

Zombies Zoning for Zionism: The Effect of an Inherited Ottoman Land Reform System on British Mandatory Palestine

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After the end of the First World War, the British were granted a mandate over Palestine by the League of Nations. This gave them the challenge of managing both Zionist immigration to what they had acknowledged as a “Jewish Home,” as well as the resistance to Zionism by Arab residents, particularly landless tenant farmers.¹ Upon receiving this mandate, they inherited a complex Ottoman legal structure governing the land they now controlled. In some areas, such as criminal and commercial law, British authorities quickly made meaningful legal changes, that, however, was not the case for land use.² Ottoman legal norms surrounding land use, which were already proving insufficient in the face of existent Zionist immigration, went largely unreformed by the British during the first half of the Mandate, leading to growing instability in the Mandate.

Laws regulating land use and ownership in Ottoman Palestine had seen dramatic legal changes in the decades preceding the First World War and the end of Ottoman rule. The most influential law to reshape land ownership in Palestine was the 1858 Ottoman Land Code. This law had sought to increase the revenue of the central government, reduce foreign influence, and increase the development of underutilized lands as part of the broader period of reform known as the *Tanzimat*.³ These reforms formalized much of the land in Palestine as *Miri* or a type of ostensibly public land that was effectively private land (but could revert to being purely public land under certain circumstances). *Miri* landholders were private individuals who held the land for long periods of time, even across generations. Landholders could sell or lease the land, or have it used by tenant farmers. The land, however, could revert to total public

¹ Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate*, (Picador: London, 2001), 33

² Bunton, Martin “Inventing the Status Quo: Ottoman Land-Law during the Palestine Mandate” *The International History Review*, 21 no. 1 (1999): 33
<https://www.jstor.org/stable/pdf/40108915.pdf>.

³ Nadav Solomonovich and Ruth Kark. “Land Privatization in Nineteenth-century Ottoman Palestine.” *Islamic Law and Society* 22, No. 3 (2015), 250,
<http://www.jstor.com/stable/43997236>.

control under a variety of circumstances, for example, if the land fell into disuse, it could revert to total public ownership.⁴ Acquiring the initial right to develop this land also required an expensive permit, or often enough, a bribe.^{5, 6} The land code also created the designations of *Mawat* (dead land) *Matruka* (abandoned land) which were more conventional public land, held exclusively by the state with no easy way to be developed.⁷ The land code also formalized private ownership of land labeled as *Mulk* which mostly consisted of urban areas and the developed land (orchards and fields) surrounding them. *Miri* was largely held by large rural landholders who had tenant farmers on their property with few rights, whereas *Mulk* land was largely owned by small independent farmers or urban dwellers, it was especially concentrated in the highlands.^{8,9} While not all land fell under these four categories (there are more minor categories and subcategories not listed here), most did and the Ottoman land codes would play a large role in shaping both the human geography of and conflicts within the British Mandate of Palestine nearly a century later.

While there were clear Ottoman legal norms, they were not the only legal precedents that would shape the approach British Mandate of Palestine (from here on referred to as the British Mandate) took to legislate and regulate land use. The Palestine Mandate, the legal document which offered the framework for and basis of the British Mandate from 1922-1948 offered clear, if unspecific, legal guidance for land use. Of note are articles 6 and 11:

(6) The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency... close settlement by Jews on the land, including State lands and waste lands not required for public purposes...(11) The Administration of Palestine

⁴ Ibid., 228.

⁵ Ibid., 224.

⁶ Ibid., 235, 241, 249.

⁷ Ibid., 223, 224, 227.

⁸ Ibid., 227, 228.

⁹ Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict 1881-2001*. (Vintage: New York, 2001), 37, 50, 51.

shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.¹⁰

The obligations of the British Mandate on land use--as laid out in the Palestinian Mandate (the legal document) - instructed the British administration to facilitate Jewish settlement on "State lands and waste lands not required for public purposes." This is an English translation of the land categories of *Mawat* and *Matruka* under the Ottoman Land Code of 1858.¹¹ This clear reference seemingly implies that the Palestinian Mandate's to land use, especially regarding Jewish immigration, was going to be premised on the preexistent Ottoman legal framework. Article 11 lays out the goals of British land administration. These unspecific goals are like those of earlier Ottoman land reform (indeed most land reforms generally have similar goals) such as encouraging development of land. Even the more secular goal, however, of achieving more intense development likely aligned British economic goals with encouraging Zionist immigration because of the increasing agricultural productivity associated with new Zionist settlements. The Palestinian Mandate does not explicitly restrict the ability of the British to modify existing legal norms in Palestine, but it does treat these existing norms as the basis of British obligations in the region.

The Palestinian Mandate introduced the assumption that the British would maintain the preexisting Ottoman system of land organization and sale. The Ottoman status quo, however, had been breaking down prior to the arrival of the British and would only do so further under their stewardship. Among the Arab inhabitants of Palestine there was a clear

¹⁰ The Palestine Mandate. The League of Nations, 1922. Yale Law School: The Avalon Project (1922, republished 2008). https://avalon.law.yale.edu/20th_century/palmanda.asp.

¹¹ Solomonovich and Kark. "Land Privatization in Nineteenth-century Ottoman Palestine," 227-228.

class division with the majority of Palestinian Arabs with many residing as independent farmers but a smaller but more prominent set of wealthy (often absentee) landowners.¹² While independent farmers were resistant to sell to Zionist purchasers, the absentee landowners were less reluctant to sell to the better financed Zionist interests. Under the late Ottoman administration, from 1878 to 1908, Jewish settlers would purchase 400,000 dunams of land from private Arab landholders, almost. This land, however, consisted primarily of large tracts of land held by absentee landholders in the lowlands (as opposed to the highlands which were mostly owned by the resident farmers).¹³ Jewish land purchases consisted primarily of *Miri* land. This established a deeply worrying disconnect between those who paid the price of Jewish land acquisitions (evicted Arab tenants) and those who reaped the benefits (Arab landholders). The economic benefits were so great to the landlords that even prominent Arab nationalists would happily sell large swathes of land to Zionist settlers.¹⁴ Independent of the issues of justice surrounding land sales by often absentee landlords, these land sales served to create an acute political problem. The disconnect between economic incentives for landholder and practical consequences for tenants was inherent in the Ottoman system of land use and the creation of a class of landless Arabs would be a large source of instability in Palestine that would only grow under the British Mandate.

This problem was only exacerbated under the British Mandate. While the Palestinian Mandate implied that Jewish land purchases would be enabled through the sale or leasing of public lands, this would not prove to be the case, as Jewish land purchases continued to be primarily facilitated by absentee landlords rather than the sale of public lands. *Miri* land continued to be more easily purchased under the British Mandate than *Mulk* land -- as evidenced by how Arab villages could remain under Arab ownership even while the rural lands around them that they depended on were sold to Jews.¹⁵ A 1921 land ordinance prior to the start

¹²Talal Asad, "Class Transformation Under the Mandate" *Middle East Research and Information Project*, (1976) 3.

¹³ Morris, *Righteous Victims*, 37.

¹⁴ Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate*. (Picador: London, 2001), 275-276.

¹⁵ United Kingdom. Hansard Parliamentary Debates, 06 Mar, vol. 358 (1940), <https://api.parliament.uk/historic-hansard/commons/1940/mar/06/palestine>.

of the British Mandate when the region was under a new civilian administration removed area limitations on land sales until they were reintroduced in 1940, greatly expanding the degree to which Arab landholders could sell land.¹⁶ Arab land sales were further incentivized by the British introducing a land tax which while only a small source of revenue in the British Mandate, had a disproportionate impact on the independent farmers and led to a further concentration of Arab lands in the hands of absentee landowners.¹⁷ This exacerbated absentee landholders continuing to sell land and evict their tenants, with Arab landholders selling one million dunams of land between 1920 and 1940.¹⁸ Arab landholder sales remained the nearly exclusive focus of Zionist land acquisition organizations as attempts to privatize public lands (despite the intentions of the Palestinian Mandate) proved sluggish and bogged down by financial, political, and legal concerns. Salt concessions in the Dead Sea and surrounding lands, whose sale was authorized under Sections 12 and 13 of the Palestine Order-in-Council of 1922, was subject to lengthy political debate, even reaching the halls of the British Parliament. This was partially due to concerns that Ottoman land disputes that predated the mandate could cause expensive legal troubles, demonstrating again Britain's heavily reliance on preexisting legal norms.¹⁹²⁰ Even though the Palestinian Mandate called for the British Mandate to sell *Mawat* and *Matruka* land to Jews, the British Mandate failed to become the primary seller of land when compared to Arab land holders. When the British Mandate replicated the Ottoman land use system it also replicated the crises of landless Arab tenant farmers. The British Mandate failed to sell meaningful quantities of public lands to Zionist purchasers allowing for demand to instead fall almost exclusively on absentee Arab landholders and the burden of eviction on their tenants. The British Mandate not only

¹⁶ Kenneth Stein, "Land Question in Palestine: 1917-1939," Chapter 7, University of North Carolina Press (1984). *Emory College of Arts and Sciences Institute for the Study of Modern Israel* 4-5 <http://ismi.emory.edu/home/documents/stein-publications/lqpconclusion.pdf>.

¹⁷ Asad, "Class Transformation Under the Mandate," 5.

¹⁸ United Kingdom. Hansard Parliamentary Debates, 06 Mar, vol. 358 (1940), <https://api.parliament.uk/historic-hansard/commons/1940/mar/06/palestine>.

¹⁹ United Kingdom. Hansard Parliamentary Debates, 20 ser., vol. 73 (1929). <https://api.parliament.uk/historic-hansard/lords/1929/mar/20/dead-sea-salts-concession>.

²⁰ The Palestine Order in Council. ECF: The Israeli-Palestinian Conflict an Interactive Database https://ecf.org.il/media_items/1468.

failed to implement intended reforms or modify the land use laws to changing circumstances, but at times exacerbated the problems with innovations like the rural land tax that fell disproportionately on rural Arab tenants.

This crisis of Arab landlessness was worsened by a legal system whose strength lay in its ability to resolve intracommunal rather than intercommunal conflicts. The Palestinian Order-in-Council of 1922 (a colonial ordinance) granted the High Commissioner the authority to establish land courts to adjudicate land ownership disputes.²¹ This is one of the few ways in which land use laws in the British Mandate would differ from those of the prior Ottoman administration. Adjudicating land disputes had previously been done by religious courts (whose powers otherwise mostly remained intact), but under the British Mandate land disputes were now to be resolved by an entirely new system of secular courts. This change, however, was more minor than it may seem as these courts, would still rule based on precedents set in the previous era of religious courts.²² These new secular British courts, however, were often worse at consistently enforcing the precedents they sought to uphold than the previous Ottoman ones had been. Adherence to prior Ottoman land use precedents proved somewhat difficult because there was no authoritative text of Ottoman law in French, English, or Arabic - the three languages of the Mandate.²³ The situation was made yet worse by the fact these courts, despite their essential role, lacked the prestige of even a district court in the eyes of colonial judges.²⁴ Palestine was already an unpopular destination and finding qualified judges proved a challenge.²⁵ Land courts also suffered from severe backlogs; in its first year, the land court established in Jaffa had decided only 66 of the 260 cases entered. The courts adjudicating intercommunal land disputes struggled mightily and throughout the 1920s and the need for reform was readily apparent. This desperate demand led to a 1927 plan to radically reform the land courts to be more like those used by the British Empire in Sudan (considered a better model of British administration). The Sudanese style

²¹ The Palestine Order in Council. ECF: The Israeli-Palestinian Conflict an Interactive Database https://ecf.org.il/media_items/1468.

²² Bunton, "Inventing the Status Quo" 49

²³ Ibid.

²⁴ Ibid., 37.

²⁵ Ibid.

code, however, wasn't published until 1935.²⁶ While the British Mandate eventually shifted away from the Ottoman legal norms regarding land use in a key way with the adaption of a new code, it was only done more than halfway through the life of the British Mandate, and after the old Ottoman codes had shaped more than a generation of conflict.

The inefficacy of the British land courts and their ability to apply Ottoman precedent during the first half of the mandate had a sizeable destabilizing effect. British lawmakers were aware of the crisis of landless Arabs but were handicapped in their ability to affect meaningful reform by the legacy Ottoman legal framework that was at play. Even though the problem was clear, change was slow in part because the same problems that destabilized land administration in the British Mandate also impacted the reform process. In addition to uncertainties surrounding land ownership from a deeply flawed legal system there were also issues such as fraudulent deeds, unsurveyed land, and the fact that there existed some 15 categories of public and private land the proportions of which were unknown.²⁷²⁸ Even in 1936, one legislator described making laws to further regulate land in the British Mandate as being done with “almost complete uncertainty.”²⁹ The uncertainty made crafting legislation difficult but the issue of a growing landless Arab class necessitated legislation. Four times the British Parliament introduced land ordinances designed to protect Arab cultivators whose land was sold by absentee landlords; in 1926, 1929, 1933, and 1934 but the problem persisted.³⁰ The British administrators and parliament were aware of the issues regarding landless Arab tenants but were trapped by the uncertainty and instability of the Ottoman land policy. The conflict between Zionists and Palestinians took shape under Ottoman rule but it was those same Ottoman rules that shaped and governed that conflict even during the British Mandate.

²⁶ Bunton, “Inventing the Status Quo” 38, 39, 42, 45.

²⁷ Solomonovich and Kark. “Land Privatization in Nineteenth-century Ottoman Palestine,” 225.

²⁸ United Kingdom. Hansard Parliamentary Debates, 24 Mar, vol. 310 (1936) <https://api.parliament.uk/historic-hansard/commons/1936/mar/24/palestine>.

²⁹ Ibid.

³⁰ United Kingdom. Hansard Parliamentary Debates, 06 Mar, vol. 358 (1940) <https://api.parliament.uk/historic-hansard/commons/1940/mar/06/palestine>.

The British largely adopted the pre-existing legal norms of the Ottoman Empires when it came to land use policy. These norms were assumed or upheld in early legislation in the British Mandate and were revised slowly and with great difficulty. These Ottoman legal norms, however, had already had meaningful inefficacies emerge during the late Ottoman administration and these only worsened during the British Mandate, undermining the stability of the mandate. The British mandate maintained difficult to enforce precedent till the mid-1930s, offered only stop gap legislative solutions to address tenant rights, and left the mismatched incentives of land sales on *Miri* land largely unchanged. The British Mandate's land policy was built on the back of Ottoman era legal norms and in doing so internalized a large source of instability in the framework of their Mandate, instability that was worsened by the broad and conflicting goals of the British mandate.

Works Cited

Primary Sources

- The Palestine Mandate. The League of Nations, 1922. Yale Law School: The Avalon Project, 1922 (republished 2008).
https://avalon.law.yale.edu/20th_century/palmanda.asp.
- United Kingdom. Hansard Parliamentary Debates, 20 Mar, vol. 73 (1929).
<https://api.parliament.uk/historic-hansard/lords/1929/mar/20/dead-sea-salts-concession>.
- United Kingdom. Hansard Parliamentary Debates, 24 Mar, vol. 310 (1936). <https://api.parliament.uk/historic-hansard/commons/1936/mar/24/palestine>.
- United Kingdom. Hansard Parliamentary Debates, 06 Mar, vol. 358 (1940). <https://api.parliament.uk/historic-hansard/commons/1940/mar/06/palestine>.

Secondary Sources

- Asad, Talal. "Class Transformation Under the Mandate." *Middle East Research and Information Project*, no. 53 (1976): 3-8.
- Bunton, Martin. "Inventing the Status Quo: Ottoman Law during the Palestine Mandate." *The International History Review*, 21 no. 1 (1999): 28-56.
- Morris, Benny. *Righteous Victims: A History of the Zionist-Arab Conflict 1881-2001*. Vintage: New York, 2001.
- Segev, Tom. *One Palestine, Complete: Jews and Arabs under the British Mandate*. Picador: London, 2001.
- Solomonovich, Nadav and Ruth Kark. "Land Privatization in Nineteenth-century Ottoman Palestine." *Islamic Law and Society* 22, No. 3

(2015).

Stein, Kenneth “Land Question in Palestine: 1917-1939, Chapter 7”
University of North Carolina Press (1984). *Emory College of Arts
and Sciences Institute for the Study of Modern Israel.*

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