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## GOVERNMENT LAND POLICIES IN OCCUPIED ENEMY TERRITORY: THE CASE OF BRITISH RULE IN OTTOMAN PALESTINE, 1917–1920

### Abstract

In the chaotic situation following the British invasion of southern Palestine at the end of 1917, military officials faced several countervailing pressures. In addition to ongoing military priorities (including international norms pertaining to military occupations, such as the law of the ‘status quo’), pressing humanitarian concerns, and even the personal religious sentiments of individual officers, the British occupation administration was forced to take into account international pressures and interventions resulting from the overlapping and conflicting promises made during the war (inter alia, Sykes-Picot agreement, Husayn-McMahon correspondence, Balfour Declaration, and President Wilson’s 14 Points). This paper focuses on the land policy-making process as a case study with which to weigh the various factors pressing upon the military occupation as it evolved during its first three years. Land ownership was a huge concern: a properly functioning land registry was seen as key to the improvement of economic and social conditions in the largely agricultural economy, and British interventions were followed closely by all interested parties. The land has also been at the centre of the ensuing century-long conflict between Arabs and Jews. Thus, a close examination of land policies (and especially the 1920 land ordinance) offers an extremely important window on both the rule of law in the aftermath of the war and our understanding of the current, unending conflict in the land.

**Keywords:** Palestine, Occupation policy, Ottoman Empire, Postimperial administration, transition

This paper focuses on the British military occupation of Ottoman Palestine, from the conquest of Jerusalem in December 1917 to the establishment in July 1920 of a British colonial civil administration.<sup>1</sup> It adopts a threefold approach. First, it will provide some overall context to British decision-making processes during these two and a half years of military occupation. Against that background, we then examine the specific policies developed by the occupying forces to provide agricultural credit and revitalise a market in land transactions. The chapter concludes with some observations about the significance of the period of occupation for a broader understanding of both postwar continuities and new challenges in the aftermath of the First World War.

Not only did land and agriculture constitute the basis of livelihood for the vast majority of Palestine's population, it also underlay the political tensions with the Zionist movement: for Zionism, land acquisition in Palestine was key to building the Jewish homeland which had just been promised by Britain by the terms of the November 1917 Balfour Declaration. Much of the extant literature on British rule in Palestine invariably accentuates the dominant influence of Zionism.<sup>2</sup> But the military administration was highly contested, and the period was marked above all by a great deal of uncertainty.<sup>3</sup> The land policies examined here suggest that historians are wrong to conflate the making of British land policies with the Zionist directive to build a Jewish national home. In fact, the land policies of the military administration indicate closer continuities with Ottoman practice (or what was deemed and interpreted to be Ottoman practice) than is normally allowed.

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<sup>1</sup> The term Palestine was widely used as a geographic term of reference well before the European division of the Middle East into modern state structures. The post-war partition plans agreed upon by the European allies at the Conference of San Remo in April 1920 were forced upon the Ottoman Empire four months later by the terms of Treaty of Sevres, which was then effectively challenged by the Turkish Nationalists and redone in the July 1923 Treaty of Lausanne. From 1923 to 1948, Britain ruled Palestine under a League of Nations "Mandate".

<sup>2</sup> See for example, Kenneth W. Stein, *The Land Question in Palestine, 1917–1939* (Chapel Hill: University of North Carolina Press, 1984); Dov Gavish, *The Survey of Palestine under the British Mandate, 1920–1948* (London: RoutledgeCurzon, 2005); and Aida Essaid, *Zionism and Land Tenure in Mandate Palestine* (London: Routledge, 2013).

<sup>3</sup> See Sahar Huneidi, "Was Balfour Policy Reversible? The Colonial Office and Palestine, 1921–23," *Journal of Palestine Studies* 27 (1998): 23–41; and Malcolm Yapp, *The Making of the Modern Middle East 1792–1923* (London: Longman, 1987), 328–9. On the period of military occupation, see John J. McTague, "The British Military Administration in Palestine 1917–1920," *Journal of Palestine Studies* 7 (1978): 55–76; Bernard Wasserstein, *The British in Palestine* (London: Royal Historical Society, 1978); and Roberto Mazza, "Occupation during and after the War (Middle East)," in *International Encyclopaedia of the First World War*, ed. Oliver Janz (Berlin: Freie Universität Berlin, 2014).

## CONTEXT

British military rule in Palestine began in dramatic fashion, with the prized capture of Jerusalem in December 1917 from Ottoman forces which subsequently dug themselves into new defensive positions just north of the holy city. In the growing body of literature on the Middle East in the First World War,<sup>4</sup> historians agree that this breakthrough by the Egyptian Expeditionary Force [EEF] under the command of General Allenby marked a significant turning point in the war. Historians underscore how the long distances and harsh terrain of the region had until then always favoured the defender: the potential for an Allied offensive against Palestine demanded gradual and prolonged preparations over the course of 1917, but the worsening situation on the western front led impatient officials in London to press for a victory in the east. Some officials in London pitched the capture of Jerusalem as “a Christmas present for the British nation.”<sup>5</sup> After fierce fighting in southern Palestine in the Fall 1917, the holy city itself would, much to Allenby’s great relief, be surrendered without a fight. Neither side wanted to be responsible for the destruction of sacred shrines. Accompanied by highly publicised declarations of respect for the religious status quo of the city, into which he theatrically walked on foot, Allenby declared martial law and established a military administration for Palestine’s conquered southern districts.

The EEF’s further northward advances were slowed for the next six months, but they progressed rapidly in the autumn of 1918 before the Ottoman Empire finally signed the armistice of Mudros on 30 October. Shortly before the armistice, Allenby laid down the parameters under which the massive territory then occupied by the EEF would be organised. He split all of the conquered lands into administrative zones known as Occupied Enemy Territory Administrations [OETA]. The area known as ‘OETA South’ [OETA(S)] came to incorporate the land of Palestine under the control of Jerusalem. ‘OETA North’ (later renamed ‘OETA West’) was established for Mt. Lebanon and coastal Syria, and was placed under a French administration based in Beirut. ‘OETA East’ consisted of the interior of Syria, and was placed for a time under an Arab administration in Damascus led by Emir Faysal, son of Sharif Husayn and leader of the Arab Revolt.

Allenby’s dismemberment of the occupied Arab lands of the former Ottoman Empire effectively kickstarted the well-known process by which Europe imposed upon the Middle East the puzzle-piece borders of the present modern state system. Of course, the hubris of this process cannot escape notice: as Roger Owen has observed of the earlier British military occupation of Egypt, “It is difficult to exaggerate the extraordinary, and misguided, ambition behind this exercise in what would now be called ‘nation-building’. Even more striking than the unreality of the

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<sup>4</sup> See for example: Eugene Rogan, *The Fall of the Ottomans: The Great War in the Middle East* (New York: Basic Books, 2015); Robert Johnson, *The Great War & the Middle East: A Strategic Study* (Oxford: Oxford University Press, 2016); and Kristian Coates Ulrichsen, *The First World War in the Middle East* (London: Hurst and Company, 2014).

<sup>5</sup> Rogan, *The Fall of the Ottomans*, 281.

whole project is the megalomania involved.”<sup>6</sup> What can sometimes be overstated for the post-war Middle East, nonetheless, is the ‘artificiality’ of the newly created administrative entities. One need not ignore, for example, the extent to which the organisation of the new administration in Palestine corresponded to existing Ottoman administrative structures built around regional districts known as *vilayets* and *sanjaks*, of which Jerusalem was already a capital, and sub-districts (*kazas*), which had been deeply engaged in state building processes since the late 19<sup>th</sup> century. As described in an official report outlining this overlap,

step by step with the advance of the Army, Military Governates were established, conforming approximately to the old Turkish Kazas, until the latter end of 1918 the whole of O.E.T. South was under the control of these varying sized self-contained districts, responsible to, and controlled by a H.Q. Staff established at Jerusalem.<sup>7</sup>

Thus, when examining the transformation of Jerusalem from an Ottoman administrative capital to the headquarters of British military rule, it is important to identify the large number of well-established government functions for which British soldiers were now accountable. As recognised by Abigail Jacobsen, the expansive responsibilities of the provincial Ottoman government in Jerusalem had long included “sanitation and hygiene; preservation of security; law and order in and around the city; the maintenance and improvement of infrastructure; construction of buildings; and the water supply,” in addition to “the office of the Tabu (the land registry bureau), the office of the nüfus (population registry), [and] the police headquarters.”<sup>8</sup>

Of course, the hurried British military administration which Allenby devised for occupied Palestine (‘OETA South’) was initially considered provisional and temporary. At the time, most British officials assumed that an international peace treaty with the defeated Ottoman Empire was imminent. Instead, Palestine was subject to an unexpectedly prolonged period of contested rule due to drawn-out deliberations in Europe. Several important features determined the development of British policies in Palestine during this period. Many of these features must be common to all military occupations, though the great diversity of historical experiences can make generalisation difficult. First to note is the unimaginable war-time hardship experienced by Palestine’s inhabitants.<sup>9</sup> Every individual household had clearly suffered in untold ways, chief among them: the toll inflicted by four years of conscription, with more Ottoman soldiers dying of disease and malnutrition than

<sup>6</sup> Roger Owen, *Lord Cromer: Victorian Imperialist, Edwardian Consul* (Oxford: Oxford University Press, 2004), 332.

<sup>7</sup> Letter from OETA Jerusalem to GHQ Cairo, 27 March 1920, “Administration of Palestine,” FO 371/5203, 141. Italics added.

<sup>8</sup> Abigail Jacobson, *From Empire to Empire: Jerusalem Between Ottoman and British Rule* (Syracuse: Syracuse University Press, 2011), 5.

<sup>9</sup> See Leila Tarazi Fawaz, *A Land of Aching Hearts: The Middle East in the Great War* (Cambridge: Harvard University Press, 2014); and Najwa al-Qattan, “When Mothers Ate their Children: Wartime Memory and the Language of Food in Syria and Lebanon,” *International Journal of Middle East Studies* 46 (2014): 719–736.

killed in battle; the parallel extra burdens of labour falling on women, the young and the old; the deprivation wrought by the Allied blockade; the relentless sequestration by the Ottoman army; and, the unprecedentedly damaging locust plague in 1915–1916. Historians have placed the death rate for Greater Syria at 18 per cent (compared to France and Germany losing approximately 5 per cent of their pre-war populations).<sup>10</sup> While the suffering can hardly be exaggerated, official British accounts tended to be highly circumscribed: typical of British descriptions was to express more concern for the broader economy than for human welfare. Reports outlining the initial measures adopted by the EEF during their first months in Palestine focussed for example on efforts to alleviate some of the distress through the import of food from Egypt, the sale on credit of army mules, the fixing of basic water infrastructure, and the introduction of a new currency system.

A second important factor determining the development of British policies was the manifest administrative inexperience and ignorance of the British occupying forces.<sup>11</sup> The personnel for Jerusalem's new military administration could only be recruited from available soldiers under Allenby's command. "Complete amateurs, led by amateurs," reflected one official: "There was practically nobody in the administration who had ever worked in an administration... It was the blind leading the blind."<sup>12</sup> From the acknowledgment of the fragility and thinness of officials' capacities can also be derived an appreciation for just how confounded most of these soldiers must have been by their new tasks and responsibilities, and thus a clearer understanding of just how reliant bewildered administrators must necessarily have been on the Jerusalem-based Ottoman officials (if they could be found), and on their experience and knowledge of the war-torn government institutions for which they had long worked. But all this necessarily leads to the further observation of how quickly resentment naturally grows among an occupied population who now had to serve a foreign class, or, as one British report warned, of the "ever increasing hostility to our presence in the country" encountered as a result of "the turning out of office of the native governing class, and substituting the British Officer."<sup>13</sup>

A third factor weighing heavily on the operations of the military administration was the way it was forced to reconcile powerful (and often contradictory) pressures coming from outside. Policy in Jerusalem was never made in a vacuum, and officials there were constantly forced to respond to, and mediate between, competing interests and interventions from London, whether they came from the Foreign Office, War Office, Treasury, etc. The reigning confusion in Jerusalem was especially palpable in regard to the twists and turns of Britain's postwar negotiations with its Allies, in particular their tense relations with the French

<sup>10</sup> Elizabeth Thompson, *Colonial Citizens* (New York: Columbia University Press, 1999), 23.

<sup>11</sup> Wasserstein, *The British in Palestine*, 17–21.

<sup>12</sup> Quoted in Great Britain, Cmd. 5479, *Palestine Royal Commission Report* [Peel Report] (London: HMSO, 1937), 160.

<sup>13</sup> Letter from OETA Jerusalem to GHQ Cairo, 27 March 1920, "Administration of Palestine," FO 371/5203, 141.

government. France strongly opposed Britain's assumed status in Jerusalem,<sup>14</sup> insisting that prior war-time agreements that divvied up Ottoman territory between them had assured France its own role in any new administration taking shape in Jerusalem. For Britain, however, the drawn-out fighting had only accentuated the strategic importance of Palestine for British imperial trade routes, and London remained suspicious of French intentions.<sup>15</sup>

In Jerusalem, Allenby insisted that the military administration was under his own sole authority as Commander in Chief of the EEF, and could not be hampered by any premature attempt at some sort of mixed government.<sup>16</sup> Therefore, somewhat conveniently, London was not prepared to authorise Palestine's official transition out of a military occupation, which vested sole and ultimate control in General Allenby, until her erstwhile ally France finally consented to Britain's longer term interests there. For the two and a half years of Palestine's military occupation, the Foreign Office would continuously assert that "grave political complications with the French Government... must be avoided at all costs."<sup>17</sup> Thus it was rather useful for London, in its negotiations with France at least, to consistently frame their on-going administration of Palestine as a purely military one, even though this led to various budgetary machinations, such as cloaking financial responsibilities as military expenditure, which greatly agitated the British Treasury. In the end, the wartime allies were finally able to sort out their own disagreements at San Remo, in April 1920, and Britain then replaced its military administration with a civilian one, starting on 1 July 1920.<sup>18</sup>

A fourth, and closely related, major force acting upon the military administration in Palestine was the overriding pressure "to carry on with the least disturbance of public life," and adhere to 'the doctrine of the status quo'.<sup>19</sup> The commitment to maintain a status quo owed much to recently established norms

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<sup>14</sup> On the continued rivalry between Britain and France in the Middle East, see James Barr, *A Line in the Sand: Britain, France and the Struggle that Shaped the Middle East* (London: Simon & Schuster, 2011).

<sup>15</sup> David K. Fieldhouse, *Western Imperialism in the Middle East 1914–1958* (Oxford: Oxford University Press, 2006), 196.

<sup>16</sup> Letter from GHQ EEF to Sir Mark Sykes, 4 February 1918, "Affairs in Palestine," FO 371/3398.

<sup>17</sup> Letter from GHQ EEF to Sir Mark Sykes, 4 February 1918, "Affairs in Palestine," FO 371/3398.

<sup>18</sup> Yet the final terms of the Ottoman surrender were not finally resolved until 1923 (due chiefly to the resistance mounted by the Turkish nationalist movement led by Mustafa Kemal). Although international laws and norms ought therefore to have weighed more heavily on Palestine's international legal status right through to 1923, they were in fact mostly ignored after San Remo. Despite all of the war-time rhetoric around democracy, self-determination, and consultation, European allies had distributed the former Ottoman territories among themselves well prior to the League of Nation's newly invented mandate system officially being put into operation in 1923. As William Rappard (the first director of the League of Nations mandates section) conceded, the European disposition of territories was presented to him as "an accomplished fact." Quoted in Susan Pederson, *The Guardians* (Oxford: Oxford University Press, 2015), 2.

<sup>19</sup> Peel Report, 153.

and guidelines of military occupation, as drawn up at the Hague conferences of 1899 and 1907. Occupying forces were no longer allowed to ignore completely the rights of the inhabitants or upend their forms of government. Such prohibitions were reinforced by US President Woodrow Wilson's widely publicised wartime promises of consultation and self-determination (as voiced also by the Russian leader Vladimir Lenin). Often referred to as "the spirit of the age," the new emphasis on powerful notions of self-determination and freedom even forced the British and the French to promise, on 7 November 1918, that the authority of new government institutions would be derived from the will and interests of the indigenous populations themselves.

This fourth factor would clash greatly with the fifth, and final, important factor impacting upon the British military occupation of Palestine, that being the goals and aspirations of the Zionist movement. By the terms of the November 1917 Balfour Declaration, Britain had committed itself to support the establishment in Palestine of a 'Jewish national home,' provided it not prejudice the rights of the indigenous Arab population. At the time, many politicians in London evidently believed that Britain's future control over this highly strategic region could not only be assured by the cooperation of Jews and Arabs, but that the interjection of Zionist capital and enterprise would moreover reduce their own overall administrative burden. In sharp contrast to the reigning optimism at home, most British officials who found themselves tasked with enforcing the status quo on the ground in Palestine quickly recognised that very little could be done on behalf of Zionism without affecting the rights of the indigenous Arab population (which constituted over 90% of Palestine's inhabitants).

Tensions came to a head early on. In March 1918, the Zionist leader Chaim Weizmann led an investigative commission whose travels across Palestine were authorised by the Foreign Office in London but whose relations with OETA South in Jerusalem deteriorated quickly. In a report sent directly to the Foreign Office, Weizmann expressed his deep frustration with the military administration being "guided by one fundamental principle laid down in the Hague Convention, that in Occupied Enemy Territory the status quo is to be preserved."<sup>20</sup> His report was especially critical of the administrative machinery which was, it said, "left intact, and all the offices are filled with Arab and Syrian employees." Although the newly established regime in Jerusalem had been "hailed with so much enthusiasm and has roused so many hopes," it "has made no substantial difference to the country in essentials, and has left the old hated and accursed régime in its place." Local Arab officials knew the "language, habits and ways of the country" and were therefore at a great advantage over the English officials who, while "enlightened and honest," nonetheless were "not conversant with the subtleties and subterfuges of the Oriental mind." Complaining that "the English are 'run' by the Arabs," the report protested that the military administration failed to take into account the "fundamental qualitative difference between Jew and Arab" and

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<sup>20</sup> 'Report by the Zionist Commission to Palestine', 30 May 1918, "Situation in Palestine," FO 371/3395, 149–152.



tended instead to “level down the Jew politically to the status of a native, and in many cases the English administrator follows the convenient rule of looking on the Jews as so many natives.” Accordingly, “the Englishman at the head of affairs” is “careful to hold the balance,” while

His only guide in this difficult situation is the democratic principle, which reckons with the relative numerical strength; and the brutal numbers operate against us, for there are five Arabs to one Jew. The influence of the Arab must in fairness be five times greater than the Jewish; in fact, in many cases it is far more than that, as the Arabs are in the Administration and the Jewish participation is very limited.

Some historians of these early stages of British rule in Palestine have scrutinised the anti-Semitism among British officers.<sup>21</sup> For its own part, OETA(S) increasingly explained its position as stretched to breaking point under the protracted peace negotiations, during which time the preferential treatment for Zionism which Weizmann sought could not have been reasonably expected by a military administration.<sup>22</sup> One senior official, General Clayton, defended OETA(S)’s position as that of a ‘trustee’, and insisted that “they were not placed there in order to carry out any particular policy.”<sup>23</sup> Seen from Jerusalem, the import of Zionism was considered quite separate from the administration’s focussed attention on “purely routine administration,” which “was chiefly concerned with the Fellahin and Arab population, agriculture, taxation, and all the usual machinery of government.”<sup>24</sup> Whereas the Zionist leadership clearly enjoyed a privileged position with strong connections in London, the British officers in Jerusalem presided over the predominant Arab community through a system, common to every colonial situation, based on patronage and clientelism. Most of the local collaborative elites among the Arab population in Palestine would be drawn from a small urban-based elite whose wealth depended upon landownership.

#### LAND POLICIES: LAND REGISTRIES AND AGRICULTURAL LOANS

As was quickly and widely recognised by the British military occupiers of Ottoman territory (from Iraq to Palestine), “of all the problems connected with the administration of this country, which await settlement at our hands, none is more vitally important than the formulation of our land policy.”<sup>25</sup> Indeed, the first

<sup>21</sup> See, for example, Michael Cohen, *Britain’s Moment in Palestine: Retrospect and Perspectives, 1917–1948* (New York: Routledge, 2014).

<sup>22</sup> See, for example, the correspondence in “Attitude of British Administration towards Zionism,” FO 371/5118.

<sup>23</sup> “Minutes of Meeting with General Clayton at the Offices of the Zionist Organisation,” 9 July 1919, “Zionist Questions,” FO 371/4225, 415–6.

<sup>24</sup> Clayton to Sykes, 1 May 1918, “Situation in Palestine,” FO 371/3391, 316.

<sup>25</sup> “Revenue circular: note on land policy,” 29 May 1919, FO 371/4150, 24.



major administrative step taken by British occupying forces throughout the region was to stop all land transfers from happening. This was done for several reasons. In addition to expressing general alarm at the war-time deterioration suffered by the Ottoman land registry system, British officials voiced specific concern for those landholders who were forced to mortgage their properties during the war (due, among other stated reasons, to currency depreciation or the need to purchase basic necessities), and who might now be unfairly obligated to sell their land by a court-ordered execution to ‘land sharks’ and speculators.<sup>26</sup> The military administration of Palestine issued proclamations in June and November 1918, in close coordination with the steps that had already been taken in Iraq, which had temporarily prohibited all land transfers from occurring until the government land registry could be authoritatively re-established. It is interesting to note, in this context, the frequency with which British officials in Palestine reported that the land registries of various *kazas* had at some point been “carried away” by Ottoman forces, but then later “recovered.”<sup>27</sup> These reports never elaborated on the rationale for, or logistics of, what must have constituted a significant diversion of scarce resources by the retreating Ottoman army – perhaps in recognition of the need for the safe-keeping of valued documents, literally worth their weight in gold, or perhaps as part of a scorched-earth policy to make things as difficult as possible for a successor regime? Either way, the anecdote serves as a useful reminder of the value with which the Ottoman land registries were held by all responsible officials.

In addition to attending to the proper functioning of land registries, a second important land policy began to take shape in Jerusalem in early 1919 whereby the military administration “with the scanty means at its disposal” extended agricultural loans to help “resuscitate cultivation that had been completely destroyed by military operations.”<sup>28</sup> Initial, sporadic efforts undertaken by the military administration had proved insufficient, so greater consideration was given to remedying the institutional collapse of the Ottoman Agricultural Bank. In operation for decades, local agencies of the bank had been set up in every *sanjak* and *kaza* of Palestine. But during the war the banks’ funds were officially appropriated or stolen (and, as noted above, the land registers temporarily dispersed), so its functions had shut down. Nonetheless, one of the bank’s main sources of capital had been the government’s receipt of an additional percentage imposed on the annual tithe, and the British officers were continuing under military rule to levy this additional tax on Palestinian farmers.

In early 1919, the military administration attempted to restore agricultural lending arrangements. First, an advance of up to 500,000 Egyptian pounds was negotiated with the Anglo-Egyptian Bank based in Cairo. Then, individual mili-

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<sup>26</sup> Note by Mr. CC Garbett, 1 October 1919, “Proposed Land Ordinance for Palestine,” FO 371/4226.

<sup>27</sup> For example, see Judge G.W. Williamson, “Note on Land Law, 1919,” in *Land Legislation in Mandate Palestine, Vol. 5*, ed. Martin Bunton (London: Cambridge Archive Editions, 2009).

<sup>28</sup> Money, chief administrator OETA(S), to GHQ, Cairo, 9 May 1919, FO 371/4226.

tary governors lent out modest amounts directly to Palestinian agriculturalists: once a military governor received a cultivator's application, he personally ascertained whether the project improved the condition of agriculture. Approved measures included, for example, the purchase of stock, seed and tools, though much of the money was evidently directed at restoring orange orchards in the Jaffa region.

When Weizmann found out about the agricultural loans, he represented the scheme as "the most serious menace to the realisation of the Jewish National Home in Palestine which has developed throughout the course of the British Military Occupation."<sup>29</sup> There were multiple levels to Weizmann's critique. First, he vented his mounting frustration at the prevailing doctrine of the status quo: how, he asked, could London accept this loans scheme, which he described as a "revolutionary departure from the status quo," when Zionism's own constructive projects were always being "compelled to bow to it"? Not only was the loans scheme flouting the doctrine of the status quo, claimed Weizmann, it disadvantaged Jewish colonists who were already receiving credit from their own sources and thus could not offer the first mortgage required. Furthermore, Weizmann highly resented the fact that the whole agricultural policy had been developed without the Zionist Organisation even being consulted, despite being "so intimately concerned." Weizmann's great fear however was that even the smallest sum lent by a government official might have an outsized influence on the overall question of property ownership, and thus compromise future Zionist efforts to acquire land for themselves: "the whole issue of title to land in Palestine, which is one of the central issues in economic policy, is vitally prejudiced as a mere accident of a scheme for granting agricultural loans." Not only might a loan provide a Palestinian cultivator with a *de facto* confirmation of title to potentially larger and larger areas, he reasoned, but the government was now effectively acquiring its own interest in sustaining the validity of that lender's claim to the land, if only in order to secure its own financial stake. Weizmann concluded that the land issues being raised were "of the gravest": "the question is one of life and death for the cause of the Jewish nation in Palestine."

Zionist leaders clearly envisioned Britain playing a dominant role in their own strategy for acquiring land in Palestine. They expected British rulers readily to adopt much more direct and interventionist measures associated with settler colonial enterprises elsewhere. Weizmann himself offered the following prescription, which is worth quoting at length for the light it sheds on both Zionist assumptions and expectations:

a great deal could be said in favour of the compulsory breaking-up, on the basis of reasonable compensation, of the large latifundia which are wastefully cultivated and in favour of settling Jews upon them, after first providing, of course, for the needs of the present tenants. It would, however, probably be politically unwise for the Zionists to press at

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<sup>29</sup> Weizmann to Graham, 14 July 1919, "Government Loans to Cultivators," FO 371/4225, 374–380.

the present time for such measures, which might provoke hostility upon the part of the landlords and lead to the intentions of the Zionists being misinterpreted to the people. There are, however, large quantities of State lands, waste and unoccupied lands in Palestine and it seems to me only right and proper that these should be turned over to the Zionists upon reasonable terms and conditions for the purposes of colonisation and development.<sup>30</sup>

In fact, large quantities of what Weizmann refers to as “state lands, waste and unoccupied lands” did not actually exist in Palestine (though, in the wake of a war that had ravaged rural populations and so terribly disrupted normal cultivation patterns, it may well at that time have appeared so). Nor would, over the course of British rule in Palestine, much land ever be officially “turned over” for Zionist colonisation. In fact, Zionist land acquisition never met with nearly as much success as was hoped. During the interwar period, Zionist land purchasing agencies were only able to acquire ownership of a relatively small percentage of Palestinian territory. According to official statistics, Jewish concerns already owned 650,000 dunums at the end of 1920, when the Ottoman land registers would finally be re-opened. By 1936, the area in Jewish ownership was 1.3m dunums, that is, a doubling of the area that had already been accumulated under Ottoman administration.<sup>31</sup> Indeed, Weizmann complained early on that the achievements under British rule weren’t nearly as striking as Zionist leaders expected: “on several points the Administration has erred on the side of prudence and has thus produced a state of affairs which injures Jewish interests.”<sup>32</sup> By the end of the British rule, in 1948, total Jewish land purchases amounted to less than 7% of Palestine.

Still, in 1919, Weizmann’s influence in London was persuasive enough to prompt the Foreign Office to call (via the War Office which, as Allenby had at one point to remind the Foreign Office, was still responsible for the military administration in Palestine) for a suspension, pending the receipt of a full report, of the new agricultural loans scheme. To be sure, Foreign Office officials were themselves already unimpressed with the fact that Jerusalem had also failed to inform them of the loans scheme. Furthermore, most officials in London steadfastly opposed the whole idea of a government involving itself so closely in the lending business. The Foreign Office thus called for a suspension of the loans scheme, but OETA(S), in turn, pushed back. Jerusalem stated pointedly that Zionist objections “are not based on facts,”<sup>33</sup> and warned that a sudden withdrawal of the loans might only encourage anti-Zionist propaganda.<sup>34</sup> As for the charge that the loans represented an unwarranted intervention in the Palestinian economy, OETA(S) emphasised that the military administration was merely con-

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<sup>30</sup> Weizmann to Curzon, 2 February 1920, “Palestine & Zionism,” FO 371/4187, 88.

<sup>31</sup> Palestine Royal Commission, “Land Statistics,” Memoranda Prepared by the Government of Palestine, in *Land Legislation in Mandate Palestine, Vol. 8*, ed. Martin Bunton (London, Cambridge Archive Editions, 2009), 452.

<sup>32</sup> Weizmann, “Report on the Situation in Palestine,” 15 February 1923, CO 733/62/624.

<sup>33</sup> Telegram, Meinhartzhagen to Foreign Office, 22 October 1919, “Agricultural Loans in Palestine,” FO 371/4226.

<sup>34</sup> Telegram, Meinhartzhagen to Foreign Office, 26 September 1919, FO 371/4226.

tinuing, in accordance with the laws and usages of war, the basic operations that had previously been performed by Ottoman institutions, and for which purposes specifically allocated tithe revenues were still being collected.<sup>35</sup> As understood, for example, by the 1918–1919 budget statement for OETA South, finances of the administration “are regulated by the terms of Article 369 of the Laws and Usages of War, which are as follows:”

The financial administration (of Occupied Enemy Territory) passes into the hands of the occupants, but all fiscal laws remain operative. If he collects the taxes, dues and tolls payable to the state, he is in consequence bound to defray the expenses of administration to the same extent as the national government was liable. The collection must be made, as far as possible, in accordance with the rules in existence and the assessment in force... The occupant may use local rates only for the purpose for which they are raised.<sup>36</sup>

OETA(S)’s response gave some officials in London reason to reflect more critically on Weizmann’s initial protestations about the loans scheme. As one Foreign Office official minuted, “surely the Jewish Colonists are not the only people in the country, and there seems no reason why the ordinary fellah should be deprived of assistance which could have been obtained under the Turkish regime.”<sup>37</sup> Once the Foreign Office received the fuller loans report which they requested from Jerusalem, it did in fact come around to accepting the validity of the loans scheme, and agreed to cancel the earlier suspension. By that point, Weizmann too had changed his mind, and heeded the anxiety growing in Jerusalem that suspending the loans scheme in this way had contributed to mounting political tensions.

Concurrent with the debate over agricultural loans in early 1919, the military administration drafted a new land transfer ordinance to allow for the re-opening of the land registers and “remove hardships from which large proportion of inhabitants are suffering.”<sup>38</sup> As explained in an official telegram to London,

the removal or destruction of land records has prevented any land transactions being permitted up to present and this has a serious effect on economic conditions of country. The land records have now been recovered for most part. No change is proposed in Ottoman law and land tenure and no guarantee of title will be given.<sup>39</sup>

In Jerusalem, the re-opening of the land registers was now considered “the foundation of all preparatory work,” and this urgency reflected the widely held belief that the continued prevention of land transactions was shackling the “transformative powers” of the free flow of money.<sup>40</sup> In London too, officials recognised that

<sup>35</sup> GHQ to War Office, 27 September 1919, “Agricultural Loans Scheme,” FO 371/4226.

<sup>36</sup> “OETA Budget,” 5 September 1919, FO 371/4142, 504.

<sup>37</sup> Minute sheets, 26 September 1919, FO 371/4226, 110.

<sup>38</sup> Telegram, GHQ Egypt to War Office, 12 August 1919, FO 371/4226, 39.

<sup>39</sup> Telegram, Clayton to Foreign Office, 19 June 1919, FO 371/4171, 159. See also, “Report on OETA,” FO 371/4143.

<sup>40</sup> Telegram, Clayton to Foreign Office, 27 June 1919, FO 371/4171/94476, 159.

“sooner or later land transactions must be allowed and meanwhile the country is suffering by the delay” caused by the fact that the military occupation was being protracted beyond any reasonable expectation. They agreed that “it would certainly help the native population,” and disliked the idea of “maintaining a corrosive kind of status quo for so long.”<sup>41</sup>

Despite the growing number of favourable voices in both Jerusalem and London, the Foreign Secretary Lord Curzon stubbornly resisted sanctioning any such ordinance as long as the period of military occupation endured. Yet again, the Foreign Office had also been prompted by concerns raised directly by Chaim Weizmann who, as he had done with the agricultural loans scheme, mounted a vigorous protest against the re-opening of the land registries until (as before) he modified his position once he became better informed about the nature and ramifications of the actual policy.<sup>42</sup> For the Foreign Office, the overarching concern lay in the feared international ramifications of tampering with the principles of military occupation, especially the adherence to the status quo. That is, London’s main objection to Palestine re-opening its registers was that Britain had committed to refrain from any ‘constructive’ policy until a final treaty confirmed international support for Britain’s position in Palestine (keeping in mind, of course, that month after month, year after year, this treaty was continually thought imminent). This commitment to the status quo even led the Foreign Office to refuse attempts made by the Zionist Organisation to obtain legal option on any property: as Curzon made clear, “it should under no circumstances be allowed.”<sup>43</sup>

To reiterate, it was the unsettled relationship with France which loomed over all of these concerns. Until the Allied powers had, among themselves, formally decided Palestine’s future status, officials in London were fearful of prejudicing Britain’s future position in the region by acting as though a mandate had already been secured: “The moment we reopen the land registers and allow land transfers even on a small scale our present policy viz. holding the country as temporary administrators pending the allocation of a Mandate, breaks down completely.”<sup>44</sup> Only once it became clear to all that a final consummation of international diplomacy was *not* in fact imminent, did it become impossible for London to ignore the calls from Jerusalem for new land legislation. In this respect, the major hurdle was overcome when, at San Remo in April 1920, France, reluctantly but finally, agreed to a British administration in Palestine (though the official establishment of a League of Nations mandate still awaited the final peace settlement with Turkey in 1923). With Palestine’s transfer from a British military to civil administration on 1 July 1920, and the appointment of Herbert Samuel as high commissioner, the Foreign Office finally began to relent on the matter of the land registers.

Though Samuel thought he was given permission to announce the re-opening of the land registers in his inaugural speech, the Foreign Office continued to stall

<sup>41</sup> Minute sheets, “The Opening of the Land Registers in Palestine,” FO 371/4226.

<sup>42</sup> See for example minute by Scott, 15 January 1920, FO 371/4226 170523.

<sup>43</sup> Foreign Office to Army Council, 19 March 1920.

<sup>44</sup> Minute by Scott, 9 December 1919, FO 371/4226, 156.

final approval, mostly due to frustrations with the many defects in Jerusalem's poor legal draughtsmanship.<sup>45</sup> Samuel pleaded incessantly for the final approval of the land ordinance, describing how "general stagnation is writ large on the face of Palestine," and repeating the argument that economic recovery was "suspended" by the prohibition on land transactions. In August, for example, he warned that "dissatisfaction increasing daily,"<sup>46</sup> and protested that

Effect of my inaugural measures being spoilt by procrastination in issuing Ordinance permitting resumption of land transactions is the first conditions of economic revival – I have telegraphed five times during four weeks emphasising urgency and importance without result. FO cannot realise harmful effect on public opinion.<sup>47</sup>

Eventually, the Foreign Office succumbed and, though they remained unsatisfied with the legal draughting, they accepted the political and economic urgency. Minuted one official,

I cannot see that the reopening would have any really undesirable results, and it would certainly help the native population – giving them an opportunity to satisfy their own requirements.<sup>48</sup>

A new land transfer ordinance opening the registries was finally passed in late 1920. A quick reorganisation of the system under Judge Williamson, Sudan's registrar general, was deemed sufficient to allow for the thirteen former Ottoman land registration offices to get back to work.<sup>49</sup>

During the long delay, successive draughts of Palestine's new land ordinance circulated widely, prompting much debate on the extent to which it differed from Ottoman practice. It is worth examining these debates a little more closely, if too briefly, for a further perspective on key issues raised above. When first responding to Jerusalem's request for sanctioning a new ordinance, the Foreign Office distrusted their own qualifications to advise on "this highly technical administrative question," and they were anxious, too, that policy for Palestine "not conflict with that for Mesopotamia."<sup>50</sup> Accordingly, officials in London sought "the observations of the India Office and of experts in Mesopotamia, where the problems to be solved are closely analogous to those in Palestine."<sup>51</sup> The feedback they received, especially from Baghdad, sparked broad discussion on a range of issues.

<sup>45</sup> "The importance of the principles involved would make it preferable to delay its issue until defects had been remedied and all vital principles safeguarded." Quoted in Foreign Office to Samuel, 7 September 1920, FO 371/5139, 200.

<sup>46</sup> Samuel, 16 August 1920, FO 371/5139.

<sup>47</sup> Telegram, Samuel to Foreign Office, 23 August 1920, FO 371/5139, 193.

<sup>48</sup> Minute by Scott, 5 May 1920, FO 371/4226, 271.

<sup>49</sup> See Judge G.W. Williamson, "Note on Land Law, 1919," in *Land Legislation in Mandate Palestine, Vol. 5*, ed. Martin Bunton (London: Cambridge Archive Editions, 2009).

<sup>50</sup> Minute by Young, 20 October 1919, FO 371/4226, 124.

<sup>51</sup> Minute sheets, July 1920, FO 371/5205, 44; also, FO 371/4171 98705.

One that stood out was the extraordinary attempt of the Palestine administration to claim new powers for itself: by the terms of their new ordinance, the Palestine administration demanded that any person wishing to make a disposition of immovable property was required first to obtain the written consent of the government, which could withhold sanction to sales up to any extent and without giving any reason.

Some British officials were not at all sure this would fly, either legally or politically. Although older Ottoman land laws had contained limitations on the validity of a transfer made without the leave of an official, a 1913 provisional law was understood to have abolished the necessity of consent.<sup>52</sup> For its part, the new Palestine administration gave three main reasons for requiring that written consent be reintroduced. These concerns mostly reflected the unfolding experience of administering occupied territories, although a couple were reinforced by the Zionist Organisation. First, it was hoped that by requiring consent, government could ensure a check on speculation which, if ignored, would cause an excessive rise of prices and prevent economic development. Secondly, it was hoped to prevent the aggregation of larger estates. Finally, and most significantly, it was deemed desirable to ensure that owners of property, and their tenants, would always retain sufficient land to continue to sustain themselves, “as it is desirable that there should be amongst the population a considerable proportion of small landholders.”<sup>53</sup> As explained at the time, owners of land “will be unable to sell such part as is necessary for the maintenance of himself and his family, and if he is the tenant his landlord will be unable to sell without leaving sufficient land for him.”<sup>54</sup> This newly inserted provision into existing Ottoman legislation clearly reflects the historic tension in British colonial policy making, between the enthusiasm for economic liberalism, on the one hand, and the anxiety for peasant dispossession, on the other.<sup>55</sup> As was explained by one official, the inclusion of provisions protecting peasant cultivators in this way was “prompted by considerations similar to those that made Lord Kitchener enact the ‘Five Feddan Law’”<sup>56</sup> in Egypt (which were themselves informed by previous colonial deliberations in India). There may also have been considerations closer to home: for example, special legislation “to give greater protection to the tenant than the common law afforded” was in fact being considered concurrently in England.<sup>57</sup>

But how would Palestinian Arab landowners themselves respond? As many officials suspected at the time, the clause did foster widespread suspicion amongst Arab landowners, and contributed markedly to the growing opposition against

<sup>52</sup> See also Richard Clifford Tute, *The Ottoman Land Law: With a Commentary on the Ottoman Land Code of 7th Ramadan 1274* (Jerusalem: Greek Convent Press, 1927), 4–42.

<sup>53</sup> Report on OETA Conference of Chief Administrators, Mount Carmel, 12 May 1919, FO 371/4143.

<sup>54</sup> “Note on the land transfer ordinance,” FO 371/5140, 122.

<sup>55</sup> For more on how this tension played out in Palestine, see Martin Bunton, *Colonial Land Policies in Palestine* (Oxford: Oxford University Press, 2007).

<sup>56</sup> Minute sheets, 24 November 1921, CO 733/7, 399.

<sup>57</sup> Frederic Goadby, Moses Doukhan, *The Land Law of Palestine* (Tel Aviv: Shoshany’s Printing Co., Ltd., 1935), 236.



British rule.<sup>58</sup> To be sure, over the course of the ordinance's first year of operation, only a very small number of dispositions of property would actually be refused.<sup>59</sup> Nonetheless, Arab landowners very quickly demanded an end to the special powers allowing government to demand consent to transactions, and petitioned for the status quo ante bellum. When these petitions were discussed in London, one official remarked that "I have always suspected that the real reason for the objection is the dislike to be told that a man may not do what he likes with his own property... in dealing with any land question we really act in a matter that possesses continuity from times prior to the dawn of history."<sup>60</sup> Similarly, a government enquiry noted that "the Ordinance is objected to on religious grounds": "The Sharieh Law states 'A possessor may dispose of his possession as he pleases' and the Land Transfer Ordinance is in direct contradiction to this... It is a question if [government] can dictate to individuals regarding the disposal of their property."<sup>61</sup> When reporting on the grievances that led to riots in 1921, the appointed commission of inquiry underlined the resentment provoked by the consent clause,

the Arabs have regarded with suspicion measures taken by the Government with the best intentions. The Transfer of Land Ordinance, 1920, which requires the consent of the Government must be obtained to all dispossessions of immovable property, and forbids transfers to others than residents in Palestine, they regard as having been introduced to keep down the price of land, and to throw a land which is in the market into the hands of the Jews at a low price.<sup>62</sup>

While the mounting opposition was described in official communications as strong and widespread, it is important to recognise that at this time the recognised Arab leadership (to be more specific, the nominated advisory council set up by Herbert Samuel upon becoming high commissioner) generally consisted of large landowners, who no doubt sought as much control over their own economic interests as possible. As a result of the mounting backlash, the ordinance was accordingly amended in 1921.

<sup>58</sup> See "Administrative Report for July 1921," CO 733/5, 282; Samuel to Secretary of State for the Colonies, 22 November 1921, CO 733/7, 399; "A Brief Statement of the Demands of the Arab people of Palestine (Moslem and Christian) submitted to the Honourable Mr. Winston Churchill by the Arab Palestine Delegation in London," CO 733/14, 102; and, "Report on the State of Palestine during the Four Years of Civil Administration by the Executive Committee of the Palestine Arab Congress," CO 733/74, 116.

<sup>59</sup> Samuel to Churchill, 14 May 1921, CO 733/3, 205–208.

<sup>60</sup> Minute by Mills, November 1921, CO 733/7, 399. Added G.L.M.C. Clauson, "Before we leave, or before the Zionist Organisation has finished with their land development policy in Palestine, we shall have really ghastly difficulties over the land, and not improbably bloodshed, but these difficulties are not in any way connected with this ordinance." For more on the LTO debates, see CO 733/5/282, 392.

<sup>61</sup> "Report of Land Commission," CO 733/18, 610–611, 630.

<sup>62</sup> Great Britain, Cmd. 1540, *Palestine: Disturbances in May 1921: Reports of the Commission of Inquiry* [Haycraft Report] (London: HMSO, 1921), 51.

## CONCLUSIONS

The foregoing examination of how specific land policies developed in Palestine during the immediate post-war period allows for some broader observations both about the new challenges confronted by the newly emerging colonial state, as well as about its continuities with the former Ottoman administration.

First, the pre-war continuities. The central, if disputed, role played by prevailing Ottoman institutions during the military occupation forces a reconsideration of the Ottoman legacy. Clearly, the significance attributed by British officials to the void left by the collapse of the Ottoman Agricultural Bank, and the parallel importance attached by the military administration to a quick reopening of the closed Ottoman land registry, indicate closer continuities with Ottoman practice (or what was deemed and interpreted to be Ottoman practice) than is normally presented in the extant literature. Of course, most British officials at the time rarely missed an opportunity to express antipathy towards the Ottoman Empire as a decaying and anachronistic edifice, and presumably had every interest in attempting to justify (if only to their own electorate back at home) their role in liberating a local population from centuries of misrule. In reality, however, Ottoman laws and practices were clearly more resilient and effective than Western images of the Ottoman Empire as the historic ‘sick man of Europe’ allow.<sup>63</sup> It is not the place here to add to the large literature on the history of Ottoman land codes, a key part of the mid-19th century reforms, together known as the Tanzimat. A growing body of literature has confirmed that the land policies of the Ottoman Empire essentially adopted “the central tenets of nineteenth century policies of government: state prosperity rests on the security of individual wealth, corresponding to individual subjecthood and tax liability.”<sup>64</sup> Clearly, as we have seen, the British occupation forces on the ground found that the pre-war Ottoman land registry had been effective enough in its ability to maintain a record of marketable rights that its administrative collapse during the war resulted in such chaos. Or, to put it another way, had Ottoman governing structures been as dysfunctional as popularly claimed, then the war-time deterioration and subsequent closure of the land registry system would not have caused the hardships it did. Furthermore, the extent to which the re-opening of the land registry was viewed as representing the interests and expectations of the local population is evidenced by the fact it was consistently defended in the name of local economic interests and concerns, as well as by the related accusation that the initial Zionist protestations against reopening the registers risked prejudicing indigenous interests.

A second set of observations can be drawn about the nature of the role played by Zionist leaders during the period of military rule. Historians ought to be wary

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<sup>63</sup> Alexandre Kedar, Ahmad Amara, Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford: Stanford University Press, 2018); *New Perspectives on Property and Land in the Middle East*, ed. Roger Owen (Cambridge: Harvard University Press, 2001).

<sup>64</sup> Martha Mundy, “The State of Property,” in *Constituting Modernity: Private Property in the East and West*, ed. Huri Islamoglu (London: I.B. Tauris, 2004), 216.

of versions of Palestinian history in the post-war period which too readily privilege the Zionist programme, and ignore how and when it was necessarily tempered by reality. Although Weizmann's position in London clearly allowed him to intervene in disproportionate and influential ways, the poorly informed protestations and vacillating actions adopted by the Zionist Organisation in the cases discussed here achieved little other than to alienate the local British officials as well as the Arab population. Reflecting back on the period, a commission of inquiry set up to investigate the cause of riots that broke out in 1921 concluded that the surge of opposition against Zionism arose from its habit of "regarding Palestine as a 'deserted, derelict land' sparsely inhabited by a population without traditions of nationality, where political experiments may be launched without arousing local opposition."<sup>65</sup> Not only did Zionist conceptions contravene official government policy to adhere to the status quo, they clearly belonged more to an earlier age of imperial annexations and settler colonialisms, than to the new post-war emphasis placed on powerful notions of "the wishes of the people" and self-determination. As Gilbert Clayton warned in March 1919,

It will take years of wise and impartial government to allay the fears which have been aroused and to prove to the non-Jewish population that the Zionists are not pursuing a policy entirely opposed to the principle so frequently enunciated by the Allied leaders.<sup>66</sup>

Clayton's reference here to "principles so frequently enunciated" brings us to our third and last conclusion. All military administrations to some extent breed their own resistance simply because they are foreign occupations (as, for example, had already been made plainly evident in neighbouring Egypt). But here we can see the added pressures in the wake of the profound transformations, often referred to as 'the spirit of the age,' experienced by the international system in the early twentieth century and legitimised by both Britain's recognition of the Hague conventions and of Wilsonian notions of a 'sacred trust.' Sir Mark Sykes had already captured a sense of the shifting ground when, in June 1917, he asked:

'are the relations of European peoples towards subject Asiatic peoples going to be the same after the war as before the war'? If there is anything in the tendency of the age, in the advance of democracy, in the expressed view of the powers with regard to small nationalities, I concluded that the answer is in the negative... If we and the French intend to work towards annexation then I am certain that our plans will sink in chaos and failure.<sup>67</sup>

Indeed, as we have seen in this examination of land policies in occupied Palestine, British officers on the ground were forced to be sensitive from the start to the need to align their policies with prevailing practices which the majority popula-

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<sup>65</sup> Great Britain, Cmd. 1540, 57.

<sup>66</sup> Clayton, 15 March 1919, FO 371/4153.

<sup>67</sup> "Notes by Sir Mark Sykes on Sir Reginal Wingate's Telegram, No.609," 22 June 1917, FO/371/3054.

tion, or at the very least the political and economic leaders among them, were accustomed. The hope was to build some minimal public backing and a certain level of legitimacy. But it proved to be an impossible task. As Bernard Wasserstein concludes, the growing discontent all round “boded ill for the Zionists’ sanguine expectation of achieving their ends peacefully... [and] created a gangrene of suspicion and mistrust in the British-Zionist relationship” which could only grow in the postwar period.<sup>68</sup> Arab protests broke out almost immediately, in 1920 and 1921, and resurged in mass in 1929. The day of reckoning arrived soon after, with the 1936–1939 revolt finally forcing the British officially to commit to Palestinian independence and majority rule. As had been made increasingly clear, less than 20 years earlier, the mobilising discourses of the early twentieth century had set the stage for the demise of Britain’s empire, not its expansion.<sup>69</sup>

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<sup>68</sup> Wasserstein, *The British in Palestine*, 72.

<sup>69</sup> Erez Manela, *The Wilsonian Moment* (Oxford: Oxford University Press, 2007).

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