

IDEALISM “MUST NOT BLIND US”: BRITISH LEGISLATORS
AND THE PALESTINE MANDATE, 1929-1934

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Abstract

In Mandate Palestine during the 1920s and 1930s, the British sought to establish a legal system for the new political entity. This task was fraught with difficulty, as the British soon discovered. Events in Palestine often occurred in such an extreme manner that the British officials could not establish control. As a result of the failure of the legal system to address the new realities on the ground, these officials were often in a position where all they could do was respond to emergencies, as was the case following the Arab Revolt in August of 1929. Despite the fact that much of what occurred on the ground in Mandate Palestine, particularly with regard to land transactions and dispossessions, often occurred outside of British control, officials were acutely aware of the realities facing the Arab agricultural cultivators being threatened with dispossession. The difficulty the British had in suppressing the violence drew attention to their lack of authority over the land question that was creating tensions between the Arab and the Jewish populations. In examining minute sheets of the Colonial Office and correspondence between British officials, it becomes clear that these officials were aware of the impossibility of resolving the contradiction inherent in their position. This paper seeks to examine British responses immediately following the 1929 Revolt to show that the British accurately perceived the problems as they existed on the ground in Palestine but were unable to take actions against them. This will demonstrate the extent to which the failures of the Mandate, with regard to preventing dispossessions, was a failure of the legal system as a whole rather than the result of any individual shortcomings of the officials in control of the territory.

The study of land rights in Mandate Palestine (1920-1948) is particularly important because of the major transformations to the regional demographics and the legal system that occurred during this time. The major changes, especially those that occurred outside of the control of the Mandate government, are significant when they are looked at in the context of government laws. The process of drafting and passing legislation was of particular importance in Mandate Palestine. Roger Owen observes that the Mandate system emerged at the same time as a significant shift was taking place in international law. The shift gave heightened consensus to the idea that military occupiers of a foreign territory should continue to employ the legal system already in place. Owen notes that this was the case in Palestine under both the military (1917-1920) and civilian British administrations (1920-1948) of Palestine.¹

Land laws stood out as a central focus for the Arabs, the Jews and the British. Despite their importance, land laws were somewhat ephemeral in the context of the Mandate; they remained outside the control of all three groups. Even the British government was unable to take control of land laws to the extent needed for these laws to facilitate the cohesive political entity that it was envisioned that the Mandate would become. The difficulty inherent in the position of the British officials in Palestine was that, while maintaining aspects of the legal system already in place, they were also intended to be fulfilling the “dual obligation.” This referred to promises made by the British to the Zionists in the form of the 1917 Balfour Declaration, as well as to post First World War promises made to respect the self-determination and to protect the rights of the “non-Jewish” community, as the Palestinian Arabs were referred to in the Balfour Declaration. At that time, Palestinian Arabs, who were predominantly Muslim, constituted 90 per cent of the population. Clearly, the “dual obligation” agreements implied that significant shifts were expected under British rule in Palestine, particularly in the area of land ownership and land usage.

The problem with the land question in Palestine was that land transactions- that is to say, land sales and land purchases- were

1 Roger Owen, “Defining Traditional: Some Implications of the Use of Ottoman Law in Mandatory Palestine,” *Harvard Middle Eastern and Islamic Review* 1 (1994): 117.

generally outside of the control of the British. While in a sense this was ideologically consistent with an unregulated economy, the degree to which land was changing ownership and the impact this was having on the Arab small scale landowners and tenants (referred to by the British by the Arabic term fellah, pl. fellaheen) was destructive to the agricultural economy. This decline in the fellaheen's security vis-à-vis their access to the land on which they had been living prior to the Mandate contravened the obligations of the British under the terms of the Mandate to "safeguard" the rights of those living in Palestine prior to the war. Arab land sales to Jewish buyers had started taking place prior to the Mandate and had been an object of controversy.² Due to the promises made in the Balfour Declaration and incorporated into the Mandate document, land purchases by Jewish buyers increased significantly in the Mandate period. Controversy remains over land that was sold by fellaheen, how much land was sold by urban notables, and how much land was sold by absentee landowners: the numbers for each group can be used in arguments that criticize the legitimacy of Palestinian nationalism. Kenneth Stein argues that the great number of land sales from Palestinian notables to Jews was indicative of an "absence of true commitment to Arab nationalism."³ Stein makes the further claim that in the first nine years of the Mandate, more than one quarter of the land sold to Jews by Arabs came from Palestinian notables and fellaheen.⁴ This means that three quarters of the land acquired by Jews would have been sold by absentee landlords. Rashid Khalidi argues that the "bulk of land would have indeed seem to have been sold by non-Palestinian absentee landlords, for whom these were no more than straight-forward commercial transactions."⁵ What is significant in the matter of land sales, as Stein points out, is that even when land was sold by Palestinian Arabs to Jews, there was not complete freedom of choice on the part of the Palestinian Arab. Stein is heavily critical of the British government for failing to provide

2 Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997). See Chapter 5.

3 Kenneth W. Stein, *The Land Question In Palestine, 1917-1939* (Chapel Hill: The University of North Carolina Press, 1984), 70. See Appendix 3 of Stein's book for a list of Palestinian notables who sold land to Jews.

4 Stein, *Land Question*, 66.

5 Khalidi, *Palestinian Identity*, 114.

money and capital to Arab tenants and owner-occupiers.⁶ The British failure to provide money and capital under conditions of economic distress that had existed since the beginning of the Mandate and that increased in intensity in the period around 1930 made land sales the only means of gaining a much needed source of capital in many cases.⁷

When the British took control of Mandate Palestine, the situation of the rural Arab population was beset with problems. Fighting on Palestinian soil during the war had caused significant destruction of the land itself. Existing independently of this situation were the structural problems facing Arab small-scale landowners and tenants, specifically the global economic depression and a period of consecutive low agricultural yields immediately prior to the establishment of the Mandate.⁸ The stagnant rural economy facilitated a high volume of land transfers, which threatened to create a group of landless cultivators.⁹ British officials recognized that indebtedness leading to dispossession was creating a group of disaffected, unemployed, transient Arabs who, it would be shown, expressed their distress in part through a violent uprising. However, the British were unsuccessful in their endeavour to find some means of preventing Arab cultivators from losing the rights that guaranteed their access to the land that was the source of their livelihoods. The British failure was not due to ignorance of the issues, for a close reading of official correspondence from this time shows that officials had a detailed and accurate view of the position of Arab agriculturalists and recognition of the need for action.¹⁰ However, officials were unable to translate this into legislation that was capable of addressing the problem of indebtedness leading to landlessness.

The intensification and expansion of legislative measures by the British to try to address land issues and indebtedness amongst the

6 Stein, *Land Question*, 64.

7 Stein, *Land Question*, 70.

8 Alexander Scholch "European Penetration and the Economic Development of Palestine, 1856-82," in *Studies in the Economic and Social History of Palestine in the Nineteenth and Twentieth Centuries*, ed. Roger Owen, 10-87 (Oxford: St. Antony's College, 1982), 13-14; Stein, *Land Question*, 4.

9 Barbara J. Smith, *The Roots of Separatism in Palestine British Economic Policy, 1920-1929* (Syracuse: Syracuse University Press, 1993), 115.

10 Such documents can be found in official reports and minute sheets from the British Colonial Office between 1929-1934.

fellaheen was the result of a specific occurrence: the 1929 Wailing Wall riots and August revolt by Palestinian Arabs. Ostensibly, the riots of 1929 began over disputes between Jews and Arabs over the Wailing Wall in Jerusalem, a religiously significant site for both Muslims and Jews. These riots spun out of control very quickly, and at the end of a week of violence, 133 Jews and 116 Arabs had been killed.¹¹ The British were not equipped to handle the conflict and only stepped in to stop it after much confusion. Following the suppression of violence, a considerable number of officials in Palestine, including High Commissioner J.R. Chancellor, realized a shift in British policy was necessary. The difficulty the British had in suppressing the violence drew attention to the challenges they encountered to summoning their authority to deal with the land question that was creating tensions between the Arab and the Jewish populations.

Arab agriculturalists who did not own land but worked on it for their livelihood occupied an obscure position in relation to the government. From 1929 to 1934, there was no shortage of legislation dealing with tenants and non-owner cultivators, yet the British seemed unable to decide how to prevent this group from losing access to the land on which it worked. Under the Ottoman administration, tenants and cultivators had rights to land that were outlined in law and were monitored by government officials, but the details of these rights were not directly transferred and were therefore not readily apparent under the conditions of the Mandate.

The problem of land rights for tenant labourers was not easily resolved. The tumultuous years 1929 and 1930 were marked by the passage of an extensive number of bills specifically dealing with rural property rights: the 1929-1930 Land Courts Bills; the 1929-1930 Land Settlement Bills; the 1929 & 1930 Protection of Cultivators Bills; the 1930 Law of Execution (Amendment) Ordinance; the 1930 Registration of Agriculturalists Bill; and the 1930 Transfer of Agricultural Land Bill. All were concerned with enabling the government to compile accurate information on ownership of land while not unduly interfering with the free market in land sales. The contradiction inherent in simultaneously empowering the government to intervene in the land market and empowering the free-market to

11 D.K. Fieldhouse, *Western Imperialism in the Middle East, 1914-1918* (Oxford: Oxford University Press, 2006), 162.

rule the land market within a single body of legislation was not lost on officials at the time. In the words of Norman Bentwich, Attorney General from 1922 to 1931, the way in which these bills was produced was “unnatural” because they had been drafted by officials in Britain, not Palestine, and had been subjected to a process of “whittling down” by officials who opposed the principles (specifically, the principle of government intervention) on which they were based.¹² Put into practice, the government took a self-contradictory position in which they simultaneously attempted to ensure that land transactions did not affect Jews and Arabs differently while attempting to allow for the operation of a perfectly functioning free-market economy. This made a successful outcome for British legislative directives over agricultural land impossible in Mandate Palestine.

In 1930, ten years after the civilian administration had been established and a whole year after the 1929 Revolt, the administration was still unable to move past the issue of establishing security of title to land. Establishing a coherent legal system for the Mandate had been a goal of the British administration from the beginning of its governorship in Palestine. That legal system would have presumably included provisions that guaranteed small scale landowners and tenant cultivators access to the land on which they worked, land being such a significant issue with regard to the “dual obligation” agenda. However, Secretary of State for the Colonies Lord Passfield noted in 1930 that there remained a need to provide a, “machinery under which legal titles can be secured by small-holders and legal security of tenure can be obtained by tenants.”¹³ This statement is surprising in the context of the post-Revolt period, and draws attention to the fact that, while the British understood that there was a need to protect those agriculturalists who were not landowners, passing permanent legislation that would establish an occupant’s right to use of land was considered objectionable. Tenants needed protection, but their legal status was ambiguous and the British were unwilling to make any laws that would codify their legal rights because of the difficulties in justifying the creation of a new legal category. The 1930 Registration

12 Great Britain, Colonial Office Records, CO 733/199. Mflm. 13356. Minute by Bentwich. March 27, 1931.

13 Great Britain, Colonial Office Records, CO 733/199. Mflm. 13356. Minute by Passfield. March 18, 1930.

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of Agriculturalists Ordinance reflected the tenants' ambiguous position. It was a piece of temporary legislation that was meant to register cultivators. One key passage read:

A cultivator whose name has been entered in the register as being the owner of a holding or (as the case may be) the tenant thereof on certain conditions stated in the register, shall not, by reason only of such entry, be deemed, in law, to be the owner of the holding or, (as the case may be) the tenant thereof or if he is, in law, the tenant thereof, he shall not be reason only of such entry, be deemed in law, to be a tenant upon the conditions stated by the register.¹⁴

This 1930 ordinance is notable because it was the first piece of legislation to mention occupancy rights (or lack thereof); however, the wording of the ordinance leaves it unclear as to whether the position of tenants was actually improved by the legislation.

In 1931, a year and a half after the Revolt, evictions of Arab tenant cultivators continued to be a problem. The correspondence and pieces of legislation from this period make it clear that the British were fully aware of the phenomenon of dispossession and its grave consequences. The deficiencies of the land registration system and the fact that the system was being allowed to operate without proper supervision together had a destructive impact. As Lewis French of the Development Department argued, in order to prevent dispossessions, "restrictions on free transfers of lands must, in any case, be imposed."¹⁵

The British government in Palestine simply did not have the authority required to stop the displacements and subsequent revolts from happening on the ground in Palestine. One must ask why the British continued to discuss this issue and to pass legislation that aimed to solve the problem if they lacked the authority to enforce it. The root of the problem was that government officials themselves were not above the law and therefore not able to make the decisions required to control a Palestine in growing turmoil. As

14 Great Britain, Colonial Office Records, CO 733/199, Mfm. 13356. The Law of Execution (Amendment) Ordinance, 1930. (1931).

15 Lewis French, *First Report on Agricultural Development and Land Settlement in Palestine*, 23 Dec. 1931. CO 733/214/5, 38-39.

High Commissioner Chancellor himself put it in a memo, “I have no power, either under existing law or under proposed Bill to prevent execution of eviction order of a court. The only action open to me would be to issue an illegal order to the police which would result in possibility of proceedings for contempt.”¹⁶

The authority to change and pass laws maintained a very privileged status in the British Mandate of Palestine. Even when it was apparent that the laws in place were unsuccessful in maintaining order, as was the case following the 1929 Revolt, the British were unable to successfully justify unilaterally changing the laws so as to prevent violent uprisings in response to Arab cultivators becoming landless. The British fully recognized the gravity of these cultivators losing access to the land on which they worked. As Chancellor stated in 1931, “evictions will take place with grave political consequences. The Bill [Draft Ordinance to Provide for Better Protection of the Tenants and Occupants of the Land] will have no effect in preventing evictions in view of provision for monetary compensation.”¹⁷ Over a year after the Revolt, the High Commissioner himself acknowledged that the very problem which had precipitated the Revolt was ongoing and legislation aimed at dealing with the problem was ineffectual. The British were not ignorant of the seriousness of the plight of Arab cultivators, yet in the face of their ongoing dispossession, officials were still attempting to draft legislation which would be effective in addressing landlessness. This demonstrates that the disorder that has come to characterize the Mandate period was the result of an intractable legal system that even the government itself was incapable of altering in order to meet the needs of the new political entity.

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