

assertions that the continuance of musha is proof that Ottoman land reforms were resisted by the *fallahin*, evaded and, thus, failed in Palestine. The debate began after the fall of the Ottoman Empire, in the early years of British rule over Palestine. It has focused on Article 8 of the Land Code. This article states,

All of the lands of a town or village cannot be granted wholesale (*toptan olarak*) to the whole of its inhabitants, nor by choice to one, two, or three from among them. Different pieces of land are to be awarded to each inhabitant (*her şahsa başka başka arazi ihale olunarak*), and title deeds showing their usufruct (*tassaruf*) are to be delivered to them.<sup>261</sup>

The idea that Article 8 forbade musha landholdings was first challenged in scholarly literature in 1927, by R.C. Tute, then president of the Mandate Land Court in Palestine.<sup>262</sup> Tute reasoned, “The proviso implied by making the article apply only to a grant of the whole of the lands of a village, appears to legalise a grant of some of the lands in common.”<sup>263</sup> This notwithstanding, misunderstandings have persisted in the literature about Ottoman intentions to dissolve musha, and its legal permissibility after land reforms.<sup>264</sup> The key phrase in Article 8

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<sup>261</sup> 1858 Land Code, Article 8. Ünal et al., *Tanzimat Sonrası*, 105.

<sup>262</sup> R.C. Tute, *The Ottoman Land Laws, with A Commentary on the Ottoman Land Code of 7<sup>th</sup> Ramadan 1274* (Jerusalem: Greek Convent Press, 1927): see Article 8 and his commentary on it, pp. 17-19. In his preface, Tute notes that his understanding of Ottoman land laws is based on Stanley Fisher’s 1919 translation of them into English. Fisher, in turn, as Martin Bunton has observed, relied on George Young’s 1906 translation of the Code into French: *Corps de Droit Ottoman* (Martin Bunton, *Colonial Land Policies in Palestine, 1917-1936* (Oxford and New York: Oxford University Press, 2007): 40.). Neither Young or Fisher, however, commented on the legality of musha in their translations.

<sup>263</sup> *Ibid.*, 18.

<sup>264</sup> For example,