State-ing Natural Resources through Law: The Codification and Articulation of Water Scarcity and Citizenship in Israel

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Using the case of the Israeli Water Law, passed between 1955 and 1959, this article makes three arguments about the relationship between legal discourse and management of natural resources. First, it argues that categories (natural and cultural) that find their way into law do not necessarily correspond with reality; rather, they should be seen as the conclusion of a process of social construction, marking winners and losers in a game of interpretation and of politics. Second, once these categories are codified, once they become part of the legal discourse, they tend to become powerful instruments in structures of power; they shape natural and political orders, despite contestations and varying interpretations. Third, one of the sources of power is the fact that these social and natural categories are articulated together in ways that make legal codes seem extremely commonsensical—what Antonio Gramsci describes as the most powerful form of ideology.
On the substantive level, this article argues that the Israeli Water Law of 1959 articulates together three categories: water scarcity as "fact"; the strong and centralized state as an appropriate form of political organization; and citizenship of the modern nation-state as the ultimate fulfillment of Jewish subjectivity. These categories and their articulation with one another shaped the water law into a strong instrument in Israeli structures of power that solidified the Jewish character of state institutions and contributed to the marginalization of Israel's Palestinian citizens.

Keywords: Water politics, state theory, science and technology studies, Israel, Palestine

S'appuyant sur le cas de la législation israélienne sur l'eau, adoptée entre 1955 et 1959, cet article avance trois propositions sur la relation entre le discours juridique et la gestion des ressources naturelles. Premièrement, il soutient que les catégories – naturelles et culturelles – inclues dans le Droit, ne correspondent pas nécessairement avec la réalité ; au contraire, elles doivent être comprises comme le résultat d'un processus de construction sociale, caractérisant les gagnants et les perdants autour des enjeux d'interprétation et de politique. Deuxièmement, une fois ces catégories codifiées et intégrées au discours juridique, elles tendent à devenir de puissants instruments dans les structures de pouvoir, elles façonnent les ordres naturels et politiques, en dépit de contestations et d'interprétations divergentes. Troisièmement, une des sources de pouvoir est le fait que ces catégories sociales et naturelles soient articulées de façon à produire des codes juridiques qui paraissent émaner du bon-sens commun — ce qu'Antonio Gramsci décrit comme la forme la plus puissante de l'idéologie.
Quant au contenu, cet article montre que la loi israélienne sur l'eau de 1959 met en relation trois catégories : la pénurie d'eau comme un « fait »; un État fort et centralisé comme une forme appropriée d'organisation politique ; et enfin la citoyenneté de l'État-nation moderne comme l'accomplissement ultime de la subjectivité juive. Ces catégories et leur articulation

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les unes aux autres ont façonné la législation sur l'eau en un vigoureux instrument des structures de pouvoir israéliennes, consolidant le caractère juif des institutions étatiques et contribuant à la marginalisation des citoyens palestiniens d'Israël.

mots clés: politique de l'eau, théorie de l'État, études des sciences et des technologies, Israël, Palestine

Introduction

Water policymaking during the first decade and a half of Israel's establishment (1948–64) captured popular as well as scholarly attention for more than half a century. On the one hand, *local* water policies—building a centralized institutional structure; prioritizing irrigation, immigration, and settlement; and passing a comprehensive water law—are often celebrated as heroic, especially in water policy circles in the West and in Israel. They are often unreasonably disconnected from national, regional, and racial conflicts. Expressions such as "greening the desert" and "making the desert bloom" became strongly associated with, and contributed to, the mythologized nature of Israeli water policies during those years. They often became a licence to ignore or sidestep the fact that those policies were possible only within a specific context of interstate (regional) and intra-state (Jewish–Jewish and Arab–Jewish) relations. These policies, despite or perhaps because of their heroism, do not necessarily originate in natural and technical necessities; rather, their origins lie in relations of power (regional, national, and racial).

On the other hand, however, much of the research on Israeli regional water policies, sharing the Jordan River with other riparian states (Jordan, Palestine, Syria, and Lebanon) or groundwater aquifers with Palestine, has been quite critical, and rightfully so, of Israeli disregard for international norms for water sharing.[1] Probably unsurprisingly, and because of the great regional importance given to water conflict in the Middle East, such research has been more typical in discussions of Israeli water policymaking in the last six decades.

Despite the importance of this body of work, both types of research on Israeli water policies (local and regional, celebratory and critical) often ignore (1) the multiple connections among Israeli policies on the local and regional levels, and how they mutually shape one another, and (2) the importance of treating Israeli local water policymaking as a marker of social, racial, and political relations *within* Israeli society. This is probably the result of disciplinary work that often *deemphasizes* the linkages between the national (the focus of sociology, development economics, and social policy) and the regional (the focus of international relations and foreign policy studies).[2] In a previous study (Alatout 2003) I address the first problem directly by demonstrating that Israel's national water policies should be seen as inseparable from and constitutive of the Israeli posture on the regional and international levels.

In this article, however, I focus attention on the second problem: literature on local Israeli water policymaking, mostly by Israeli researchers and scholars, ignores the implications of such policymaking for shaping the Israeli political order of the day—that is, its effects on social, racial, and political relations within Israel itself.[3] More specifically, the study of local water policymaking offers a unique opportunity for understanding Jewish–Jewish and Jewish–Palestinian relations within the state and how those relations were managed.

Since the early 1950s Israeli literature on the subject has often deployed an over-simplified instrumental–rational model for understanding policymaking. In this model, the following elements are *presumed* to be certain and to *constitute* the pre-conditions of water management practices: Israel is a small country,[4] surrounded by enemy states, that

suffers from water scarcity; it opened its borders to Jewish immigration and thus doubled its population within three and a half years; and it is assumed to be a country with vast empty spaces that were deemed insecure unless settled by Jewish immigrants. The result of these assumptions, often stated as commonsensical, is that centralization of water resources management apparatus was the only possible rational policy.[5] Palestinians figure very infrequently and often disappear altogether.[6] The assumption is that water resources management on the local level within Israel is a technical–rational process that hardly discriminates and, if it does at all, it does so by error and not by intention or design.

My purpose here is twofold. First, I point to a number of simplifications, inconsistencies, and outright mistakes committed in the deployment of this instrumental–rational model of policy-making; second, I also point to the constructed nature of the very elements such a model of policymaking takes for granted (water scarcity in particular).

In order to do this, I use the case of the Israeli Water Law, its history, the context of its writing, and the contestations along the way. This law was passed in August 1959 but has been surprisingly understudied in the literature on Israeli water policy and resource management.[7] A word of caution is due here, however. Rather than thinking of the Water Law as the culmination of an instrumental–rational process of policymaking or as the result of politically negotiated settlements, I rethink it as a political narrative, a strategy, for constructing human–environmental relations. In this sense it becomes a part of a larger network of elements, human and nonhuman, that successfully constructed (1) water scarcity as a "fact," and (2) the strong centralized state as "necessary," but also (3) the Jewish subject as a "citizen" in the service of the state, rather than a mere "settler."[8] This reconfiguration of Jewish subjectivity allowed the state to deploy its instruments of discipline, surveillance, and control. In the process, I argue, these policies had important implications for Jewish–Jewish relations—the role of the state in Jewish life, how the new identity of the Jewish subject is to be understood, and so on. But I also underscore the fact that (4) these various constructions were not only made possible by deploying Palestinian citizens of the state as a foreign element but provided the very rationale for legitimizing and institutionalizing discriminatory practices.

I start with some very brief theoretical background on the role of environmental law in society; I then provide three brief historical sketches about the above-mentioned constructions of water as a scarce resource, of the strong state as necessary, and of the Jewish subject as citizen. Next, I briefly discuss how these constructions played a role in marginalizing Palestinians in Israel—to use William Connolly's words, constructing them as an "other".[9] The rest of the article describes the historical and political contexts within which the Israeli Water Law was written, as well as the ways in which its *content* helped codify and stabilize these three constructions and turn them into instruments of the state. In the conclusion I draw together the themes of the article, their implications for the type of political order that emerged in Israel, and their significance to water resources management and policymaking.

Legal Theory and Human–Environmental Relations: A Brief Discussion

In a "moderate social constructionist" framework, according to Elizabeth Mertz (1994), law is both (1) a field of practice, where legal categories that have no necessary correspondence with reality are continually constructed and maintained, and (2) a field of power, where these constructed categories become instruments for organizing and disciplining social and political life. The implications of this constructionist conception of law are numerous. They include examples from legal studies but also from other fields, especially

that of science policy: legal discourse actively constructs, rather than responding to, categories of identity (Espeland 1994, 2001); it defines notions of space—public vs. private, local vs. national (Alatout 2003); it de/legitimizes categories of nature (Jasanoff 1990, 1995, 1998; Cole 1998; Daemmrich 1998; Halfon 1998; Lynch 1998; Reardon 2005); it defines, draws boundaries around, or withdraws its recognition from political communities (Levine 1994); it becomes a site for constructing power relations (Gooding 1994; Bower 1994; Espeland 1994).

In this sense, categories that find their way into the legal discourse should be seen as the end result of a long process through which struggles over the meaning and place of these categories have been resolved, at least temporarily, in favour of a certain interpretation. At the same time, once these categories and their meanings become part of the legal discourse, despite the possibility of different interpretations, they also become frameworks or structures of power—they become the instruments through which society is interpreted and organized.

This constructionist character of legal discourses is apparent in the Israeli water codes that were enacted starting from 1955 and culminated in the Water Law of 1959. Especially important for me in this article is the process by which categories about the water potential of the state, appropriate policy-making apparatuses, and conceptions of citizenship enter the water legal code and become its instruments of power.

Constructing Water Scarcity

The sweeping powers granted by the 1959 Water Law to a centralized institutional apparatus (see below) were justified, first and foremost, by reference to water scarcity—treated as a biophysical limit on water availability. The argument went as follows: Since water is a scarce resource in Israel, estimated at 1 200 to 1 700 million cubic meters per year (MCMY), the only way to use it efficiently is to construct a strong state apparatus for water policymaking and management.[10] Once water scarcity became part of the legal discourse in Israel, its constructed nature became that much harder to recognize. But scarcity was indeed a technically and politically constructed category that had its advocates and its detractors, all of them at the top of water policymaking institutions in Israel. Water scarcity became a "fact" only toward the mid- to late-1950s. How did that happen?

Under the British Mandate, between 1918 and 1948, the story of water availability was diametrically opposed to the story after the mid-1950s. As a matter of fact, between 1936 and 1948 there emerged in Palestine a Zionist network of abundance and settlement (Alatout 2003, 2007).[11] All the elements of that network were articulated both with one another and with Judeo-Biblical, geological, and geophysical notions of water abundance: water abundance became the "articulatory principle" of such a network.[12] This was important for the Zionist project of Jewish immigration: If Palestine were to be fully opened to Jewish immigration, then its absorptive capacity, read through water availability, had to be capable of addressing the needs of new immigrants.

During the first half-decade of statehood (1948–53), the story changed drmatically. There were immediately groups of water experts who disagreed on everything from estimates of the water potential of the state to what constitutes legitimate evidence in hydrological research. They also disagreed on what constitutes a legitimate role for the state in water policymaking. The main figures in that struggle over water policymaking were Simcha Blass and Aaron Wiener.[13] While Blass believed water to be abundant (more than 3 000 mcmy), Wiener believed it to be very scarce (a maximum of 1 700 mcmy). Each depended on a different methodology and different evidentiary elements. While Blass used theoretical and deductivist notions of water availability (deducing groundwater levels from rainfall), Wiener used empirical

and inductivist methods (available water is only that which is proven to be available) (Alatout 2003). Their disagreement on the water potential of Israel is a well-known episode in Israeli water policymaking—so much so that Blass is often described by his contemporaries as a "stubborn man" who believed water was abundant and would not believe "any evidence given to him" (Virschubski 1997). Wiener, on the other hand, is often described as having been "obsessed with water scarcity" and "pessimistic by nature and character"; he is supposed to have had a "personal fear … that one day [Israel] will be out of water" (Kally 1997).

Turf battles between the Water Department in the Ministry of Agriculture (headed by Blass) and Mekorot Water Company (headed by Wiener) came to a head in 1951. An inter-ministerial committee was formed in 1952 and decided that the way out of the impasse was to establish a third institution, Tahal Water Planning of Israel, to take over research and planning for the national water carrier that would convey water from the upper Jordan River in the north to the Negev Desert in the south. It was to be the representative of state interests in water policymaking. The first director general of the new company was none other than Blass, and his deputy none other than Wiener.

In a few months, disputes over the water potential of Israel found their way into the new institution and led to Blass's resignation in 1953.[14] As his deputy, Wiener took over the management of Tahal from 1953 until his retirement in 1977.

This shift from conceiving water resources as abundant to conceiving them as scarce is often explained in a positivist framework: Better techniques led to better understanding of the water system of Israel and to better estimates of the water resources of the state. This explanation is not sufficient, however, since, as I have demonstrated, we know that the evidence was not capable of singlehandedly resolving the disputes and that those disputes were over more than the water potential of the state. The most important factor in resolving the controversy was political: Scarcity justified and lent credence to the argument for a strong, centralized state.

Constructing the Strong, Centralized State as Necessary

The struggles over the boundaries of the state *vis-à-vis* civil society, its centralization, and its role in constructing Jewish subjectivity were among the most important political controversies in the first decade of the state. I will describe these controversies and their resolution only briefly here.

David Ben-Gurion's political philosophy rested on the notion of *mamlakhtiyut*. This term is often narrowly translated as "statism" but often carries broader meanings. For Ben-Gurion, the Israeli state was not only a mere representation of its citizens but the fulfilment of Jewish history—the conclusion of that history and the beginning of a new Jewish subjectivity. For Ben-Gurion, the state was the resolution of everything that had gone wrong in Jewish Diasporic life; it was the promise, the regeneration, the glorious satisfaction of all that is Jewish. But the state is also more than the representation of Jewish life. Once established, it is what *defines* Jewish life; it is precisely the institution that gives meaning to the new Jewish subject, who was lost in Diasporic meaninglessness prior to the establishment of Israel.

It is precisely this notion of the state as coextensive with civil society and Jewish life that was heavily contested in the 1950s.[15] Contestation of *mamlakhtiyut* came from a number of political circles within Israel, spanning the political spectrum from left to right. While the extreme religious parties did not recognize the legitimacy of the state as the Biblical "promised land" from the start, the secular right was, for the most part, apprehensive of what it presumed to be the excessive socialist tendencies of Labor Zionism, in control of state institutions until 1977. Even

the conventional allies of Labor, the *kibbutz* and *moshav* movements, were sceptical of the extension of state power, especially when the state, under the leadership of Ben-Gurion, tried to force the *kibbutzim* and *moshavim* to accept new immigrants as members or, at least, as wage labourers. This initiative was vehemently rejected by the *kibbutzim* and *moshavim* (Avi-Hai 1976).[16]

So, for Ben-Gurion, centralization was an important element in ridding Israeli society of everything that had gone wrong during the Mandate era, especially the decentralization of Jewish life. He tried, with considerable success, to centralize state education, the army, and labour exchanges; to organize immigration; and to disperse immigrants throughout the country. As an important part of establishing strong state institutions, Ben-Gurion and his allies were also successful in centralizing water policymaking and management apparatuses.

In the process, Ben-Gurion deployed the notion of scarcity and threat throughout the 1950s and 1960s. In his public speeches and diaries, he did not limit his notion of scarcity to water but extended it to include land, people, and resources of every kind. This notion of generalized scarcity played a major role in legitimizing the establishment of a strong and centralized nation-state.

Constructing the Jewish Subject as a Citizen of the State

Each of these elements—scarcity and the centralized nation-state—constructed a new image of the Jewish subject that was both similar to and different from the one constructed during the Mandate period. The Zionist ideal of the Jewish subject was built on the ideology of "productivization," that is, the belief that Diaspora Jews were engaged in unproductive work and that their regeneration required a radical change in Jewish occupations (Penslar 1991). To address this problem, Diaspora Jews were supposed to return to Palestine and engage the land in productive endeavours like farming and agriculture. Only by working the land and engaging productive pursuits would the Jew achieve salvation.

This idea, coupled with the notion of abundance discussed above, meant that the ideal Zionist subject was an immigrant (a *returnee*, in Zionist nomenclature) who was also a settler on the land engaged in productive work, especially farming. While this idea retained its hold on Zionist perceptions of Jewish subjectivity, life under the Mandate meant that the Jewish community was organized in fractured and decentralized ways. Immigrant-settlers tended to move where their compatriots moved and settled, resulting in the concentration of regional differences in religious, political, and cultural traditions. For example, party affiliation meant a great deal of loyalty but also resulted in different educational systems, different paramilitary groups, different political affiliations, different linguistic communities, and so on.

The state, from the viewpoint of Ben-Gurion, was to do away with those divisions and the accompanying decentralization. The state was to create the "new Jew" who was part immigrant, and part settler of the land, but whose allegiance was first and foremost to the state and its institutions. It was there that he or she derived his or her own understanding of self, of nation, and of life in general. The Israeli's role in life was not only, or even particularly, to help a party or a fellow immigrant but to become an instrument of the state and its objectives.

Constructing the Palestinian as an "Other"

All of these constructions—water as a scarce resource, the necessity of centralization and the strong state, and the new Jewish subject-citizen—were made possible only by the constant negation of the Palestinians as a national minority with rights to water and development. Even though Israeli Palestinians never constituted a serious military threat

to the state, they were nevertheless constructed as such by the Israeli political and military establishments. They were placed under extreme security measures, curfews, movement constraints, and, at times, outright violence for more than a decade and a half; some rightfully argue that discrimination against the Palestinian minority of the state, though it may have changed tactics, is ongoing (see Zureik 1978; Kimmerling 1983; Troen and Lucas 1995).

Scarcity, along with immigration and population dispersal, was the main justification for transferring the water resources of the Jordan River out of its basin—against the customary laws of rivers at the time—to irrigate other lands at a distance. The national water carrier was to convey water from the upper reaches of the Jordan in the north to the Negev Desert in the south. Discussions over possible locations of reservoirs to regulate water flow between dry and wet seasons were decided in 1954 in favour of using the Beit Natufa reservoir. This reservoir adjoined a number of Palestinian villages; in order to expand it, a large tract of land, 12 000 dunams to be precise, was to be confiscated from the village of Kafr Mandeh in western Galilee, which meant displacing most of the inhabitants of the village.

On 13 December 1954, a group of surveyors from Tahal went to Kafr Mandeh, accompanied by a small police force, in order to appraise the houses that would be submerged by water, for purposes of compensation. The *Jerusalem Post* reported on 7 June 1955 that resistance to this survey was very pronounced, and that the group had to withdraw and to return at a later date with a bigger police force. The protest led to the arrest of more than 30 Palestinians. This supposedly surprised the minister of agriculture, Peretz Naftali, since, according to his narrative, "every effort would be made to resettle them [the displaced Palestinians] on equivalent land" (*Jerusalem Post,* 16 December 1954).

The problem is that, in the language of the state, the Palestinians were, on one level, citizens who should be protected. As I mentioned above, however, Mekorot and Tahal had no incentives to use the same rationale: Their mandate was to help the Jewish population of Israel, *not* all of its citizens.[17] So an editorial in the *Jerusalem Post* on 16 December 1954, three days after the protest, admonished the protestors and claimed that, as in Britain, the United States, France, and Switzerland, it has "to be understood that in all such instances the national or greater interest has always had to prevail and no one has seriously criticized the necessary use of compulsion in the final instance when all argument, reason, and explanation had failed." This reference to compulsion in democratic states is at once purposeful and disingenuous, for a number of reasons, not only because in 1954 the Palestinians were still considered an enemy presence in Israel and subject to emergency regulations (Zureik 1978; Kimmerling 1983; Troen and Lucas 1995) but also because the technical necessity of broadening Beit Natufa had not yet been established or agreed upon at the time. Without delving into the intricacies and technical details of the national water carrier, it should be noted here that there were at least two conflicting opinions about the appropriateness of Beit Natufa as the main regulatory reservoir. Some, including Wiener, insisted that the leaky basin of Beit Natufa was inappropriate and that, instead, Lake Tiberias should be used as the main regulatory reservoir of the system.

But it was not only the *Jerusalem Post* that saw the problem in such technical and non-political terms, whether deliberately or naïvely. Witness the statement of the military judge Rav-Seren Benjamin Shehory in sentencing the protestors of Kfar Mandeh (quoted in the *Jerusalem Post* on 9 June 1955): that he "realized that nothing was harder for a farmer than to abandon his land but, being farmers themselves, the prisoners should have understood the importance of irrigation." Again, this reference to farmers as a unified category, and to irrigation works as

if they would benefit all citizens of the state equally, is precisely what is disingenuous.

These stories, brief as they may be, point to clear and important discursive and material practices in Israeli water policy in the 1950s: (1) to negate the Palestinians as a national minority with water rights and describe them with vague categories such as "citizens" and "farmers," while (2) vacating the notion of the Palestinian of any national significance, providing a complex institutional framework of policymaking that further marginalizes the Palestinians: Mekorot and Tahal are, after all, owned by Zionist institution, not the citizens of the state or even the state as such.

Codification: Constructing the Legal Legitimacy of State Interventions[18]

The Israeli Water Law of 1959 is often described as the most comprehensive of its genre in the world at the time (Wiener 1997; Virschubski 1997),[19] which compels the observer to ask the "how" question: How did it happen that a comprehensive law for water resources management and control was deemed so important in so small a state as Israel? This question becomes even more compelling because water had never previously been strongly regulated. The evidence also points to the curious fact that some of the same forces that struggled for regulation after the establishment of the state had been staunchly against any regulation in the pre-state era. Witness, for example, the Zionists' unqualified rejection of the High Commissioner's ordinance of 1940, which attempted the nationalization of water resources in Palestine; under Zionist pressure, the ordinance failed miserably, only to be enacted during the first decade of statehood. So what happened between 1940 (or as late as 1947) and 1959 (or as early as 1949), when the first regulation of water was enacted as part of agricultural reform?

The most common explanation is that a condition of water scarcity (a technical–rational argument), coupled with a state policy of open immigration and ingathering of world Jewry, necessitated regulating as well as centralizing water resources management. An interview with an expert on the legal structure of water policymaking in Israel provides an example of this articulation of a condition of scarcity with a condition of political control and legitimacy.[20] Laster repeatedly points to the "fact" that "Israel is a country with scarce water resources" in order to justify the "need" to "give the government as much control as possible." He goes on to explain, "This was the basic scientific background, that we had no water, serious scarcity, we have to control it, we don't want to have what they call in the U.S. riparian rights or private rights … they were abrogated, so they don't exist in Israel."

Another example of the same sort of reasoning comes from a very important figure in Israeli water politics during the 1950s. Mordechi Virschubski, who graduated with a law degree in 1953 and acquired his licence in 1954, expresses similar sentiments. In 1955 Virschubski became legal advisor to the Water Commission. He took part in the preparation of the water legislation from the beginning of the process and is often credited with writing the Water Law of 1959 and getting it over the parliamentary hurdles that faced it.[21] This is how he described the link between scarcity and state control over water resources in a 1997 interview:

> First of all, from the beginning of the state or even from the beginning of the Jewish settlement in Palestine, it was always felt that water is in scarcity, that it's a commodity that is limited and that it inhibits the development of the country. And even when Herzl met, in 1898, the German Emperor he said in the meeting that what the country needs is much water. It is very dry. So, those were general statements. But the 1948 war, when the state was created and we had a great number of immigrants coming to the country, it was felt that in order to develop the economy of the country, the industry and recreation and so forth, there must be control over water resources

> of the country. Since everything we tried to do was by legislation. There were scattered provisions here and there and there were all kinds of administrative rules and regulations, but there was no basic regulation. And then, we started in the Ministry of Agriculture to feel the need of a comprehensive water law for the state of Israel.

As these two examples and many others indicate, interviewees often keep intact a symbiotic connection between a scientific *content* of scarcity and a political *context* of state control and centralization.[22] Centralization, for these important professionals, was a necessary condition of governing, precisely because water scarcity was the natural condition under which Israel found itself. The abrogation of private rights enters Laster's narrative, and even Virschubski's, not as a political choice but as an effect of nature; thus it was produced as unproblematic, not troubling in the least.

These attempts to naturalize the abrogation of private rights, notwithstanding the fact that they signalled a major policy shift from pre-state legal doctrines, should be neither ignored nor underestimated. Nor should this naturalization fool us into thinking that the choice to abrogate private rights, or the technical–rational argument of scarcity that lay behind it, were so self-evident that they engendered no opposition. As a matter of fact, as mentioned above, this shift was far from easy; the agricultural lobby—*kibbutzim*, *moshavim*, and plantation owners—took the lead in opposing the abrogation of private rights and the science that supported it (Virschubski 1997).[23]

Legal practices during the first decade of Israeli statehood constituted the important context within which water laws were enacted, and thus deserve some attention. However, such laws were also, to a great extent, enacted in relation to the legal precedents set during Ottoman and British rule. Below I offer a brief commentary on the Ottoman legal code (the Mejelle) as it relates to water; the British Ordinances relating to water; and the debates in the early state over whether the legal structure of Israel should have a constitution or whether it should depend on passing individual laws through its parliamentary system.[24]

The Mejelle

The Mejelle was the legal code in Palestine under Ottoman rule. It constituted a part of the legal code of Palestine under the British Mandate and was part of the legal code of Israel until it was repealed during the 1950s. Passed in 1876, the Mejelle was the Ottomans' attempt at "modernizing" Islamic law by institutionalizing it in a civil administration, rather than a religious one, and by entrusting its application to a new civil position, that of the minister of justice.[25]

Building on Islamic notions of gratuitous property rights, water, like grass and air, was declared a free natural resource, jointly owned by the public; this ownership extended to both rivers and groundwater resources. However, public ownership of water resources was not absolute in the Mejelle either. While the river and groundwater themselves could not be owned, a well and the portion of a river existing on a specific property belonged to the owner of that property. This ownership was guaranteed even if the owner's use could harm other uses of groundwater (Laster 1976). Landowners, however, could not make a claim on the whole course of a river or on the groundwater aquifer itself. In this sense, the Mejelle carefully constructed water as a public resource while at the same time protecting the individual property rights of landowners.[26]

The High Commissioner's Ordinances

During the British Mandate, the high commissioner of Palestine enacted one especially important ordinance that affected water rights and water resource management. The 1940 amendment to the Palestine Order in Council of 1922 vested rights in all surface

water of Palestine in the high commissioner in trust for Palestine, including rivers, springs, streams, and lakes. The creation of this trust abrogated rights in private streams created by the Mejelle. The significance of this amendment becomes even more pronounced when we recognize the broad authority it granted the high commissioner to enact ordinances concerning the "beneficial and economic use" of all water sources, thus investing him with the power to determine allowable water uses.

In 1944, the high commissioner created the position of the water commissioner in the Department of Land Settlement to "supervise and regulate the distribution of water in 'controlled areas' of Palestine." (Laster 1976, 6) This move was resisted by Zionist leaders in Palestine; controlled use of water resources was felt to be "another name for restrictions on immigration" (Aloni 1967, qtd. in Laster 1976).[27]

Most other ordinances that affected water resource management were meant to control pollution and were enacted in the guise of nuisance control and health legislation. The details of these ordinances are not important for our purposes here; however, it is important to note that such ordinances, including the Municipal Corporation Ordinance of 1936 and the Public Health Ordinance of 1940, treated water pollution as a local problem of nuisance control best dealt with on the local or municipal level. In other words, aside from the ill-fated amendment of 1940, none had nationalizing effects; that is, no other ordinance centralized water resource management in the hands of the high commissioner or even in the hands of his water commissioner.

Constitution vs. Basic Laws: The Legal and Political Culture of Early Israel

In its Partition Plan of 1947, the UN General Assembly envisioned the establishment of two states, one Arab and one Jewish. A suggested constituent assembly for each state would soon thereafter draft "a democratic constitution for its state."[28] Six decades later, however, a Palestinian state has yet to materialize and an Israeli constitution has yet to be adopted.

The most important unit of Israel's legal structure is the Basic Law, usually passed by the Knesset by a simple majority.[29] During the 1950s, many Basic Laws were passed to regulate important aspects of Israeli life: the Law of Return, codifying and legitimizing the ingathering project; citizenship laws, with their complex provisions that excluded the Palestinian citizens from political participation while reflecting an image of democratic state building; Israeli defence regulations that centralized the armed forces and military command within state institutions; and water regulations that abrogated private rights, placed all water resources under centralized management within state and semi-public institutions, and authorized the state to decide appropriate uses of water, determine water quotas for different sectors, charge for water use, and monitor illegal water uses.

It is important to note that Basic Laws enacted during the first decade of statehood were drafted, negotiated, and passed in relation, as well as in opposition, to other legal provisions that predated the state: the Mejelle and the high commissioner's ordinances.[30]

Israeli Water: From a Social–Economic to a Strategic–Security Concern

Between 1948 and 1959 the Knesset passed regulations that gradually nationalized the water resources of Israel, abrogated water rights, and centralized water policymaking within state and semi-state institutions. These different pieces of legislation were consolidated into one Water Law that passed the Knesset in 1959 after two years of debate.

In the early years of the state, the importance of water policy as a strategic resource for governing, independent from agricultural policy, was yet to be constructed. This is why, in both legislation and institutions, water

regulation was an addendum to agricultural policy. The General Agricultural Ordinance (GAO) of 1948 was the only law that dealt with water resource management. It created an Agricultural Council and entrusted it with the protection and development of the nation's water resources. Water management, however, remained peripheral to and in the service of the council's main set of objectives: "increased agricultural production and the absorption of immigrants in agricultural work" (Laster 1976, 9–10). The council was not asked to design a full-fledged water policy for Israel, and water had yet to be nationalized.

In addition to the GAO, a special Proclamation of the Government issued on 12 April 1950 vested all water resources mentioned under article 16E of the Palestine Order in Council, 1922–1947, with the government in trust for the state.[31] This law confirmed the state's interest in surface water resources, especially rivers.

Open immigration, the project that most legitimized the establishment of the Israeli state, more than doubled the Israeli population by 1952. The settlement of new immigrants was both the most important and the most contentious issue with which Israeli policymakers had to deal. Three determinants of Israeli policies of settlement are important for us: first, the Zionist idea of Jewish regeneration through working the land was still a symbol of Zionist and early Israeli policy;[32] second, there was a strong belief that the only way to achieve the security of the state and its borders, its sovereignty over all its national space, was by strengthening the Jewish presence on the land through settlement;[33] third, there was a belief that in order to identify strongly with the state, new immigrants had to be introduced to an Israeli way of life.[34] In all this, the role of the state was highly contested. Ben-Gurion, on the one hand, considered the state an extremely important institution in Israeli and Jewish life—the fulfilment, if you wish, of Jewish struggles in the past, and its salvation for the future. *Mamlakhtiyut*, his governing philosophy, sees the state as coextensive with civil society. Moreover, he considered the state the centre of Jewish life, the institution that gives meaning and identity to Jewish subjectivity. Jewish and Israeli citizens become instruments of the state, in this sense.

Ben-Gurion's statist tendencies led him to a number of confrontations with opponents and proponents alike. One problem facing his policy of settlement was the immigrants themselves, who for the most part chose to settle in large coastal cities, where more employment opportunities were available. One of the results was the emergence of a new, purposeful policy of population dispersal. Immigrants were enticed, and often forced, to live in already established settlements in the Negev, to start their own settlements, or to inhabit new developments, also known as "border towns" because of their location at the borders with Arab states.

In addition to the relationship between the state and agricultural forces, water regulation was also affected by conflicts between the state and the labour movement. The Histadrut (the General Federation of Hebrew Workers in the Land of Israel) was established in 1920 at the initiative of Ben-Gurion, who became its first secretary-general. Since its creation, the Histadrut had not been a conventional labour union, interested exclusively in labour issues; it was involved in health care, education, consumer unions, workers' exchanges, and water.[35] In fact, the Histadrut became the Zionist movement's instrument of settlement, and it played an unquestionable role in bringing the labour movement to a position of dominance within the Zionist movement.

But the relationship between the Histadrut and the state began to deteriorate in the early 1950s. Under the leadership of Ben-Gurion, the state targeted many of the Histadrut's functions through the policy of nationalization: its labour exchanges, health care institutions, educational establishments, and, most importantly for our purposes here,

Mekorot and other waterworks that were wholly or partly owned by the Histadrut. Ben-Gurion was able to wrestle labour exchanges out of Histadrut's control, but not its sick fund (*kupat holim*), nor its water affiliates, such as Mekorot, until the mid-1950s.

By defining open immigration, settlement, and population dispersal as state interests, especially in terms of the security of the state, Ben-Gurion and his Mapai party were able to define water resource management strategically, as a state concern. What made state interventions more urgent was the progressive technical construction of water as a scarce resource that had to be controlled and centralized within state institutions (Alatout 2003, 2007). A number of laws enacted from 1955 onward paved the way to, and culminated in, the passage of the Water Law of 1959.

The Water Drilling Control Law (1955): Codifying Water Scarcity and Its Implications

By late 1954, the situation turned in favour of water legislation. The water commissioner at the time was Pinhas Sapir,[36] a close friend of Levi Eshkol, who went on to become the minister of trade and industry; Simcha Blass had already been replaced by Aaron Wiener, former chief engineer of Mekorot and a close friend of Eshkol and Sapir.[37] Work had already begun on the Israeli project to convey water from the middle and north of the country to the Negev in the south, and this required the expropriation of private land and water, and thus legislation (Virschubski 1997). Water-sharing struggles with neighbouring states over the Jordan and Yarmuk Rivers were already at their height and threatening Israel's master plan for water resources. The population had more than doubled, and population increases were expected to continue at the same pace; and, as we have seen earlier, the state project of centralization was pitting members of state institutions against previous allies in the *kibbutzim* and the Histadrut.

The first regulation to be enacted was the Water Drilling Control Law (1955). This law aimed to extend the definition of water resources vested in the state in the proclamation of 1950 to include groundwater aquifers; in the process, it changed a long-standing legal paradigm that connected rights in water to rights in land. For the first time, regardless of land-ownership status, a "drilling licence" was to be issued by the water commissioner in advance of any extraction of groundwater. The commissioner's choices were not limited to either licensing drilling or not. Many conditions could be imposed as well: boring diameter, depth, equipment used, quantity of water to be extracted, purposes for which the extracted water could be used. Licences were also subject to renewal requirements. In addition, the law gave the commissioner the power to monitor existing wells to ensure compliance with the terms of the licence.

These unfamiliar powers did not go as far as the 1959, but they unquestionably legitimized state intervention in decisions about water use. They were opposed by many groups, including some unlikely allies: in addition to Menachem Begin's Herut party (ancestor of the present-day Likud), the Tzionim Klalim (General Zionists) also opposed the measures. The Tzionim Klalim were to the right of Mapai but often to the left of Herut; they were the "capitalist" Zionists, as Virschubski (1997) described them, mainly representing the interests of plantation owners, and any state encroachment on their rights for the use of water within their lands was seen as a further extension of socialist Zionism. When asked to explain the fact that the *kibbutz and moshav* movements did not mobilize efforts against this regulation, even though it threatened their own share of water resources, Virschubski offered a general theoretical explanation: state control was seen as a positive development, because it meant that public enterprises would be guaranteed access to water.[38]

The Water Metering Law (1955): Redefining the Rights of the State; Discipline, Surveillance, and Control

The Water Metering Law of 1955, like its predecessor, introduced new, unfamiliar aspects of water relations. It provided the water commissioner with the power to monitor water by installing measuring devices at every water source and to establish water tariffs and collect periodic dues.[39] This law not only reconstructed water as a commodity but, unlike the Mejelle, also constructed water as a legitimate object of surveillance. For the first time, it justified and extended the state's ability to intervene in water uses and to manipulate them through economic instruments such as the setting of tariffs. Although this law still recognized private rights in water, it curtailed those rights and made them subject to surveillance and intervention. It is important to note, however, that by claiming the presence of state interests (financial and otherwise) in water resources, it legitimized the process of institution building and centralization.

The Drainage and Flood Control Law (1957): Defining the Boundaries of the State; Centralizing Water Institutions

The Drainage and Flood Control Law was another step toward centralized state control over water resources. It was meant, however, to facilitate the construction of the national water carrier. This law gave the minister of agriculture the power to declare certain areas drainage areas, to establish drainage authorities, and to carry out drainage schemes. In addition, the law prioritized the claims of the state over those of Drainage Boards in local districts, which were established by the law itself.[40] Further, control over sewage water and groundwater resources, even those originating from drainage and floodwaters, was placed in the hands of the water commissioner himself. Again, this law was opposed by the same forces mentioned above.

It should be noted that this law was passed at a time when the Yarkon–Negev conduit was about to be completed. This project was to convey water from the centre of the country to the south. It should not be surprising to know that most of the water resources for that project were either underground aquifers or winter floods. In that sense, the Drainage and Flood Control Law paved the way for the conduit's completion.

The Water Law (1959): The Hegemonic Articulation of Water Scarcity, Centralization, and Citizenship

The Water Law of 1959 completed this process of centralization of water control and policy-making.[41] It declares that all water resources are "public property; … subject to the control of the State and are intended for the use of its inhabitants and for the development of the country" (art. 1.1). The law, in addition, extends its definition of water resources to include "springs, streams, rivers, lakes and other currents and accumulations of water, whether above ground or under ground, whether natural, regulated or man made, and whether water rises, flows or stands therein at all times or intermittently, and includes drainage water and sewage" (art. 1.2). For the first time, no matter where water was located, it was entrusted to the state.

In order to secure the power of the state in managing water resources, the law also limits personal rights in many ways and made them subject to intervention at any time. It disconnects rights in water from rights in lands, stating that "a person's right in any land does not confer on him a right in a water source situated therein or crossing it or abutting thereon" (art. 1.4). It guarantees a person's rights in water as long as that use does not lead to "salination or depletion." A person's right to water is limited to the use agreed upon by the water commissioner, namely, "domestic purposes, agricultural, industry, handicraft, commerce and services, and public services" (art. 1.4). All water rights are subject to the water

commissioner's power to limit, repeal, or extend.

Red lines for water levels in Lake Tiberias and in aquifers were to be established, and the water commissioner was authorized, in cases of drought, to decide whether a water shortage was threatening and might be causing irreparable damages to various bodies of water.[42] In such a case, he was now authorized by the law to reduce water uses from different water resources and for different sectors as he saw fit.

The most vocal opposition to this law came from the Tzionim Klalim and their supporters, owners of private citrus plantations. The law once and for all abrogated their rights to privately owned water resources and their rights to control those resources. Most of these plantations were located at the centre of the country, where water was available and where its use had never been open to challenge. The reaction of the Tzionim Klalim was linked to the fact that they were all but sure that this law was meant to support what they saw as the socialist project of building communal settlements in the Negev and border towns without regard to their interests in water. The Tzionim Klalim assumed that from now on all water would go to the south, especially once the national water carrier was completed.

The sweeping powers of the water commissioner, however, were perceived as a threat by the farming community in general, including the *kibbutzim* and *moshavim*. Even though the law was perceived to be necessary *because of the building of the national water carrier*, which was to benefit the *kibbutzim* and *moshavim* in particular, and especially those in the south, they were suspicious of the sweeping powers of the water commissioner and of the possibility that these powers would be used as political leverage against them in the future (Tal 1997).

The *kibbutzim* and *moshavim*, however, were given something in return for their acquiescence: water was to be subsidized for its use in agriculture, especially in the Negev. Rather than having different water tariffs for different parts of the country, depending on the cost of conveying water to its place of consumption,[43] a single water rate was established and charged to all users. This has been a thorny issue in Israeli water politics for the last four decades. At the time, however, agricultural settlements, especially in remote areas, were defined as part and parcel of the national project of protecting the state. For the *kibbutzim* and *moshavim,* far from the water resources of the north, a uniform water rate was a tremendous victory. For plantation owners in the centre of the country and for other water users, however, water rates were substantially higher than the cost of conveyance. In addition, the special budget in the hands of the minister of agriculture was used to help most *kibbutzim* meet their water costs.

The struggles over water regulations notwithstanding, it is important to draw attention to the fact that these struggles were resolved in favour of the perception that the Israeli society was a threatened entity, a nation under attack; that it was in a condition of scarcity; and that it needed to enact strong measures in order to protect the state itself.

Conclusion

Categories that find their way into legal discourse (water scarcity, the strong and centralized state, and the Jewish subject as citizen) should not be read as natural categories that correspond to the reality on the ground, unfiltered by political and interpretive lenses. They should be seen as constructed categories. Their presence in the legal discourse should be seen as a social and political accomplishment that points to winners and losers in the game of interpretation.

Moreover, rather than the result of a natural correspondence, the relationship between one category and another (scarcity, centralization, citizenship) should be seen as the result of articulatory (political) practices that

strategically link the categories together and construct them as commonsensical. These articulatory practices produced a chain of causes and effects: once water scarcity was seen as a fact and the security of the state as threatened, the statist form of governance became more attractive, and the citizen-as-instrument of the state became the only way to salvation. We have seen in this article, however, that all of the above went through processes of construction that involved contestation, negotiation, and the exercise of power.

In addition—and this is one of the most important implications of these comments—once categories and their relationships are sanctioned by legal codes, they become that much more entrenched as instruments of power. They are often deployed in refashioning reality according to their logic—scarcity demands centralization, but it also demands the construction of a citizenry willing to be an instrument of the state.

The implication for environmental and natural resource policymaking is that categories inscribed and "black-boxed" in scientific and legal discourse should be seen as historically contingent categories that have a history of emergence. It is important to conduct genealogies for some of these categories (Foucault 1975, 1978, 1980) in order to reconstruct the struggles that made them commonsensical: the relations of power and resistance that led to their triumph, but also the voices silenced in the process. Antonio Gramsci (1971) has rightly argued that the strongest form of ideology is what appears to be common sense. Scarcity; the strong, centralized state; and the Jewish subject as citizen all have the power of common sense; their unpacking, at least as they are present in water laws, leads us to a better understanding of their contingent character and of the alternative routes not taken.

To return to the implications of this understanding of the relationship between natural resources, their management, and the law, I offer three crucial conclusions: (1) the fact that scientific and legal categories are socially and politically constructed should encourage us to revisit their history of emergence in order to understand the power and resistance relations that lie behind their success; (2) in the process, we must pay special attention to the silenced voices in that history and try, as much as possible, to shed light on the processes of negation; and, (3) water law and policy should be seen as a political narrative and strategy that work for the benefit of certain political projects and against others. The role of social science is to interrogate such seemingly commonsensical categories of nature and society and to make apparent the political work they do.

In the end, the success of constructing water as a scarce resource, the strong state as necessary, and the Jewish subject as a citizen of the modern nation-state points to the fact that (1) there were winners and losers within Jewish-Jewish relations in Israel (those in favour of a conception of abundance and those in favour of scarcity; those pro-*Mamlakhtiyut* and those opposed to it), but also that (2) these successes were possible by displacing the Palestinian citizens of the state as an "other" that has no pre-existing, national rights in the water resources of the state.

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Notes

1 Although fraught with political implications, the inclusion of Palestine as a riparian nation has been a constant practice in most writings on the Jordan River. The assump-

tion, indeed legitimate and supported by historical evidence, is that *de facto* water-sharing regimes along the river, which were established as a result of the Johnston Mission to the Middle East (1953–56), included a Palestinian share in the river with that of Jordan; at the time, and until 1967, Jordan was in control of the West Bank (see, e.g., Alatout 2000; Bou-Zeid and El-Fadel 2002; Elmusa 1993, 1996; Isaaq 1994).

2 In general, some researchers, especially geographers, have paid attention to differences in and relations among scales; however, this has not been the case in Israel–Palestine, see, for example, Corell and Swain 1995; Harris 2002; Sneddon 2002; Sneddon et al. 2002). For theoretical discussions of scale see Marston (2000), Brenner (2001), Marston and Smith (2001), and Purcell (2003).

3 A notable exception is Davis et al. (1980).

4 A point of clarification is in order here: I am arguing that the Israeli state is *presumed* to be small, not that it really is. The smallness of a state is not an immutable category or measurement; rather, it is constructed in political and social practice in order to convey a sense of vulnerability and threat. Thanks to an anonymous reviewer for *The Arab World Geographer* for reminding me that Israel is, in fact, larger than a number of states that do not deploy their *smallness* as an important category of politics—Lebanon, Qatar, and Bahrain, to name a few.

5 For the most part, only Israeli scholarship on water deals with local water policy-making. This scholarship take issues of immigration, security, and state building for granted, ignoring the fact that those categories are themselves constructed through a Zionist political vision that expresses and legitimizes Zionist relations of power. For a limited number of examples of such scholarship see Schiff (1993); Kahan (1987); Shuval (1980, 1992); Schwartz (1992); Ben-Meir (1992); Avnimelech (1992); Baskin (1993); Wolf (1992); Arolosoroff (1977); Wiener and Wolman (1962); Kartin (2002). The only exception is the work of Davis et al. (1980), who argue that the very possibility of an Israeli project of settlement and development has been based on the total negation of Israeli Palestinians from Israeli official calculations. Similarly, although Zureik (1978) does not deal with water policies as such, his characterization of Israeli policies *vis-à-vis* Palestinian citizens of the state during the 1950s and 1960s as "internal colonization" points to the importance of racial relations in Israeli politics of the time.

6 In fact, even though this article is about the mutual shaping of water policymaking and the Israeli political order, I initially focused on Jewish–Jewish relations and ignored the effects of these policies on Palestinian citizens of the state. Thanks to an external reviewer for *The Arab World Geographer* for bringing this to my attention.

7 Very few studies on the Water Law of 1959 have been published, and all are quite old (see Laster 1976, 1980; Raphaeli 1965; Hirsch 1959).

8 For an extensive treatment of network theory literature see Law and Hassard (1999).

9 In his theoretical treatment of "othering" as opposed to "difference," Connolly (1991) argues that the former establishes discriminatory categories whereby "difference" (race, class, gender, ethnicity, etc.) becomes the prism through which repression is legitimized. In this case, I argue that Israeli water scarcity, state centralization, and struggles over Jewish identity were resolved, in part, through the construction of Palestinians as an "other" and through continual attempts to negate their presence as legitimate owners or users of water resources in Israel.

10 Available water resources in the State of Israel went through a radical change between the early and the late 1950s. See the different Interim Reports on Master Plan for Development of Irrigation and Hydroelectric Power in State of Israel. These were secretly circulated between 1951 and 1956. See also the amended Master Plan for Development of Irrigation and Hydroelectric

Power in State of Israel 1957. For a comprehensive study of these plans, through which water scarcity was gradually constructed as fact, see Alatout (2003).

11 This argument of water abundance is made, for example, by Walter Lowdermilk (1944).

12 Articulation is a theoretical concept that has a long history in linguistics and political theory. For an extended discussion of articulation, articulatory practices, and articulatory principle, see especially Althusser (1969), Mouffe (1979), Laclau and Mouffe (1985), Smith (1994), and Hall (1996). For our purposes here, I use Ernesto Laclau and Chantal Mouffe's (1985, 105) definition of articulation as "any practice establishing a relation among elements such that *their identity is modified* as a result of the articulatory practice." In the case at hand—Israeli water policies during the 1950s and 1960s—articulatory practices can be seen as the different discursive and material practices (rhetoric, police, taxing, scientific research, sociological and political research, etc.) through which we see as *common sense* the connections made between water scarcity, the centralized and strong state, and the Jew as citizen of the modern nation-state.

13 Simcha Blass worked with Mekorot (the Zionist water company) from its establishment in 1937, first in its administration and then as a consultant; he was put in charge of the Water Department in the Ministry of Agriculture upon the establishment of Israel in 1948. In 1952 he became the first director of Tahal, Israel's water-planning company, and held this post until his resignation at the end of 1953. After that he became a consultant for different water policy-making institutions in Israel. He is best known for inventing drip irrigation in the 1960s. Aaron Wiener, on the other hand, worked within Mekorot beginning in the mid-1940s and became its chief engineer; he then became the first deputy director of Tahal when it was established in 1952, and took over the directorship from Blass upon the latter's resignation in 1953. Wiener held that position until retiring in 1977. He is often credited with building Israeli water institutions during the early years.

14 Though beyond the scope of this paper, it should be understood that Blass's resignation and the struggles over Israeli water potential are complex stories in their own right. Without delving into the details, they had everything to do with how different alliances within Israel were formed, David Ben-Gurion's temporary retirement in 1953, Levi Eshkol's control of water policy in the ensuing years, international conflict and military skirmishes with Syria over the water resources of the upper Jordan River and the demilitarized zone, and UN intervention to resolve that regional conflict. See Alatout (2003) for more detail.

15 This is a continuing controversy in Israeli society. The state, its boundaries *vis-à-vis* civil society, still engenders passionate discussions and disagreements, probably more so than in the 1950s (see, e.g., Kemp et al. 2004).

16 The *kibbutzim* (plural *kibbutz*) are cooperative agricultural Jewish settlements in Palestine and have been in existence since 1908, when the second wave of Jewish immigration to Palestine, heavily East European, deployed radical socialist politics. *Kibbutzim* are linked to the Zionist project of the "regeneration" of the Jewish people by working the land; they became the symbol of its success. While the *kibbutz* economy (including farming, cooking, industrial production, and child care) is managed communally, with no private ownership, the *moshav* is a Jewish agricultural cooperative that allows for limited private property.

17 Even thought the state has a share in these institutions (in partnership with other Zionist organizations), their bylaws still stress their original mandate of aiding the Jewish people rather than the citizens of the state.

For more detail on Beit Natufa and the decision to use it as the main reservoir for the national water carrier, see Alatout (2003).

18 Most information in this section is compiled from Laster (1976, 1993, 1997); Mordechi Virschubski (1997); Wiener (1997, 1998). In addition, the different codes were also used as sources.

19 The main features stressed as comprehensive, as well as revolutionary, are the following: absolute state ownership of water resources; divorcing water from land ownership; extending the definition of water resources to include those that are naturally produced as well as those that are produced artificially; and granting the Office of the Water Commissioner, within the Ministry of Agriculture, unlimited authority for defining water quotas, prices, and surveillance powers.

20 Richard Laster is a practising environmental lawyer in Jerusalem. He is famous for his dissertation from the Hebrew University, written in 1973, on the effect of regulation on water pollution; he was also a member of the team that produced amendments to the water law in the late 1970s and early 1980s.

21 Virschubski went on to become a member of the Knesset (the Israeli parliament) between 1984 and 1993. At the time of our interview, he was a member of Tel Aviv City Council for Cultural Affairs.

22 It is importnt to bear in mind that most of those interviewed for this project participated actively in the making of water policy during the 1950s.

23 The difference between *kibbutzim* and *moshavim* is that while both are agricultural cooperatives, the former functions as a commune where there is no private property, and all members work and benefit from the cooperative equally; the latter allows for the private ownership of land, houses, and other elements while encouraging cooperative arrangements in the marketing, sale, and even harvesting of crops.

24 The Mejelle, enacted in 1876, was the first civil code to be written in the Ottoman Empire. It was also the first attempt in history to codify Islamic *Shari'a* law or jurisprudence.

25 For more on the Ottoman code, see Laster (1976).

26 This law, it has been argued, struck a balance between the interests of the state in natural resources and the interests of the landowners of Palestine who constituted the elite class (notables) on which an efficient Ottoman administration depended (see Hourani 1991).

27 The same argument is given by Laster (1997), Virschubski (1997), and Wiener (1997).

28 UN Doc. No. A/RES/181 (29 November 1947).

29 The Knesset has 120 seats, and laws are passed by a simple majority of 61 votes. Since no single party has been able to hold a majority since the establishment of the state in 1948, however, all Israeli governments have been negotiated through coalitions. As will become apparent in the following paragraphs, Basic Laws were to be written gradually as needs arise. They were also subject to a simple parliamentary majority and, in that sense, very susceptible to electoral and coalition politics—at least, more so than a constitution would have been, had that route been chosen.

30 The Law and Administration Ordinance of 19 May 1948, enacted by the Provisional Council of State, stipulated that the courts and local authorities would continue to operate within historical jurisdictions.

31 This was considered a routine move; the government of Israel often replaced pre-state regulations with new ones as part of the creation of a specifically Israeli law.

32 The idea of regeneration by working the land was debated extensively in Jewish and Zionist literature (see, e.g., Laqueur 1976).

33 This idea is prevalent in many works on the Yishuv (Jewish residents of Palestine before 1948) and the state (see, e.g., Lucas 1975).

34 This meant, in part, introducing new immigrants to *kibbutz* life. See, for example, Ben-Gurion's biographies (Avi-Hai 1976; Pearlman 1965).

35 By the mid-1930s, the Histadrut had more than 100 000 members, 30 000 of them in its *kupat holim* (sick fund); it maintained clinics in five cities and 33 rural centres, and operated two hospitals and two nursing homes; it also controlled 44 % of the Hebrew institutions in Palestine. After the establishment of the state, it became the trade union of Israeli workers. The Histadrut also established the Technion in Haifa in 1924 and the Hebrew University of Jerusalem in 1925. For more on the history of the Histadrut and its relationship with the Zionist movement and the Israeli state, see Laqueur (1976) and Tessler (1994).

36 Sapir held this post for only a little more than a year, having replaced Simcha Blass as the Water Commissioner after the latter's resignation in late 1953. Blass held the position in addition to his position as the Director of TAHAL. Sapir was followed by Kahana, then by Steve Nueman; in 1959, Menachem Kantor took over and stayed on until 1977. The water commissioner facilitated communication among the upper echelons of water policy-making, all of whom were friends and colleagues, including Levi Eshkol as minister of finance and Aaron Wiener as director of Tahal.

37 Blass's resignation from the water policy apparatus notwithstanding, he continued to be involved in water policy-making until his death in 1982. For example, he was present at most meetings with the American envoy to the Middle East, Eric Johnston, who tried to broker a water-sharing agreement between Israel and its Arab neighbours between 1953 and 1956.

38 Laster (1997) and Wiener (1997) also point to similar outcomes. Virschubski adds that even though these groups were suspicious of these attempts at state control of resources, especially because of their problems with the state, there was a sense that the "good of the country dictated" such legislation.

39 The law was amended in 1959 to systematize this surveillance on a monthly basis.

40 These Drainage Boards were composed primarily of community participants; they also included a minority of local government officials.

41 The law took effect upon its publication in *Reshumot* (the official gazette) on 13 August 1959.

42 The establishment of these red lines, especially for Lake Tiberias, was contested in Israeli water politics at the time. The issues of what level of water is appropriate, and when, and at what point the body of water is irreparably damaged, were not immediately resolved.

43 This was suggested by the Tzionim Klalim, and even promoted by Aaron Wiener, as an efficient method for managing water resources (Wiener 1998).

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