the Ottoman Tanzimat and the new Land Code

(1858), landed properties in the region were of three types: mulk, miri and waqf lands. Miri lands, owned by the sultan (the sovereign), were the most common. It is important to note that Ottoman laws differentiated between the use and the ownership rights of lands.

After the Tanzimat and the land reforms they included, private properties increased in surface area and number of titles. Land classification within the 1858 Ottoman land code was as follows: miri (state-owned with a right of usufruct for individuals); mulk (free held); waqf (inalienable land dedicated for charity); mawat (distant barren lands) and metruk (lands without cultivation preserved for public purposes e.g. roads, forests, pastures). All state domains had separate ownership (raqaba) and use (tasarruf) rights. The metruk category was subdivided into: metruk mehmi, of which the use rights are for the whole public (roads, squares, and cult areas); and metruk murfaq of which the use rights are granted to specific collectives (pastures and forests).

When the registration of properties and lands started, land titles were granted to those who could prove their ownership. These rights were registered on lists without maps for exact spatial delineation. In 1871, land registration became mandatory for most land types reinforcing the sacralisation of private property at the turn of the twentieth century. While the Ottomans' primary goal in land titling was to collect taxes to fund their wars, large landowners at the time were members of well-off families who sometimes owned lands in regions they never visited.

Lebanese historians have also documented fraud and controversies in title registrations that happened even before the 1858 code. Ottoman rulers assigned local emirs and sheikhs over delineated regions to collect taxes from town dwellers on behalf of the Sublime Porte. Viewing land as a source of authority, these emirs and sheikhs constantly sought to expand their rule in surface area by force or privatise miri lands through fraud titles or de facto power. In different forms of rent extraction, whether through forced labour or taxing farmers, land was used and privatised by the asserted possessors to expand their wealth and power. This way, and more with the French, possession was de facto turned into ownership and moved away from physical claims over land in the present to more speculative control later asserted as a property right over lands that one person cannot possibly reclaim physically at the same moment.

After mandate authorities divided the region, they sought further land reforms and established most of the institutions and laws that still govern land today in Lebanon. By the end of the French mandate, almost half of the Lebanese territory had been surveyed and represented in cadastral maps covering mainly productive lands and main cities (coastal areas, close mountains and large parts of the Bekaa valley). Yet many of the Ottoman code's gaps remain unfilled.

Private property and the built environment after 1943

With the historic overview of the legal framework of land management in the backdrop, the paper draws a clearer link between the economic and fiscal choices, the regulation (or lack thereof) of the banking sector and the role of land in post-war Lebanon. It also presents a summary of the post-war rentier economic model in Lebanon to better understand the impacts on today's built environment.

With an outdated and warped legal framework and the economic model adopted after the civil war (1975-1990), Lebanon saw increased financialisation of property. The war increased the fragmentation of state institutions and many controversies remained in terms of delineation of public domains and commons, as privatisation is strengthened. The unaccomplished surveying and mapping of lands in cadastral registries amplifies the challenges.

The centrality of land and particularly real estate in the Lebanese economy is neither a conspiracy nor a coincidence. Beirut was envisioned to become the region's financial capital after the war, and the attraction of foreign capital was necessary. Ex-pat remittances and transnational investments mainly from the Gulf kept the economy going. The price of land rose by 300 per cent between 2003 and 2010. Agricultural and industrial activities would not generate enough returns to cover skyrocketing land prices. Increased imports and decreased exports led to a deficit in the country's balance of payments. However, this deficit was recurrently financed mainly by ex-pat remittances up until 2019. To keep foreign capital flowing, an unproductive economy was sustained, one that led to youth migration and foreign remittances to feed the system. Most remittances were "invested" again in real estate or deposited in banks which strengthened the rentier

model, thus increasing consumption and weakening production.

With the privatisation and financialisation of landed properties, planning became short of a tool to shape a better built environment in Lebanon. The freedom of use of private properties is lightly regulated, returns very little to and even consumes the surrounding public realm. For instance, with increased expropriation prices and prevalence of private interests (particularly of real estate developers and bankers) over decision-making processes, the state became incapable of successfully devising public projects, protecting natural areas or preserving heritage. The delineation of private property became sharper, while the remaining patterns of ownership (e.g., commons, public domains of sidewalks and streets, maritime domains) were being blurred and privatised, de jure and/or de facto. Across the decades, land has become an absorbent of capital and generator of surplus. Therefore, unlike common belief of an absent state, the governance system is rather that of a present, yet hybrid state superseded by private interests of the ruling elite.

Conclusion

The state in Lebanon, be it hybrid or privatised, uses a convenient legal framework – one that is either broken or disregarded through "exceptions" when amendments are not possible or worthy, effectively destroying landscape and human and natural resources as much as a war would. In reviewing the historical institutional frameworks of land property and governance in Lebanon, we understand the shifting power relationships within the state, society, and land. We learn from the political choices of territorial and economic planning and their implications on society. We find the gaps in inherited laws and practices that are reinforcing dispossession for most and wealth accumulation for the few. We derive lessons from the past to answer the challenges of the future: what society and economy do we need after the crisis? How are we going to preserve what remains of our national public assets and resources? What could be the role of land, and more precisely, the public domain and the state lands in this vision? These are challenging questions for planners and policymakers with a hope that this crisis would turn into an opportunity for emancipation from the governance model of evergetism in Lebanon.

The Food and Agriculture Organization's 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security states that no tenure right is absolute, including private ownership. The Food and Agriculture Organization (FAO) also places the question of rights of tenure and ownership of land within the limits imposed by "general welfare" and "public purposes". The guidelines further state: "Such measures should be determined by law, solely for the purpose of promoting general welfare including environmental protection and consistent with states' human rights obligations" (FAO, 2012, p.6).

While such statements provide a bold framework for approaching property and land, the definitions of "general welfare" and "public good" remain ambiguous. Governance, land management and society relations are shaped by each other. In the end, property, especially that of land, is a form or materialisation of power relations within society. Property laws are the institutional framework governing these relationships with various ownership patterns.

In historical Babylonia, these patterns were shaped to facilitate or organise work and family relations and strengthen authority (Leick, 2009). Landownership was organised through deeds and contracts documented on cuneiform tablets. It was assumed that there was collective ownership of arable lands, while temples and palaces had large shares of private property across history and geography. Therefore, land tenure was at the core of the political economy of the first city-states as well as their social organisation. It has taken different forms throughout history until modern societies became organised as "property owners" (Arendt, 1958).

Towards the end of the eighteenth century, classical economic models dealt with landownership as an element for production, besides capital and labour. Considering land as a scarce resource in economic production increased its commodification (Polanyi, 2001). Efforts to systematically register any piece of land and enclose it as a private property that is only accessible through the market were strongly led in the past century. A new model to organise society was strengthened mainly through different forms of colonialism, prioritizing individual landownership, and bringing more clarity to existing tenure systems that stemmed from local social organisation. This model of political organisation was spread and replicated around the globe. Societies or groups of people that

remained outside this hegemonic model were often tagged as illegal or informal.

1.1. Objectives

While this privatisation trend is global, this study aims to understand the path it has taken in Lebanon with the compounded historical, social, and political aspects. The major shifts in land governance in recent history are traced, highlighting the impacts on society and land. The period covered is from the mid-nineteenth century until today. By looking at the basis of private deeds and the legal framework of land management in Lebanon, the report aims to situate the processes of capital circulation and accumulation and their impacts on society through the lens of land privatisation and its financialisation. The research gains significance with the financial and economic crises burdening the country heavily since October 2019 and where privatisation of state assets, including lands, has been recurrently proposed by politicians and bankers as a magical solution for the country's deadlock.

Signs of economic and financial crises in post-war Lebanon started to appear as early as the late 1990s. Indeed, the authority – and not society – was resilient (Mouawad, 2017) enough to stay in power and postpone these crises until 2019. However, this system of governance has become "too costly to sustain" (Mahmalat, 2020) and collapsed. The Lebanese government defaulted in March 2020. The Lebanese pound continues its devaluation while the depositors cannot access their savings in the banks. With strong economic challenges, society is undergoing significant shifts in its composition and status (e.g., pauperisation, dispossession, migration). The social and political orders today are transitioning as the overdue economic crisis deepens.

1.2. Research Question

The research questions of this paper are: what were the main instruments and who were the main actors that shaped the privatisation and financialisation of land in Lebanon? What was the impact of privatisation and financialisation of land on the social order and on society's relationship to the land?

1.3. Methodology

Historical research on property management in the Levant region is still lacking although land is a major source of conflict. A few researchers have worked on

Ottoman archives to analyse the political economy of property from 1860 to 1920 (Khalidi, 1984; Mundy and Smith, 2007). Several Lebanese historians have also looked at social and economic transformations at the end of the nineteenth century, focusing on taxation and social relations in Mount Lebanon (Abu Chakra, 1999; Aoun, 1982; Said, 1986, 2003a). Consulting these references along with the land codes (laws, decrees, Ottoman and French decisions) as a primary source allowed for understanding the current and historical legal framework that governs land in Lebanon. In addition, economic indicators and newspaper articles were reviewed to complement the legal framework with the economic and social realities of urban planning and land management after the war (1975-1990). Hence, the paper relied mainly on a desk review of various types of material (laws, archives, and newspapers) and a wide relevant bibliography across sociology, history, economy, and urban planning disciplines.

1.4. Outline

To better understand the central role of land in today's crisis, the paper presents a historical overview of land management to open venues for research and public policy options for the country. The section briefly explaining the basis of property and cadastral registry in the country with their accompanying legal frameworks follows. The third section reviews post-independence land-related policies, privatisation and the main attributes of the Lebanese economic model. The impacts of privatisation on society and the territory are described in the fourth section. To conclude, in light of the economic crisis in Lebanon today, the paper poses questions on the role of land in shaping a post-crisis state and society. today, the paper poses questions on the role of land in shaping a post-crisis state and society.



2.1. Brief historical overview of land management in the late Ottoman period (1858-1920)

The Ottoman Empire was a vast, multi-ethnic, rich empire that mainly functioned based on privilege (Makdisi, 2019). Ottomans reached Lebanon and the Levant in the year 1516. The region was peripheral in relation to Istanbul, the centre of power. Hence, governance was “subcontracted” to local notables who found their place in the power dynamics. Through these notables, resources were extracted and conveyed to the centre. They were reliable allegiants to the central authority. This form of governance was institutionalised by forming local councils that claim legitimacy and authority over residents (Said, 2003b). These networks were tools of domination that later affected the registration process of landed properties as explained in the following paragraphs.

Before the Tanzimat¹, land properties were of three types: *mulk*, *miri* and *waqf* lands (Ziadeh, 1993). *Miri* lands, owned by the sultan (the sovereign), were the most common. After the Tanzimat and the land reforms they included, private property of land increased in surface area and in number of titles. Land classification within the 1858 Ottoman Land Code² was listed as follows:

1. *Miri*: belonging to the “state” or the sovereign, with a right of usufruct to individuals for a tax collected.
2. *Mulk*: free held land (all *usus*, *fructus* and *abusus* rights); all built sites within towns were *mulk*.

3. *Waqf*: inalienable land dedicated for charity. *Waqf* lands were mainly private. However, public lands listed as *waqfs* were possible, yet titled *waqf ghayr sahih* or “incorrect” *waqf*.
4. *Mawat*: distant barren lands
5. *Metruk*: lands without cultivation preserved for public purposes (roads, forests, pastures assigned to inhabitants)

All state domains had separate *raqaba* (ownership) and *tasarruf* (use) rights. The *metruk* category was divided into two subcategories. *Metruk mehmi*, of which the *tasarruf* rights were for the whole public, included roads, squares, and cult areas. *Metruk murfaq* lands covered areas such as pastures and forests of which *tasarruf* rights were granted to collectives. Conversely, *tasarruf* rights of *miri* lands were granted to individuals.

Ottoman laws differentiated hence between use and ownership rights of the land except for *mulk* lands (Mundy and Smith, 2007). It is worth noting that *mashaa* (roughly translating to common lands) did not appear in the code as a category. In practice, it refers to land used collectively by the dwellers. Also, lands in the Moutassarriyya of Mount Lebanon after 1860 were mainly *mulk* as governance in the region followed a specific protocol. These lands were subject to different regulations than the surrounding areas (the Ottoman provinces with cultivable *miri* lands) that would later make Greater Lebanon.



Figure 1: Land classification in the 1858 Ottoman Land Code.

1 The Tanzimat was a period of reform and modernisation in the Ottoman Empire from 1839 to 1876.

2 The Ottoman Land Code of 1858 was based on Islamic law, previous Ottoman practice and local customs (Ziadeh, 1987).

The Tanzimat included the creation of institutional frameworks such as the *defterkhane*³ managing the *tapu*⁴ titles and the cadastral registry. The *tapu* titles were individual titles that certify usufruct rights on *miri* lands. Registration was based on lists of usufruct right holders without cadastral maps for exact spatial delineation. Property boundaries were delimited in writing according to customs⁵ (reference to existing trees, water sources, rocks or other elements). Registration required minimal proof of ownership, with a statement from the local *mukhtar* being sufficient, a process still adopted today by law in Lebanon for non-surveyed lands.

Moreover, as the boundaries were not demarcated and delineated on maps, conflicts were common and remain until today in many non-surveyed areas (Al-Akhbar, 2019; Al-Amine, 2014; Aoun, 1982). Here, the power dynamics and relationships of dwellers with the local councils played and still play a determining role. Modalities and meanings for paying taxes also changed over the years. Possessors of land acquired title deeds for parcels that became possible to be inherited or mortgaged, transforming in practice usufruct rights into full ownership rights (Ziadeh, 1993). Hence, during this registration process, the taxpayer eventually became owner of the land he usufruct (Mundy and Smith, 2007).

Developing regulations related to land property rights was a long process. A main turning point however was year 1871 when registration of *waqf* and *miri* lands became mandatory. In 1875, registration of *mulk* property also became mandatory reinforcing individual private property. By the end of the nineteenth century and beginning of the twentieth century, other frameworks were developed for buying, selling or mortgaging land, normalizing more and more the land as a commodity. Some owners started to enclose their land even if it was an empty parcel (Hallaj, 2017).

The Ottoman Empire's main goal in systematic individual land titling was to collect more taxes to fund its wars. However, a clear and general system of individual ownership was never achieved. There were many divergences between registered titles and actual

possession titles (Ziadeh, 1987). Landowners who owned large areas of lands at the time were from well-off families and sometimes owned lands in regions they never visited. Farmers were rarely owners of the lands they till. They feared taxes or the obligatory military service or had lost their lands through unpaid mortgage. In the beginning of the twentieth century, the collapse of the silk industry led to massive land transfers from peasants to credit lenders (Pitts, 2016).

Lebanese historians have also documented fraud and controversies in title registrations even before the 1858 code (Aoun, 1982; Said, 1986). Local emirs and sheikhs assigned by Ottoman rulers over delineated regions to collect taxes from town dwellers on behalf of the Sublime Porte viewed land as a source of authority. They constantly sought to expand their rule in surface area by force or privatise *miri* lands through fraudulent titles or *de facto* power. Indeed, Badie (1987) explains how the Ottoman land reforms sought mainly to manage these frauds and decrease the number and authority of middlemen to increase state tax returns and consolidate central power. However, local notables used the gaps in the system and their influence to profit even more and reinforce their presence by registering properties in their names (Karpas, 1972). In different forms of rent extraction, whether through forced labour or taxing farmers, land was used and privatised by the asserted possessors to expand their wealth and power (Aoun, 1982). This way, and more with the French as explained in the following paragraph, possession was *de facto* turned into ownership and moved away from physical claims over land -in the present- to more speculative control later asserted as a property right over lands that one person cannot possibly reclaim physically at the same moment (Mitchell, 2002).

All these changes in how the land was conceptualised and dealt with across the decades also affect and are affected by the imbricated social, political, and economic orders. What seemed like a simple administrative process or legal reform had reshaped the framework of relations between members of society, and their relationship to the land.

3 Imperial land registers

4 Title deeds registering usufruct rights.

5 Ottomans started to establish cadastral maps in more central areas of the Empire at the time, such as Anatolia and Bursa.



Figure II: Borders of Mutasarrifiya of Mount Lebanon. Source: Verdeil et al. (2007).

2.2. Land management in Lebanon under the French mandate period (1920-1943)

After mandate authorities divided the Levant region, they sought further land reforms. The French mandate in Lebanon adopted the concept of state-building and aimed to make society and the territory visible with maps (Duraffourd, n.d.; Mitchell, 2002). They did not fill many of the gaps that the Ottoman code left, but their presence imposed a more modern “universal character of law” (Mitchell, 2002). Even though the local notables had privatised many of the supposedly state-owned lands, it was only with the French mandate that these endeavours took a permanent legal meaning, clearing any other competing claims on the land. The high commissariat reports often mentioned the reform endeavours of the administration (Haut-commissariat de la République française en Syrie et au Liban, 1929): clear jurisprudence, modern legislation, finance management, cadastral surveying,

and clarity in land registry, resources, and land management. They also sought to “govern by numbers” (Scott, 1998). An official population census was done in 1932 and listed 861,000 inhabitants in Lebanon. Reports on land management were depoliticised and technical (Duraffourd, 1922, 1933b, 1933a, 1935, 1935). Referring only to this work in understanding land and power relations overlooks the continuous shifts and struggles over land that society kept undergoing. However, they remain essential as most of the current laws in Lebanon are based on this framework.

The cadastral registry institution (French version of *defterkhane*) was established in 1921. In 1925, and more in 1926, the French authorities in Lebanon issued laws regulating cadastral registry such as the law on the registration of census of properties/demarcation and delineation (186/1926), the creation of the cadastral registry (188/1926), and the organisation of land registry and cadastre (423/1926). The creation of cadastral maps started with the delineation of projected land boundaries.

The legal notion of “public domain” first appeared in 1925 (law 144/1925). “Public domain” was ratified as inalienable, although it had no legal interpretation before this law. The Ottoman laws only covered what was related to the public good in relation to the organisation of spaces (e.g., street cleanliness and alignment, prohibition of beggars, mosques’ forecourts organisation). The laws had no apparent legal reference to the public domain governance as law 144 defined their limits, delineation and occupation conditions. Following the definitions in this law and the 1930 land classification, the *metruk mehmi* lands would constitute the public domain.

The notion of state’s private assets and its legal framework was also ratified in 1926 (law 275/1926). Through this law, all *miri* Ottoman properties were passed to the mandate authorities. Based on their definition in the law, private state assets include *miri*, *metruk murfaq* and *mawat* lands, including what remains to be known as *mashaa’* today. As per the first version of this law, these properties can be sold, rented and subdivided. In the same year, the Lebanese constitution was written where it was stated in one of its articles that property is a sacred right protected by law.

The French were adamant on institutionalizing individual ownership by law and by practice (Duraffourd, 1935; Gabriel, 1954; Kilzi, 1995). In 1926, another law was introduced specifically to abolish the *mashaa’*, although

this classification had no legal significance⁶. Probably, the aim was to abolish a practice that mainly consisted of shared use and not ownership of agricultural land. The law clearly stated that shared ownership of land was unlawful and that it negatively affected agricultural progress. With the intensification of production in this era, individualisation and registration of property was essential so land can be used as credit. With this logic, the French led endeavours for land surveying and registration based on the Torrens Act (Kilzi, 2002). This act was first applied in Australia in 1857 with the first English migrants to create agricultural zones. The Torrens Act aimed to ensure clarity and security in land registration as well as to make land easily tradable as any other form of capital. In 1930, the law 3339 ratified a new cadastral law for land property in the Levant, still in use today in Lebanon with minor modifications. Five legal categories of property are listed in this law with a slight modification from the fivefold Ottoman classification: *miri*, *metruk murfaq*, *metruk mehmi*, *mawat* and *mulk*. More usufruct rights were developed for *miri* lands. *Waqf* is no longer a land classification but is defined in law as a real right on private property. It is estimated that *waqfs* represent today 35 per cent of Lebanon’s territory MOE/UNDP/

ECODIT, 2011).

By the end of the French mandate (1943), almost half of the Lebanese territory was surveyed and represented in cadastral maps (Kilzi, 1995, 2002). These mainly covered the productive lands and main cities (coastal areas, close mountains, and large parts of the Bekaa valley) (Kilzi, 1995, 2002). These were attempts to unify land management considering the nuances and differences in the Ottoman law that had already shaped the social order. Maps were also a tool to make land and society visible. They represented boundaries, but also rights of passage, eminent domains, public domains, waterways, etc. All these laws have shaped the production of the built environment by putting the cadastre at the centre of the urbanisation process. Codes related to building typology and morphology were also developed and ratified subsequently (e.g., the building code 61/1940).

After having presented a brief historic overview of land management before independence (1943), an overview of post-independence land and urban policies follows.

6 In 1936, a law was ratified to organise committees that manage *mashaa* forests also.

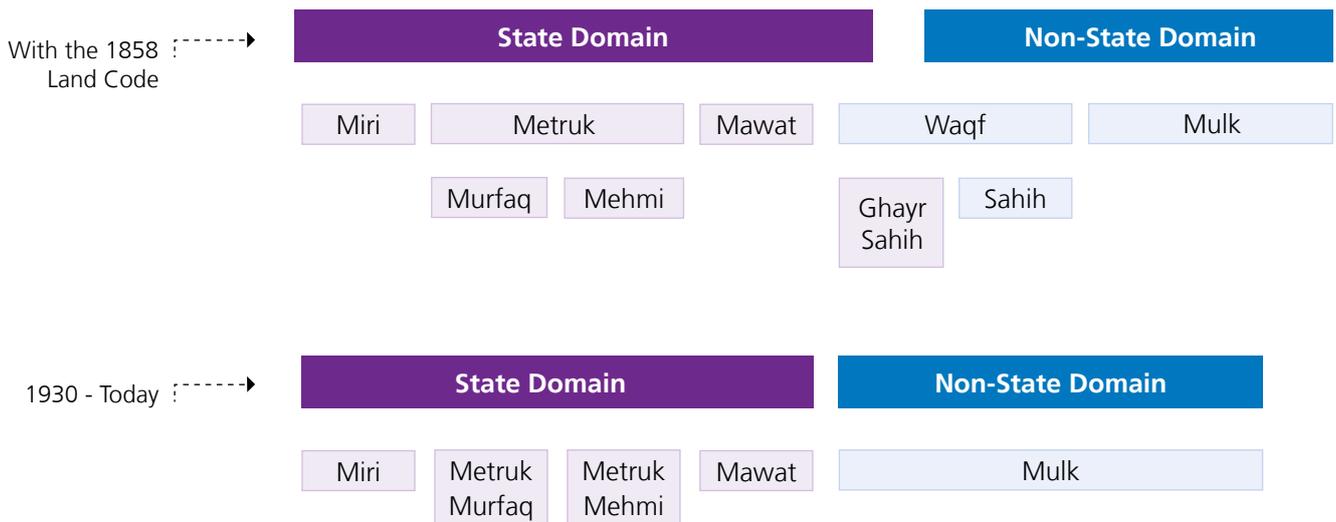


Figure III: Land classification in 1858 and 1930



3.1. Current land management framework: a different form of state privatization

With the above-defined framework of landed properties as materialisation of power relations, one understands better the large projects of land reform or agriculture reforms that several Arab leaders sought after independence (e.g., Egypt, Syria). In an attempt to assert the legitimacy of the new-found state, post-independence leaders tried to abolish the political nature of all inherited legitimacies (bourgeoisie, feudalists, clergy, and tribes) and mould it into a new public order (Ajl, 2020; Rae, 2002). Territory was as important as institutions in modern state building (Mitchell, 2002). Also, private property of land was correlated with modernity and described as the most developed type of ownership compared to more customary ways (Gabriel, 1954).

In contrast, the French cadastre in Lebanon is still in use today without any historical attempts to modify it (Ghorayeb, 2014). Very few land-related regulations were elaborated after independence. Most of the laws listed above are still used in Lebanon with minor modifications, albeit often broken by both public authorities and individuals. *Waqf* lands remained with monasteries and are highly capitalised on⁷ (commercial buildings, even quarries, private schools and religious buildings). The tax on non-built lands was abolished. The usufruct of public domains was facilitated especially for the maritime public domain (decree 4810/1966).

The urban planning law was ratified in 1962 and allowed construction without building permits under certain conditions. This facilitated the process of building almost anywhere, attaching ipso facto a “right” to build to the right to own land. The Building Code of 1983 also allowed construction in regions that have no master plans and with high construction ratios (80 per cent construction ratio per parcel). These ratios were decreased to 50 per cent in the Building Code 646/2004 but remain high and are perceived by landowners as inherent to property rights. Compensation is also required by law for prohibiting construction when lands are zoned as *non aedificandi* (Article 17 of the Urban Planning law 69/1983). Increased commodification also happened through more recent laws and policies (adding more facilitations in the building code for instance), or the lack thereof (mainly the absence

of a fiscal land policy and taxation on land speculation) (Marot and Moukarzel-Héchaïmé, 2018).

Efforts to finalise the demarcation and delineation of the whole of the Lebanese territories never came to fruition despite the survey of a large number of towns in recent decades (e.g., Decrees 43/1964, 2322/1965 and 3981/2000). These endeavours included fraud and privatisation of municipal *mashaa'* lands (Al-Akhbar, 2019; Al-Amine, 2014). The controversies and conflicts are mainly caused by the fact that the processes for delineation used are still the same since the French mandate period and rely on proof and supporting documents dating back to the Ottoman period as well as the *mukhtar's* truthfulness. The title proving ownership is given by the land registry services as a property title deed if the delineation and cadastral plans are done. The deed has reference to the cadastral plan and includes the surface area of the land. In cases where the cadastral plans are not done, the owner only receives a certificate of registration from land registry services mentioning the real rights on the land but without its surface area. If the demarcation is done but the ratification of objections is not finalised by the judge, the latter provides a signed land certificate. Lastly, a notice from the *mukhtar* is sufficient in cases where demarcation has not started. This notice should conform to the old cadastral notebook (*Daftar Masa-hat Loubnan Al-Qadim*) of the Ottoman period, with all the transactions made afterwards to the *mukhtar's* knowledge (Kilzi, 1995).

In addition, the war (1975-1990) increased the fragmentation of state institutions and many controversies remain in the delineation of public domains (maritime and inland) and state's private property. A notable amendment of the 1930 property law was done in year 2000 whereby Article 7 was modified to ban the sale of private municipal lands without the approval of the council of ministers. This modification was passed in the budget law of that year. Additionally, a presidential decree is needed for the sale of private state lands.

However, this legal framework – respected or not – does not allow for the protection of state properties. Even the public domain that is inalienable by law is recurrently declassified by decree into private state property to be sold. These instances can be tracked through the decrees and mostly relate to the selling of

⁷ Putting *Waqf* land in use is done via two possible modalities: either through exchange/ swap with *Mulk* land or through rent.

waterways whereby the future owner is required to replace it with a cemented canal. Here are a few decrees in which the surface of the declassified public domain was significant and the reason for declassification was not listed: 2244/1959 and 9728/1996 for 4000 square meters and 800 square meters respectively in the Bekaa, and 11121/2003 for 6400 square meters in Beirut. Such transactions require further research to be justified or understood.

Before discussing the impacts on today's built environment, I present in the following paragraph a summary of the post-war rentier economic model in Lebanon as land became more and more central in ensuring its resilience.

3.2. Land as a cash machine

The financialisation of housing and property in Lebanon has been researched in recent years by several scholars (Fawaz, 2017; Fawaz et al., 2014; Fawaz and Zaatari, 2020; Krijnen, 2016; Marot, 2018a, 2018b; Tonkiss, 2018). Also, the critiques of the post war reconstruction model were numerous from architects and urban planners (Ghandour and Fawaz, 2010; Rowe and Sarkis, 1998; Sawalha, 1998) but also from political economists who deemed the model as short-lived (Dibeh, 2005).

With the historic overview of the legal framework of land management in the backdrop, I attempt in this paragraph to draw a clearer link between the economic and fiscal choices, the regulation (or lack thereof) of the banking sector and the role of land in post-war Lebanon. The centrality of land, particularly real estate, in the Lebanese economy was neither a conspiracy nor a coincidence. For Beirut to become the financial capital of the region⁸ as was envisioned after the war, attracting foreign capital was necessary. This required conveying a certain level of trust in the local market, meaning primarily pegging the Lebanese pound to the US dollar and relying on financial arrangements within the banking sector but also on convenient fiscal policies that existed since the rise of the "merchant republic" (Gates, 1998) in Lebanon (e.g., banking secrecy law, free movement of capital) (Safieddine, 2019). Therefore, unlike common perception of an absent state, the current governance system is rather that of a present yet private state (Hibou, 2004). In this case, the public is superseded by private interests of the ruling elite (Mouawad and Baumann, 2017a, 2017b). Speaking of private state allows understanding the representations and power of the political order (Hibou, 2004). The

sectarian neoliberal system goes beyond a laissez-faire model where the state retreats in favour of the market. Instead, sectarian political leaders and their cronies captured state institutions for their private interest (Verdeil, 2018).

The constant inflation of the real estate bubble was essential to stabilise financial and monetary systems. Rather than being (or remaining) as a commodity that can be easily mortgaged or sold, land has become a cash machine. Its financialisation maximised profits generated from its use (Crotty, 2005). Without proper taxation and surplus value redistribution, wealth concentration spiked over the years. Any economic activity besides speculation is not profitable as land has become an absorbent of capital and a generator of surplus. Potential profit from land sale or construction is much higher than any income agriculture or industry might generate, strengthening a rentier economic model over a productive one with severe public infrastructure deterioration. The GDP share of agricultural and industrial activities was mostly stagnant between 2004 and 2012, while construction and most services increased significantly.

Owning land or benefiting from high interest rates on bank deposits became the most lucrative "investments" for capital in this financial and economic model. Productive sectors of the economy lagged.

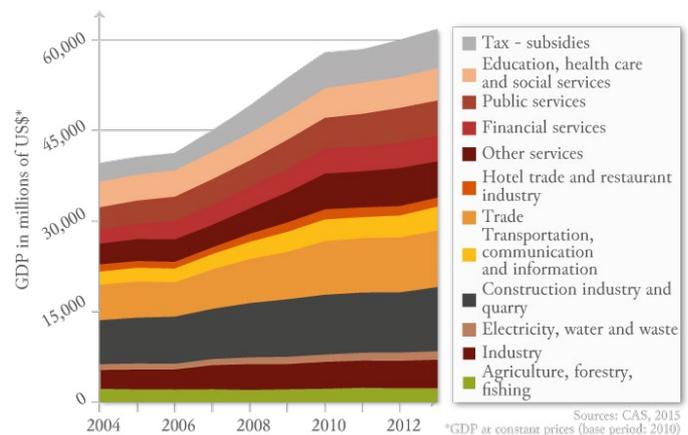


Figure IV: Value and composition of Lebanon's GDP 2004-2013, Source: Verdeil et al. (2019).

What kept the economy going were the ex-pat remittances and transnational investments mainly from the Gulf. The price of land rose by 300 per cent between 2003 and 2010. Agricultural and industrial activities would not generate enough returns to cover skyrocket-

8 For more on financialisation in the Arab region, see Buckley & Hanieh (2014) and Hanieh (2016).

ing land prices. Increased imports (due to heightened consumption resulting from the illusion of wealth parts of the society had after the war) and decreased exports (due to low production) led to a deficit in the country's balance of payments. However, this deficit was recurrently financed, again, mainly by ex-pat remittances up until 2019. To keep foreign capital flowing, an unproductive economy that led to youth migration and additional foreign remittances fed the system. To close the vicious cycle well, most remittances were "invested" again in real estate or deposited in banks strengthening the rentier model. The value of exports barely covered 21 per cent of imports in 2017 while it used to reach 62 per cent before the war.

The constant reliance on foreign capital to sustain the economy has changed the role of banks and turned them into dollar-luring institutions, especially after the first signs of the crisis appeared in the late 1990s (Awdeh, 2014; Nahas, 2020). The myth of land scarcity is used to justify skyrocketing real estate prices (Marot, 2018). Accordingly, "housing policy" was practically set by banks through loans to support demand for real estate and keep prices high (Saghieh and Mouawad, 2019). Housing loans increased in number and value (10 times in numbers from 2005 to 2017, amounting to USD 13 billion) to promote demand. Loans to property developers were also generous.

The overall value of loans increased (from USD 16 billion in 2005 to a peak of USD 60 billion⁹ in 2017, as per Banque du Liban accounts) with land used as collateral in most cases. Banks themselves invested in real estate projects and owned real estate properties. All these factors led to an ultimate bond between deposits and real estate assets (Nahas, 2020). Land became a financial asset, with prices systematically and voluntarily kept high to support the economic model at any cost. The central bank went beyond its prerogatives in 2016 to postpone the crisis with financial engineering schemes and shady deals with commercial banks (Zbib, 2017).

The growth of consumption-related loans, housing loans and accumulated debt due to the reliance on private actors to replace failed public services (including education and health) all ensured banking profitability and were indicators of the degree of financialisation of the economy (Hanieh, 2016). The financialisation of land and real estate assets increas-

ingly turned urban production into a predominantly financial process connected to interest-bearing transnational capital (Marot, 2018). By transforming land into a financial asset, also land use planning becomes obsolete. Census, statistics, land surveying and mapping are tools for governments (like what the French mandate attempted to do) to rule society after making it legible. In Lebanon today, these tools are deliberately not used to keep society functioning following the logic of "war machines" (Deleuze, 1979).¹⁰

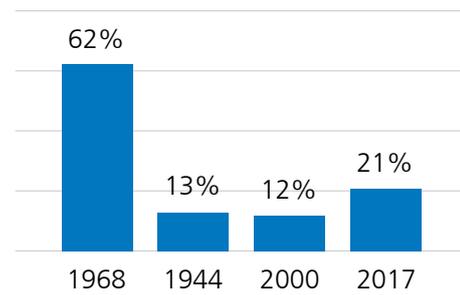


Figure V: Percentage value of exports from imports over the years in Lebanon (import/export ratio)

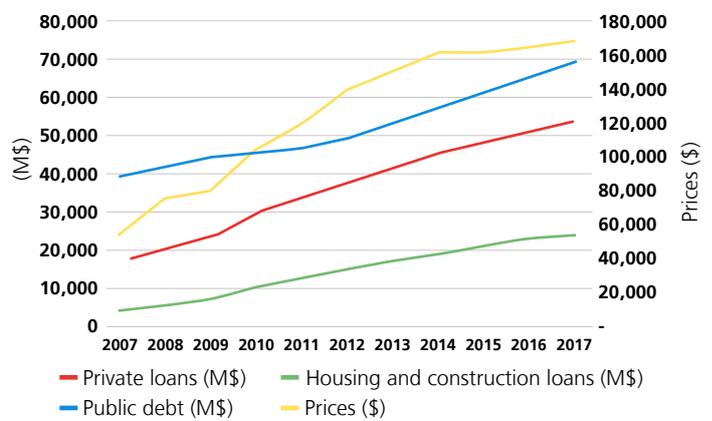


Figure VI: Value of loans and real estate prices. Source: author, data from Banque du Liban, Ministry of Finance and Fransabank.

This model that is incapable of creating jobs for the youth in turn led to higher migration rates, and therefore more remittances and higher land prices. A better equilibrated balance of payment was replaced by an outflow of youth and an inflow of capital. More people migrated from Lebanon after the war than during the war itself (Nahas, 2020), inducing massive changes in society's shape. The impact of this model on the built environment is summarised in the following paragraph.

9 USD 1 = LBP 1500 at the time

10 In opposition to the "state" that functions in a territorial logic of composition: organises human territory and treats land as the object of production, circulation, and frontiers; Deleuze describes the "war machines" as functioning in a logic of an arithmetic organisation of humans through competing networks.

With the prevalence of privatisation and subsequent financialisation of landed properties, urban planning became short of a tool to shape a better built environment in Lebanon. The freedom of use of private properties is lightly regulated and returns very little to, and even consumes, the surrounding public realm. Current laws regulating public property in Lebanon highlight the private sector's eminence in the adopted regulations. Today, with the rise of financialisation, the "value" of land especially in urban areas has been reduced to its capital surplus potential often defined by its surroundings' level of economic development and infrastructure. Real estate developers work on attracting investments into land to accumulate profit. Without adequate fiscal policies and land use regulations, any productive economic activity (agriculture, industry) is deemed non-profitable and is substituted by rentier speculation.

The main governmental institutions dealing with property management and land use planning in Lebanon are:

- the Directorate General of Urban Planning (within the Ministry of Public Works and Transport)
- the Cadastral Registry (within the Ministry of Finance)
- the Ministry of Environment
- the Ministry of Agriculture
- the Directorate General of Antiquities (within the Ministry of Culture)
- the local municipalities
- the Council of Development and Reconstruction

However, most public authorities make limited use of available land governance tools to prioritise the public good over private interests (Marot, 2018a). In contrast, as seen in the abovementioned laws, decrees and practices, government authorities granted more privileges to private owners. Several laws and decrees were recurrently passed to legalise or settle encroachments on public domains and infractions of construction limits (e.g., decrees of years 1981, 1994, 2008 and 2019).

The urban planning law (1983) and building code (2004) incentivise building rather than limit and plan it. Prohibiting construction for public good purposes such

as in cases of preservation of agriculture, heritage and natural sites became the exception that needed to be justified. Perceived entitlements of "rights" to build regardless of the land use plans strengthened once again the interest of private landlords. Despite being possible by law, even the smallest decrease of construction ratios in master plans is fought against by landowners.

Any land without potential of construction loses its perceived value. Municipalities spend public funds to service constructions in distant areas outside planned or needed built area extension. Even in the recently celebrated heritage preservation law project (2017), transfer of development rights was proposed for lands on which heritage buildings are present, even though the heritage law allows classification without compensation (166/1933).

The only plan that aimed to strategically manage Lebanon's lands and resources after the war was the National Physical Master Plan for the Lebanese Territories (NPMPLT decree 2366/2009). However, its operational decrees were never developed. Local master plans are also often developed in contradiction with the NPMPLT to ensure higher construction ratios in land use planning. They are also recurrently amended to allow construction (Public Works Studio, 2018b, 2018a; Samaha, 2021).

The financialisation of land led to devastating impacts on society and the territory. There are increased segregation and sharp urban divide between the different classes of society, irreversible losses in human and natural resources and heritage, the degeneration of public spaces and a decaying public realm. One striking example is the recurrent relinquishment of maritime public domains by various public authorities (like in Ramlet el Bayda-Beirut, and el Mina-Tripoli), whereby public property is conceded to private owners (Hamze, 2016; Ibrahim, 2019). This is facilitated by the controversies in delineation and ownership not only among private properties but also in public domains and the convenient regulations consequently devised to sacralise private property. The collapse of classified heritage buildings and protected natural sites making way for quarries, dumpsites, illegal construction, useless dams, and reclaimed lands in the sea are also a result of the privatised state and its territory (Farfour, 2014). Gaps in the laws are being exploited to allow the conversion of state/municipal lands to

private property or to increase construction ratios (Aveline-Dubach, 2000).

With increased expropriation prices and the prevalence of private interests (particularly of real estate developers and bankers) over decision-making processes, the state became incapable of successfully devising public projects, protecting natural areas, or preserving heritage. The delineation of private property becomes sharper while the remaining patterns of ownership (e.g., commons, public domains of sidewalks and streets, maritime domains) are being blurred and privatised, *de jure* and/or *de facto*. The NPMPPT strategies to preserve natural and agricultural sites, that are mostly private lands, are failing due to high land prices that instead become sites of speculation and construction without any attempt to curb prices. The price of a square meter of agricultural land in Lebanon is 16 times higher than that in France, with a much lower quality (Nahas, 2014). From land to natural resources, to the air we breathe, the whole country has become a “propertied land-

scape” (Blomley, 1998; Fawaz, 2017). Today, the Association of Lebanese banks is pushing to privatise state assets to cover part of the losses incurred. Their “rescue” plan valued state assets to be privatised in a lump sum of USD 40 billion. The call today to privatise public lands labelling them as real estate assets to write off debts without any reference to their morphology, vocation, or potential use, follows this same logic of land as a cash machine.

In reality, land is not a product. Landscapes differ vastly and are primarily defined by concrete/physical characteristics that make each place unique: location, geology, topography, hydrology, etc. The land also holds social value for the people that inhabit it. The combination of these criteria has created what is called the *genius loci* or the spirit of place in classical Roman religion. However, as Marx and Arendt both argued, society has become organised as “property owners who, instead of claiming access to the public realm because of their wealth, demanded protection from it for the accumulation of more wealth” (Arendt, 1958, p. 68; Marx, 1843).



At the turn of the twentieth century, peasants, local notables, emirs, elites and *mukhtars*, landlords, urban merchants and many others were all groups of a social order that underwent changes inflicted by shifts in the political order: changing authorities, statuses and representations, varying political and legal meanings for private ownership, the public and even citizenship. Who was the state? Where was its territory? Who were the compatriots? Whose interests were ensured and at the expense of whom?

Answers to these questions were changing and blurry at times, especially regarding land distribution and appropriation. Understanding the vested interests of elites and decision-makers at each juncture of our modern history brings to the surface the clash of economic interests and conflicting political and geopolitical projects that recurrently led to armed conflicts (1860, 1958 and 1975). These instances and their aftermaths transformed and shaped society and its relationship with authority for decades to come.

With the Ottomans and local emirs, land was a source of power and authority that conditioned society, mainly the peasants, through taxation, privatisation, and dispossession. The governor could use the land and its people, exploit, or even expel them (Mitchell, 2002). By the end of the twentieth century, land has become both a source and an absorbent of capital and subsequently remains a source of power. With the war, the post-war reconstruction and the economic model, a large part of the Lebanese society was dispossessed again. Today, the social order is sharply hit once more

with shifts in social class distribution, high migration rates and internal displacement. The state, be it hybrid or privatised, has been actively destroying its landscape and human and natural resources as much as a war would, using a convenient legal framework – one that is either broken or disregarded through “exceptions” when amendments are not possible or worthy. The resilient elite or the private actors of the state are pushing once again to accumulate wealth at the expense of the rest of society. The political implications of the discourses on privatisation are being masked by technical jargon of “cost-benefit” and “feasibility” of a defeasance fund to solve the crisis and easily write off public debt. But is there really an “easy” way out?

In reviewing the historic institutional frameworks of land property and governance in Lebanon, we understand the shifting power relationships within the state, society, and land. We learn from the political choices of territorial and economic planning and their implications on society. We find the gaps in inherited laws and practices reinforcing dispossession for the most and wealth accumulation for the few. We derive lessons from the past to answer the challenges of the future: what society and economy do we need after the crisis? How will we preserve what remains of our national public assets and resources? What could be the role of land, and more precisely, the public domain and the state lands in this vision? These are challenging questions for planners and policymakers in the hope that this crisis would become an opportunity for emancipation from the governance model of evergetism in Lebanon.





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