

The Legitimacy of Repression: The History of Martial Law in British Controlled Palestine

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INTRODUCTION; MARTIAL LAW IN PALESTINE

A sixteen-year-old boy was tried for throwing a Molotov cocktail in a military courtroom in the city of Ofer, Palestine. Throughout the trial, the boy sat in chains looking confused and out of place. As the trial progressed, he sat looking pleadingly at his mother who he has not seen in months. When asked how he pleaded, the boy's lawyers advised him to plead guilty. In a matter of minutes, the court condemned the boy to six months in an Israeli prison (Meekings, 2012). This scene has played out thousands of times in Israeli military courts like the one at Ofer. Palestinians, even as young as eight or nine years old, are prosecuted under martial law codes. Under this process, they are held for up to four days in order to see a military judge, and as many as ninety days before seeing a lawyer. Detainment can last indefinitely, continuing for as long as 188 days before the accused is charged or two years before the accused goes to trial (Meekings, 2012). Criminal court proceedings, normally held under civilian legal codes, are subsumed under the jurisdiction of martial law.

As a report by the International Review of the Red Cross states, "There is in fact an invasion of the military legal system over civilian domains" in Israel and Palestine (Weil, 2007). Yet this form of legal application is not uniformly applied in all cases. The jurisdiction of martial law extends only to the Occupied Territories of Palestine, captured and occupied by Israel since 1967. This means that Israeli citizens who commit the same crimes are prosecuted under a completely different system, one that guarantees protected rights, like the right to a speedy trial, not found in martial law. Furthermore, the military courts are inherently biased because of its connection to the military apparatus in charge of keeping control in the Occupied Territories.

Within this system there is "less independence and impartiality and [it] does not effectively safeguard the individual rights of accused persons and suspects" (Weil, 2007). It is surely the case that the use of martial law in the treatment of Palestinians is a central point in the Israeli-Palestinian Conflict. The unequal separation of legal systems and their applications create grievances among the Palestinians and compound the already delicate, and volatile balance in the Israeli-Palestinian relationship.

Since its inception, the State of Israel faced challenges to its existence during the various wars in 1948, 1956-67, 1967 and 1973. From the Israeli perspective, it is easy to see why security and the need for a strong military presence are important. Yet after securing its survival and long after serious threats had receded, Israel still clings on to fears for its national security. This is evident in its continual use of martial law, which was adopted almost entirely from the British Defense (Emergency) Regulations of 1945.

From 1948 to 1966, martial law was officially imposed on the Arab minority in Israel, but continues to be intermittently enforced to this day. The military government, in effect, imposed various restrictions on Palestinians. Palestinians were required to apply for permits to travel from area to area, regardless of destination. Security checkpoints were set up to enforce these permits. Those who disobeyed these regulations were jailed or fined. All petitions or requests for government services were directed to military courts instead of civil courts (Weil, 2007).

By the end of 1973, serious threats to Israeli security had ended, since Israel was no longer engaged in defensive wars. Though widespread martial law had ended, the use of martial law was sporadically declared in the Occupied Territories during periods of Palestinian unrest or protest. The fact that the use of martial law continues today shows that martial law has become a tool for Israeli control of Palestinians.

Martial law was drafted and enacted by the British in its administration of Palestine during periods of unrest, but British martial law codes continue to influence the region to this day due to its recurring use by the State of Israel. Upon closer look, one can uncover or unravel the reasoning behind the need for martial law. Who were the people involved in its drafting and what were their motivations? Why did British colonial officials deem martial law necessary in Palestine? Was there any opposition to the use of martial law? By using records and papers kept in the Nation Archives in the United Kingdom, I hope to excavate the story behind these law codes. Studying the introduction of martial law into Palestine may reveal the structure supporting the ongoing conflict. The current conflict may be an inheritance of the colonial history of Palestine or a succession of colonial rule from one power to another.

The theme of colonialism is a crucial part of this story. Martial law, from a certain viewpoint, may simply be a manifestation of colonialism. Jurgen Osterhammel's dissertation on the theory, definition, and relationship dynamics of colonialism shows that colonial projects have certain features and patterns. Does the relationship between Israel and Palestine constitute a colonial relationship? Is the continual existence of martial law in shaping the unequal treatment of Palestinians an example of recurring colonialism?

This study will first provide a clear framing of colonialism by addressing the theoretical overview provided by Osterhammel in conjunction with comparative historical discussions. The discussion will then continue with the origins and development of martial law in Palestine, beginning with the establishment of the Mandate system to the present day. Finally, we will end with an evaluation of the relationship between Israel and Palestine and create a more nuanced view and a fresh examination of the structure behind the conflict.

PART I. THEORETICAL FRAMEWORK OF COLONIALISM

This paper will use the term colonialism to describe “the process of European settlement and political control over the rest of the world, including the Americas, Australia, and parts of Africa and Asia” (Kohn, 2006). In addition to the traditional meaning, Osterhammel asserts that the definition of colonialism must include the relationship between the ruler and the ruled, in which the ruled is “externally manipulated” and changed according to the needs of the colonizers. Consequently the vast difference between the colonizers and the colonized is of crucial importance. Aside from the structural characteristics of colonialism, a true definition must take into account the ideological underpinnings and ethnocentric rhetoric that propelled the colonial project (Osterhammel, 1997).

Osterhammel's definition of colonialism takes into account all three factors:

Colonialism is a relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders. The fundamental decisions affecting the lives of the colonized people are made and implemented by the colonial rulers in pursuit of interests that are often defined in a distant metropolis. Rejecting cultural compromises with the colonized population, the colonizers are convinced of their own superiority and of their ordained mandate to rule (Osterhammel, p. 17).

From this definition, one can extrapolate certain characteristics of colonial relationships. There is a dynamic relationship between the controlling group and the controlled. The resources of the colony are extracted at the expense of the local people. In doing so, there is a need for the replacement and reconstruction of new political and economic infrastructure in order to facilitate this process of extraction. As Joachim Radkau discusses in his book, *Nature and Power*, the main problem of colonialism was its long-term impact rather than its immediate consequences. Colonialism unleashes a series of ripples upon the natural environment that is so pervasive that it has shaped the future of the land. Such transformations are facilitated by social and economic systems constructed by the colonizing power within the colony, which serves to regulate the process of resource extraction. Indigenous ways of life and modes of survival are consequently transformed along with the environment.

An essential component to colonialism, as discussed by Osterhammel, is the existence of nationalistic and ethnocentric sentiment (Osterhammel, p.22). The worldview of superiority and civility of the colonizing nations animated the colonial building projects and gave justification for brutal or unjust treatment. The superiority colonizers felt came from the ideological belief that it was their divine right to be at the apex of the natural social order. Similarly, the British imperial and colonizing projects took on the mantle of “liberalism”. The British were benevolently colonizing “savage” nations in order to bring them civilization. They were bringing economic prosperity (although it was one-sided) and the liberal

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ideas that were believed to be the essential ingredients of a successful civilization. This sentiment was expressed at its peak in Rudyard Kipling's famous poem "The White Man's Burden" of 1899, where the British are heralded as the guardians to "light". Osterhammel, as an extension of his definition of colonialism, defines imperialism as "the concept that comprises all forces and activities contributing to the construction and the maintenance of transcolonial empires" (Osterhammel, p. 21). It is a comprehensive concept in which the controlling nation extends beyond its colonial holdings to exert influence upon the global system. From this sense, one can characterize "colonialism" as a special manifestation of imperialism. This is especially true of the British Empire in its later days.

The British control of Palestine does not completely fall into any a specific category of colonialism. Rather, through the Mandate System, British control exhibited a mixture of colonial characteristics. The ideology of "civilizing savages" that was the core of British imperialism underwent a significant change. Though the push for colonization and control was the same, its basis shifted towards a sense of democratic liberalism. Now the main legitimacy for colonialism came from the professed benevolent act of securing the independence of the targeted territory. The colonizers now operated under the pretense of being protectors and guides towards national independence, though the realities were enormously different from the rhetoric. All except in name, the mandates were essentially colonies. From 1912 until 1950, the intensity and scale of colonialism increased dramatically. Bureaucratic regulation and administration became methodical and systematic. The growth of European corporations specializing in exports of oil and mineral resources indicated the importance of the export economy: an economy that relied on the colonial controls that gave the Colonial Powers the concessions to exploit these export commodities.

Beginning in the 1920's, the discovery of oil in the Middle East provided a lucrative opportunity for Colonial Powers like Britain. Petroleum companies like the Anglo-Iranian Oil Company, and later Standard Oil, cashed in on the concessions that allowed them to drill and refine petroleum. Later, the growing importance of oil as a fuel source at the turn of the century made petroleum an important resource, especially during times of war. In order to facilitate the exploitation of petroleum in the region, it was necessary to establish a strong presence in the region and build infrastructure such as railways and pipelines to transport the resource. This meant setting up colonial governments in the region that could gain the cooperation, labor, and concessions from the native population. In truth, the exploitation of resources like oil show that the liberal rhetoric the colonizing powers relied on was little more than a veil for the true exploitation that occurred.

PART II. THE MANDATE SYSTEM OF POST WORLD WAR I

The beginning of martial law in Palestine can be traced to the creation of the Mandate System after World War I. With the defeat of the Central Powers, the territories and colonies under German and Ottoman control were ripe for the taking. The horrors of the Great War had scarred the world. Peace became the rallying cry for the masses. The original intent of the Mandate System was to help develop the captured territories of the losing nations toward a higher status of sophistication and civilization. Ultimately, the reality was that the Mandate system became a mechanism of colonialism that extended the imperial ambitions of the West.

ORIGINS OF THE MANDATE SYSTEM

In Britain, thinkers like Leonard Woolf argued that though the world was a chaotic "jungle", order and peace could be gained by instituting constraints and controls. In his treatise, *Fear and Politics: A Debate at the Zoo*, Woolf presented the idea that one could organize peace or set in motion plans to prevent war. As Daniel Gorman writes, "Woolf believe that mankind still lived in the jungle, but that, counter to the thinking of social Darwinists and despite the evidence of the war, it was not fated to this existence". What Woolf envisioned was an international system that would restrain war and promote peace. This idea of "liberal internationalism" was attractive to the war weary people of the early 20th century and gained tremendous public support. President Woodrow Wilson's idea of the League of Nations was the expression of this sentiment.

The strong public support for the League of Nations gave them a means by which to mask their real political reasons. Each ally had their own ulterior motives that were centered on their goal of maintaining their imperial power. In spirit, the newly formed League of Nations was to be the arena in which disputes through nations were solved diplomatically. Within this organization, the creation of the Mandate System in 1921 was seen as a method by which the former

colonies of the conquered German and Ottoman Empire could rise up to status among the nations. The sacred trust of building these colonies were given to the allies. The intention of the mandate system was centered on the ideal of peace and diplomacy, where through cooperation all nations could prosper.

THE ORIGINAL INTENT OF THE MANDATE SYSTEM

The League of Nations became entrusted with supervising the administration of the colonies and territories of the nations who had lost their claims to sovereignty as a result of the First World War. Under Article 22 of the League of Nations Covenant, “the well-being and development of such peoples form a sacred trust of civilization...The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or geographical position, can best undertake this responsibility” (League of Nations, 1945).

On the eve of the Paris Peace Conference in 1919, General Jan Smuts published a plan for the League of Nations that outlined an international mandate system. The fundamental principles that Smuts mentioned is summed up in a single general formula: “No annexation, and self-determination.” His original plan for the Mandate System aimed at providing the League of Nations with the overall supreme power to decide how the territories functioned under mandate supervision. He stated that “the delegation of certain powers to the mandatory State must not be looked upon as in any way impairing the ultimate authority and control of the League...The mandatory State should look upon its position as a great trust and honor, not as an office or profit or position of private advantage for it or its nationals” (Smuts, 1919). Smuts carefully and explicitly expressed the role of the League of Nations as being the supervising entity over the states that were entrusted to administer the mandate. Knowing that there would be serious assertions for annexation among the victorious allies, it seems that Smuts wanted to create an organization that would temper the grab for territory and prevent disputes.

However, Smuts’ plan only applied to the territories of Eastern Europe and the Near East. In regards to the German territories in Africa, Smuts states that they were “inhabited by barbarians who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense...” (Smuts, 1919). His peculiar belief was not uncommon amongst intellectuals in the period. The burst of international liberalism, while advocating for peace and humanitarianism, was markedly ethnocentric. The principles outlined in Smuts’ work and discussed by the leading statesmen of the West assumed a sense of Western superiority. In other words, the people of Eastern Europe and Africa were considered incapable of governing themselves. To the creators of the League of Nations and the Mandate System, civilization progressed along a particular line—liberal, democratic and capitalist in nature. Those outside of Europe had no experience in this ideology, thus they required guides.

THE MANDATE SYSTEM IN REALITY

The writings of Jan Smuts, Cecil Rhodes, and other leading supporters of the Mandate System show sincerity towards the welfare for the people in the proposed mandates, but ultimately their goals were subsumed under colonial ambitions. Perhaps in some ways, the ambitions of the allies were intrinsically meshed into the creation of the Mandate System. From the beginning, the allies argued over who would have control over a territory. Strategic control of oil was the main source of the diplomatic contention. The Americans accused the British of economically exploiting the oil wealth of the region. They protested specifically against the San Remo Oil Agreement of 1920, which allowed the construction of an oil pipeline to the Mediterranean. Conversely, the British accused the Americans of jealousy and wanting their own piece of the oil wealth. These disputes leaked over to the discussion of mandate assignments. Italian, French, American, and British diplomats quarreled over the division and caused major delays in the final creation of the system. Surprisingly, the League of Nations did not exercise their authority to assign colonial control, although the Mandate gave them this power. Prominent historian William Roger Louis states, “Article 22 of the Covenant did not specify which the Mandatory Powers were to be or how the mandated territories were to be distributed between them. These points were decided by the Supreme Council of the Allied Powers” (League of Nations, 1945). The allies themselves decided the distribution of territories to further their own interests. This action showcases the actual reason for the implementation of the Mandate System: a new form of colonial control.

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Supervision of the Mandate Powers was assigned to the Permanent Mandates Commission, but the commission was strictly an advisory body. They had no formal power to coerce or regulate the Mandate Powers. Their role was “to receive and examine annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates” (League of Nations, 1945). Consequently, the Permanent Mandate Commission was a body without teeth. If needed, the Mandate Powers may choose to ignore any recommendations that the Commission offers. Even though the Permanent Mandate Commission regarded itself as a supervisory body, it was evident that they held no real power.

At the beginning, the Mandate System was envisioned as the best method by which to create a peaceful and democratic world. The territories taken from Germany and the Ottomans were to be guided towards prosperity and democracy (as it seems to the West, democracy goes hand in hand with prosperity). As Susan Pederson states, “Mandatory rule was different from earlier, discredited types of imperial rule, the British liberals and humanitarians who helped to frame it argued, being purely benevolent in its intent and intended to last only for a limited time. It was a transitional form, a halfway house between dependence and independence, perhaps even a tool for making those earlier and more exploitive forms of imperial rule obsolete” (Pederson, 2006).

The reality was much different than the vision. It is clear that victorious nations Britain and France intended to claim the “liberated” territories for themselves. The prize was the natural resources and the strategic geography of the lands in the Middle East and Africa. Putting aside the rhetoric of the Mandate System, the core motives are imperialistic. Not only does the system take on an ethnocentric nature, it essentially acted as a cover for colonial control. Interestingly the mandate system also functioned as an international forum that helped to facilitate colonial rule. Pederson suggests that “...the mandate system was less a means for transforming governance than a mechanism for generating talk: while lacking the capacity directly to affect colonial rule, it could require colonial powers to discuss the character and legitimacy of that rule” (Pederson, 2006). Reality shows that the Mandate system legitimated and even indirectly abetted imperialist control of territories.

PART III. DEVELOPMENT OF MARTIAL LAW IN PALESTINE

In 1920 Britain was awarded the mandate of Palestine at the San Remo Conference. Amid protests and diplomatic negotiations, Britain began replacing its occupying military government with a civilian administration. The birth of the Palestine Mandate was followed by increasing tensions and alarm in the Arab community. British support of the large influx of Jews into Palestine incubated a deep antagonism between the Arab and Jewish populations. Eventually the situation erupted into violence, triggering a response from the British Mandate government. British investigations showed a genuine concern for the security of the region, including the need for more military support. The early period of the Palestine Mandate reveals the 1) rising tension in the region, 2) demand for a stronger security apparatus, and 3) early preparation for martial law and the use of force.

RISING TENSIONS IN PALESTINE

Prior to the mandate, the British government had given support to Zionist aspirations. Through the intense and persuasive lobbying of Zionist leader, Chaim Weismann, the Foreign Office had recognized Jewish claims to a homeland in Palestine. In combination with other factors, “The most pressing of them was the belief, held by several key government officials, that Jewish groups in the United States and Russia had the capacity to influence their respective governments’ attitudes toward the war” (Cleveland, 2004). This belief, correct or not, dramatically influenced British foreign policy. There was also general sympathy towards the Jewish cause in the top levels of British government. On November 2, 1917 the British Foreign Secretary Arthur Balfour wrote to Lord Rothschild, a prominent Zionist politician, stating the government’s approval of Zionist goals:

“His Majesty’s Government view with favour the establishment in Palestine of a National Home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country” (Cleveland, 2004).

Britain had declared, as stated in the declaration, that it would support the establishment of a Jewish national home. In the same instance, it pledged to uphold the rights and welfare of the Arab population. The Mandate Administration was teetering on a political wire as it struggled to appease both the Arabs and Jews, whose interests were naturally

in opposition of each other. This policy of dual obligation was contradicting and muddled Britain's intentions in the region. The lack of a definitive strategy left the situation chaotic and exasperating for the entire population. Through such policies, the Palestine Mandate was established in a tense and confusing political climate.

The first High Commissioner of Palestine, Sir Herbert Samuel, attempted to find common ground by advocating the creation of a diverse legislative council. This council was to be composed of elected Muslim, Jewish, and Christian representatives in addition to eleven members nominated by the commissioner. The idea was to create a council to help draft a new constitutional government under the administration of the High Commissioner. But a new constitution failed to appear due to the many disagreements among all parties. In its place, two separate Arab and Jewish agencies formed and operated independently of each other. The High Commissioner had to administer the Mandate, and at the same time, work with both agencies. The lack in cooperation alienated and set the two groups against each other, further adding to the tense situation.

Political pressure began building at the beginning of the Palestine Mandate. The British government had backed itself into a dangerous political corner, inadvertently creating a foundation for future conflict. From 1919 to 1929, as the agitation and tension increased between the two populations, the British exacerbated the situation by doggedly pursuing its dual appeasement policy.

THE DEMAND FOR MORE SECURITY

Tensions finally erupted into conflict in the August of 1929. The focal point of communal antagonism was the dispute over the Jewish right to access the Western Wall or the Wailing Wall in Jerusalem. Both communities claimed religious rights to the wall. The Jews regard it as one of their holiest sites. Muslims also claimed the Wailing Wall as a part of the Haram al-Sharif that contained the Dome of the Rock and the al-Aqsa Mosque. Under British law, however, the Arabs had jurisdiction over the wall but Jews had the right to visit. Tensions were high, and the Arab leadership responded by launching a propaganda campaign that warned about the dangers of Jewish interference in the holy sites. After a period of intense rhetorical battles, violence finally broke out. Arab mobs angered by Jewish demonstrations attacked the Jewish Quarter in Jerusalem, Hebron, and Safad (Cleveland, 2004). The British was obligated to send in troops to quell the riots. The Wailing Wall incident embarrassed the officials of the Palestine Mandate. This incident had caused the death of 133 Jews and 116 Arabs, and also magnified the animosity between the two groups.

In the aftermath of the incident, the British Administration sent a royal commission headed by Sir Walter Shaw to investigate the outbreak of violence. The commission found that the leading cause of the tensions was the increase in Jewish immigration and land purchases in Palestine. The Arabs were increasingly fearful of becoming landless and pushed out of their country. When the Commission asked Pineas Rutenberg, a prominent Jewish leader and businessman, who was responsible for the riot in August 1929, he replied "The government" (Shaw Commission, 1929). Rutenberg opined,

"They should have known, and they should have acted as a government against the inadmissible attitude of a small group of men which quite openly organize in the press and excited simple but fanatical people by issuing lies...Everybody is afraid of being knifed in the street; everyone is afraid of being shot; the psychology prevents work" (Shaw Commission, 1929).

His statement is symbolic of the Jewish perspective at the time that believed the government did not do enough to clamp down on the violence.

The interviews of the Shaw Commission reveal that the demand for increased security was evident as early as 1929. Administrators and the military were apprehensive of the continuation of violence and the possibility of an inability to quell further violence. On November 25, 1929 the Commission interviewed H.C. Luke, the commander of the police unit that responded to the riot. Luke testified that his men were unable to adequately respond to the riots due their lack of resource and numbers. He also testified that he wanted to have British, not native, policemen. The presence of Arab policemen seemed to incite more anger from the Jewish mobs and vice versa. Luke and his fellow officers genuinely believed that "...it is not difficult to envisage what would have taken place had our police, the Jerusalem police, been overpowered. The Arabs would have spread right through Jerusalem; they would have killed every Jew they could have got hold of" (Shaw Commission, 1929).

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Both Brigadier Dobbie and Marshal Dowding, members of the War Office, separately suggested an increase in soldiers stationed in Palestine. They also advised recruiting more British soldiers instead of native soldiers. In case of more problems, both men advised that battleships ought to be stationed nearby (Shaw Commission, 1929). Yet the underlying problems could not be solved with a mere increase of military and police forces. Arthur Stephen Mavrogardato the Commandant of Police commented to the Commission, “The principal cause is of course that the Arabs feel that their country has been taken away from them and given to the Jews. We had managed over several years rather to pacify the Arabs but later on the feeling was again intensified by the fact the Jews got, as time went on, more confident, more aggressive...which developed among the Arabs a feeling of antagonism” (Shaw Commission, 1929). The officials knew that the problems were much deeper than having adequate security. Regardless, the increase in security measures, especially military forces, was regarded as a primary solution. A report by the Mandate government to the League of Nations in 1929 showed a substantial increase in the number of military personnel stationed in Palestine. The increase in the military force only foreshadowed the introduction of martial law.

The various testimonies provided before the Shaw Commission uncovered the underlying reason for the Arab-Jewish antagonism, but more importantly showed that the British were preparing to augment their military presence. The royal commission’s final recommendations urged the British to limit Jewish immigration and stop the eviction of Arab farmer tenants. Instead, the Palestine mandate administration continued its policy of dual obligation and reaffirmed its intention of securing a Jewish homeland. Reports after 1929 showed that the British were steadily increasing the number of security forces in Palestine. The Colonial Office was determined to be ready for the outbreak of violence as conditions started to worsen.

THE PUSH FOR MARTIAL LAW

Various indications within the report and other letters show that the British were prepared to use force to suppress any form of protest. As expected, the Jewish leaders felt that a strong British military presence was needed in Palestine. The Vice Chairman of the new council in the Jewish Agency even went as far as to demand that the government institute martial law. He told Sir Shaw that “this revolt against the British flag, against British dominion in which we Jews only formed an incident, was carefully organized, expensively and thoroughly for many months before it took place” (Shaw Commission, 1929). The attempt to paint the riot as an Arab conspiracy to oust British rule was intended to convince the government into taking drastic action. During this period, British colonies and dominions all over the world were experiencing periods of revolts and rebellions. Revolt and movements against colonialism were fresh in the officials’ consciousness. The Vice Chairman of the Jewish Agency used the British’s fear of losing another colony to his advantage. He suggested, “that the country should be placed under martial law and under some senior officer of high military rank” (Shaw Commission, 1929). Yet, at this early stage the administration was not yet sure whether martial law was required. Regardless of their reluctance, the transcripts and interviews from the time indicate that martial law was a possibility before the start of the Arab Revolt.

The situation in Palestine deteriorated as the world suffered economic depression in the 1930’s and a larger wave of Jewish immigrants came to Palestine. These factors created unemployment in the population and further fueled animosity between Jews and Arabs. Leadership of the Arab community under Hajj Amin began to experience challenges from younger Palestinian elites who advocated for a more active approach to stopping Jewish immigration and forcing the British to change its policy. Their position echoed the sentiments of a large part of the Arab community. Frustrated with the status quo and suffering from the economic depression, the Arab population increasingly felt that militancy and armed revolt would be the only way to secure their interests. At the same time, records show that William Ormsby-Gore and the High Commissioner had already been preparing for the possibility of revolt. Troop increases and the early contemplation of drafting martial law codes had been occurring after 1929.

PART IV. THE DRAFTING OF THE MARTIAL LAW DECREES AND ITS EFFECTS

In 1931, Ormsby-Gore secured an order from the Cabinet that allowed the High Commissioner to suspend civil law and institute martial law regulations in order to suppress rebellion. The Defence Order in Council of 1931 was the first official declaration that allowed for the institution of martial law. Essentially, the High Commissioner could declare a set of regulations that far exceeded the power of the civilian legal codes, for “securing public safety and the defence of Palestine.” However, the situation in Palestine in 1931 was not yet grave enough to justify the use of the Defence Order of 1931.

The Great Arab Revolt of 1936 would be the starting point for periods of violence until 1939, prompting a harsh military response from the British that was sanctioned by the subsequent enactment of the redrafted Defence Orders in Council. As the situation deteriorated, the Defence Orders in Council underwent multiple changes in 1936 and 1937. The drafting of the martial law decrees was a contentious and arduous affair. All parties involved with its writing were minutely concerned with the wording of the decree to show that the British government had legitimacy in repressing any challenge to its authority in Palestine. The fundamental goal was to create a legal document certifying that the British could put down the rebellion by any means necessary. In essence, the drafters attempted to legitimize the use of force by legalizing it through martial law.

ISSUES ADDRESSED IN THE DRAFTING OF THE MARTIAL LAW CODES

Legitimacy became an important facet of Mandate rule because of the nature of the new international consciousness among countries. National prestige and opinion abroad became important as politics shifted towards diplomacy and internationalism. Since the British wanted to maintain legitimacy in the international community, they were concerned with what the League of Nations and other countries like the United States would think about the use of force. The memos, letters, and reports reveal a negotiated debate between the Colonial Office and the War Office over issues such as the power of the military court, the use of the word “martial law”, and the specificity of the codes itself.

General J.G. Dill, the General Officer Commanding Palestine (GOC), had expressed his interest in having the martial law codes explicitly state that he was able to prosecute malefactors in military courts prior to the proclamation of the codes. In a letter to the Undersecretary of War, he states, “There is no provision empowering military courts established under the regulations to try and punish persons who may have been guilty of offences against the safety of Palestine committed before the date on which those regulations came into force” (Dill, 1936). He wanted to be given the power, once the rebellion began, to capture and punish the planners. In order to do this, he needed the martial law codes to explicitly state that military courts were able to retrospectively try crimes that were committed before martial law was enacted (Dill, 1936). A secret document of a meeting held at 10 Downing Street in 1937 showed that Dill’s proposal was considered in the final draft of the martial law codes.

In response, the Colonial Office was adamant on not allowing military courts to try cases retroactively. This would give too much power to the military and there were fears that it might be perceived as an undermining of civilian authority. The Colonial Office’s objection to this proposal was not based on any principle of justice or concern for the welfare of the citizens of Palestine. Instead, they were primarily afraid of what dissenters outside and within the British Empire might think. In the end, the rest of the cabinet agreed with the Colonial Office. The codes only gave the military courts authority after martial law was decreed. This episode of the drafting is symbolic of the colonial government’s obsession with maintaining good public relations while at the same time attempting to give leeway for military repression. In other words, a proposed provision in the martial law codes was hastily disregarded if it had the potential to cause outrage or could besmirch the British Empire’s public image.

Interestingly, there was a long debate over the use of the words “martial law” as part of the regulations’ title. The drafters believed that labeling the regulations as “martial law” was too inflammatory. It evoked a sense of lawlessness and could lead people to think that the mandate was in a dire situation. The use of the words “martial law” also seems to suggest that the civil authority under the High Commissioner had failed. On the other hand, General Dill felt that omitting martial law would limit his authority. By stating “martial law” in the codes itself, the powers to carry out his duties would not be challenged since it was explicitly stated in the codes. The words “martial law”, according to members of the military staff, communicated to the general public that the government was determined to end the rebellion through extraordinary measures. Using these words might have the effect of deterring or stopping anyone who might want to oppose the mandate government. To the military’s displeasure, the title of the law codes was changed to the Defence Orders (Emergency) in Council. The drafters had elected to omit the reference to martial law and replaced it with the words “emergency powers”.

Once again, the drafters were mainly concerned with satisfying critics and protecting the government from being denounced. They were unconcerned with how the regulations might affect the people of Palestine. Colonial officials insisted that the regulations showed that the Mandate Administration had the situation under control. To them, using

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the words “martial law” would show to the public and the world that the British administration was experiencing difficulty in maintaining order. This was unacceptable, so in the end the regulations were changed to display the administration in a better light.

The specificity of the overall regulations was also a source of debate. The Colonial Office had initially intended to enumerate in detail the types of action that was permitted under the regulations. In carrying out its service, the military was empowered to arrest suspects, expel dissenters, confiscate land, tear down buildings, etc. One of the military officials, Duff Cooper, had suggested that the regulations be intentionally vague on certain issues. Duff was afraid that being too specific might inadvertently curb the military’s power. The authority of British forces to carry out its operations might be held illegal if it did not fall into the detailed regulations. However, Duff advised that the ability of the military to destroy buildings be clearly mentioned. To avoid criticism, Duff suggested:

“an expression covering the ‘pulling down, destruction, or removal of any building, structure or property’ be added. It may be argued that this power is inherent in the power of acquisition, but the destruction of buildings was one of the legal bones of contention during the recent disturbances, and the destruction without the formality of acquisition might conceivably be found necessary” (Dill, 1936).

In the final draft of the Emergency Powers (Defence) Orders in Council of 1937, the powers given to the government were broadly defined and the caveat on the destruction of buildings was inserted into Part II of the final regulations. British officials all agreed that the military and police forces in Palestine needed broad powers in order to suppress the revolt, but they were concerned with presenting the orders in a “correct” perspective. Officials wanted to stave off critics and keep the veil of legality provided by the mandate system. They could not afford to be seen as colonial oppressors, lest they lose the support of the League of Nations. The martial law regulations were intrinsically a method of legitimating the use of force without drawing too much criticism from other countries.

BALANCING PUBLIC OPINIONS AND ACTS OF REPRESSION

Surprisingly, the two hundred and more pieces of correspondence on the drafting of the law codes showed no interest in how the codes would affect the public except when the actions sanctioned by the codes embarrassed the government. Instead, the focus was on minute details either for the extension of the use of force or how to present the codes in such a way that it would not draw criticism. Regardless of their attempts to gloss over or portray their operations in a just and benevolent light, several incidents reveal the true nature of British repression of the Arab Revolt.

Perhaps the only time public concern was mentioned in the various official correspondences was when a 13-year-old girl was brought to trial. Rachel

Koka, a Jewish girl, was arrested after being accused of throwing a firebomb into an Arab bus. According to the martial law regulations those who are accused of possessing or having possessed a weapon would be tried in a military court and, if convicted, hanged. Since the government had to enforce its regulations, Koka was brought to trial (The Daily Herald, 1938). Although Rachel Koka was quickly acquitted, the administration’s decision to go ahead with a trial received backlash from the press and public. One article lambasted the administration,

“...All the humanity afterwards does not affect the inhumanity of putting her on trial when there was no evidence to justify it. And it doesn’t alter the fact that the Press of the world (no small portion of it being quite delighted to show this country in a bad light) will publish the fact that under the British flag little girls are tried on capital offences before military courts” (the Daily Herald, 1938).

The bad press received caused the drafters to partially reconsider the effects of the severe martial law codes. Under the provisions of the regulations, severe penalties would be levied against those found guilty of minor crimes such as possessing a rifle or dressing slightly similar to a military uniform. The martial law regulations also allowed the use of collective punishment and destruction of property (National Archives, 1937). The suffering caused by the enforcement of these regulations were never considered during the drafting. The concerns were narrowly limited to protecting British prestige and legitimacy while authorizing military repression. However, the reality of the situation contradicted what the drafters wanted to present to the public.

On October 1938, soldiers publicly executed a rebel suspect in broad daylight without trial. This incident was witnessed by a number of shocked Europeans. Such incidents seem to be commonplace but were seldom reported, since the

martial law codes had explicitly sanctioned the censoring of the press (National Archives, 1937). However, this execution became a sensational story, because it was witnessed by a group of European citizens. Outraged at what they witnessed, the group had petitioned the government to investigate and punish the perpetrators. After being publicly shamed, the administration charged four of the police officers involved. However, on appeal, their punishment was reduced to minimal prison sentences. Under martial law, acts such as the one described, frequently occurred with the implicit support of the government. In general, the British government was unconcerned with the use of brute force by their military, as long as it did not cause public humiliation.

Additionally, all the correspondences and discussions of the drafters were very bureaucratic in nature. All those involved seem to be markedly aloof while discussing the codes that would have a significant effect on thousands of people during a period of conflict. The tone of their correspondence was “matter-of-fact” and oddly unperturbed. From time to time there would be blatant emotional responses, but that only occurred when there was a disagreement between the offices. The dominant attitude shared by all the drafters was that of a “business-as-usual”, administrative indifference. Their sole goal was to create a legal system that supported and served the colonial purpose of the British government.

EFFECTS OF THE MARTIAL LAW CODES

As of 1936, the pent up frustrations of the Arab population erupted. The situation worsened as riots and violence continued throughout Palestine. The Foreign Office applied pressure on High Commissioner Arthur Wauchope to stop the uprising. Meanwhile, the military demanded that it be authorized to intervene. Wauchope had initially hoped to end the discontent through negotiations with Arab and Jewish leaders. To this end, he corresponded ceaselessly with Chaim Weissman, the Mufti, and other notable leaders in Palestine. His reports to the Colonial Office indicate that Wauchope advocated for a lenient approach to the problem. During a quiet period in October 1936 Wauchope wrote that he plans to reduce the number of stationed soldiers. He also advised the government not to deport the Mufti, “Deporting Mufti won’t end, may not even diminish, our troubles” (National Archives, 1937). However, Wauchope’s optimism about the state of affair was short lived as the violence surged in the following year. The British responded to the revolt with a long and intense counter-insurgency operation that dragged from 1936 to 1939. Martial law was instituted throughout the period and gave the military the power to carry out devastating and brutal operations across the country.

Since it was difficult to catch the evasive rebels, the military depended on the use of collective punishment in order to flush them out. In areas of high rebel activity, the soldiers would storm the nearby villages and destroy the surrounding land. This was intended to cause the local public to turn against the rebels and to make sure that the rebels had no place of protection. As Hughes states, “This destruction became a systematic, systemic part of British counterinsurgency operations during the revolt.” The overall strategy had two goals: to destroy elusive enemy fighters and the civilians who supported them. Brutality and terror tactics were the modus operandi. One officer recalls that during a punitive raid,

“ [We would] knock the place about. And its very alien to a chap like you or me to go in and break the chair and kick chatty in with all the oil in and mixed it in with the bedclothes and break all the windows and everything. You don’t feel like doing it. And I remember the adjutant coming in and saying, ‘you are not doing your stuff. They’re perfectly intact all those houses you’ve just searched. This is what you’ve got to do’. And he picked up a pick helve and sort of burst everything ” (Hughes, 2010).

British commanders encouraged the destruction of property as the official policy. Destruction was a weapon used by the military to terrify or gain intelligence. The practice was so extensive that entire villages were destroyed. In June of 1936, the British blew up large sections of Jaffa, leaving thousands of people homeless (Hughes, 2010). The evidence of demolition is clear, as there were many documented cases of villages, like Mi’ar north of Acre, being blown up with mines. Such actions, though shocking, were perfectly legal under the martial law codes. They were drafted explicitly into the regulations and therefore could not be challenged (Hughes, 2010). Those who lost their homes and property had no legal recourse.

The historical record also shows that the British also levied huge fines against villages and civilians claimed to be in league with the rebels. Collective fines were imposed on villages that were deemed noncompliant. The fines went from 700 British pounds to almost 5000, depending on the severity of the perceived recalcitrant actions. As Hughes

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points, “Fines varied but could be as high as 5000 pounds and they had to be paid promptly in cash or in the form of produce such as animals, eggs, and cereals” (Hughes, 2010). These actions worked to impoverish the populace and forced those who could not pay to become refugees. The rebels also exploited villages by robbing them in the name of the rebellion. All in all, the local population was caught in a dire predicament. The period of the revolt impoverished many Palestinians.

The actions of the British are plainly seen as brutal and bordering on the illegal. No real opposition could be raised against the counter-insurgency operations since it technically was in line with the legal system in Palestine. These operations intensified and reached its peak in 1938. Unsurprisingly, the method of repression was successful in fracturing and impoverishing the local population. However, the method of repression was not entirely equal. Christians and Jews, though also subjected to the enforcement strategy of the British, did not suffer at the same level as the Arabs. By 1939, the brutal nature of military repression had worked as more and more locals became tired of the intense suppression. Public opinion turned against the rebels. In the end, the army’s methods prevailed to end the revolt.

This method, although barely legal, was only seen as such if the actions were necessary for public safety. As a nation that prided itself upon laws, civilization, and humanity, the British could not embark on a vicious suppression campaign without finding a way to legitimize their actions. Their solution was to use martial law in which to frame the legality of the actions. Under martial law, callous acts like the demolition of homes and villages became acceptable. Repression of the free press became necessary. Mass detention were part of the norm and civilian courts were replaced by military courts out of “necessity”. Laws such as the Defense Orders in Council defended these actions primarily based on the paradigm of security and necessity.

The martial law codes proved effective, not only in providing a legal cover, but also in changing the psychological mindset of its actors. Soldiers, who would normally be appalled at destroying property or wantonly razing homes, could justify their actions by attributing it to legal authorization. The actors become disconnected from their actions in this frame of mind, thus allowing them more freedom to engage in violence or brutality. Since the law sanctioned these actions, soldiers had no fear of possible repercussions. Indeed, the administration encouraged brutality. Any attempt at revolt was thereby ruthlessly suppressed.

CONCLUSIONS:

The story of the creation of martial law in Palestine shows us that it was intended as a tool to help preserve British authority in the country. Martial law was fundamentally a method of colonial control. Similar to other colonial powers during the Mandate Period, the British needed to find a way to legitimize the use of force. It was no longer acceptable in the public and the international community to engage in military action without good reasons. The new trend of internationalist liberalism after World War I made it hard for hegemonic powers like the British to exert their influence blatantly. They had to operate under the guise of liberal principles like rule of law, peace, and justice espoused by the League of Nations. In order to put down the challenge to their authority in Palestine, the British government drafted and instituted a series of Defense Orders or martial law regulations. This was their way to legitimacy. By codifying the use of force and enshrining repression in the legal system, the government was able to give free reign for the military to punish and put down the rebellion.

The motives for the martial laws are clear in the discussions of its drafters. They were mainly concerned with allowing the military the freedom it needed to operate effectively without causing public criticism. The main theme of the various pieces of correspondence was focused on finding the right balance. Throughout the discussion, there was no real concern for the welfare of the people of Palestine. Concerns only became salient if an incident occurred that would embarrass the government, like the prosecution of a 13-year-old girl or the widely witnessed execution of a suspect without trial. Aside from these incidents, the main aim of the martial law codes was to ensure the successful repression of the revolt without harming the international prestige of the British government.

As examined in the beginning of this paper, Israel has absorbed and expanded the British martial law codes. The final form of the codes was finalized in 1945, towards the end of World War II. Since 1948, Israel has used the same martial law codes in various periods. Actions such as the censorship of the press, the destruction of homes in the West Bank, and administrative detention have all been authorized under the martial law codes. As Alan Dowty states in his book on the Jewish State,

“Even more than censorship provisions, other Defense Regulations have been applied almost exclusively to the Arab minority. From 1948 to 1966, many border areas, not coincidentally corresponding to Arab-populated areas, were placed under a military government whose legal basis was the 1945 Defense Regulations” (Dowty, 1998).

The operation of the Israeli government under martial law is reminiscent of the British Mandate during the Arab Revolt of 1936-1939. British Mandate Officials routinely censored the press and, as discussed previously, vigorously destroyed buildings under the authority of martial law. Similarly, Regulations 86-101 allowed the Israeli Minister of the Interior to restrict the press if the information is related to security. Regulation 125 allowed the government to appropriate “uncultivated” land (Dowty, 1998). This was used during the early 1950’s and 60’s to take the property of troublesome Arabs. Perhaps the most controversial regulations involved the detention of suspects. Regulation 111 “empowered a ‘military commander’ to detain any person in any place of the commander’s choosing, for renewable periods of one year” (Dowty, 1998). It is in essence the ability to indefinitely imprison without trial and no judicial review. These practices continue in the occupied territories to this day.

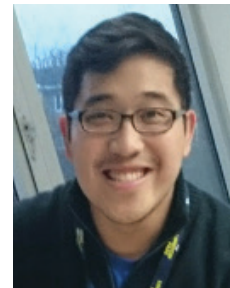
Since Israel’s martial law can be traced directly back to the Britain’s martial law in Palestine after 1948, it can be argued that the colonial motives of the original drafters have been continued. Israel’s use of martial law in the Occupied Territories of Palestine clearly shows a focus on legitimating brutality. Their military operations also mirror British operations during the Arab Revolt. Restrictions on movements, brutal destruction of property, the use of military courts, and other methods are evident in both situations. More strikingly, both governments use the preservation of public security as the primary justification for using martial law. The characteristics show a clear reflection of the motives and attitudes of the British administrators in 1939. Beyond being merely parallel, these similarities are suggestive of the continuation of colonialism in Palestine. Martial law has legitimated Israeli actions that would not be allowed in civil law. These actions continue under the façade of security, as can be seen by various news reports and human rights watchdogs (Families Under the Rubble, 2014). The inherent unequal and unjust treatment that Palestinians receive in the occupied territories throughout the years, from 1948 to the present, has unsurprisingly created resentment and anger on the part of the Arab population. The resulting conflict is one that is hard to overcome since it builds and feeds off decades of mutual mistreatment. Can Israel’s use of martial law be characterized as an inheritance of the colonial project? The evidence seems to be fairly unambiguous. In a way, Israel’s application of martial law makes the government complicit in continuing the colonial history of Palestine.

Although it may seem easy to condemn Israel as a colonial oppressor, their perspective must also be considered. The quick withdrawal of the British left the Jewish population surrounded by a hostile Arab population that had, after years of pent up anger and frustration, declared their intention to push out the Jews. Through a series of wars, the Jewish nation was able to establish a homeland for its people. To most Israelis, security meant survival. More importantly, the British Mandate government was the instigator of the conflict between Arabs and Jews. Failed policies and multiple missed chances at reconciliation led to the festering of emotions that underscored the conflict. The British also first introduced martial law into the region and used as a weapon against the Arabs.

Palestine’s problems in this sense are not merely a battle between two opposing groups, but rather a culmination of colonial mismanagement. Consequently, I venture to suggest that our view of the Palestinian-Israeli Conflict needs to be reframed as an inheritance of its colonial past. To maintain their colonial ambitions, Britain used martial law to legitimate the use of force. The State of Israel’s continuing use of martial law can be seen as the protraction of colonialism in Palestine. However, the origin of martial law and other methods of control used by Israel lend credence to the idea that the main cause of the conflict lies in Palestine’s colonial past. Through these lenses, one can argue that the Israelis and Palestinians are merely actors, perhaps even victims, of a history that they could not control.

Nhat-Dang Do

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Q: What motivated you to get involved in the field of research?

A: I am motivated by the allure of creating new knowledge. There's always something novel to discover in every research project, whether it be a new perspective or an earth-shattering new discovery. The chance to be the person to find and expose something new is intoxicating. It is what keeps me going during the tedious parts of the research process.

Q: What do you enjoy about doing research?

A: I enjoy the process of research, from the initial exploratory reading to the final analysis of the project. There is something adventurous about the process of research. For me, I feel as though I am a detective or an investigator looking for clues to solve a problem. I even love the frustrating and ragged moments. They make the eventual "AH-HA!" moment much sweeter.

Q: What is your typical day like?

A: I currently work for the State Senate as a Legislative Aid, so there is really not a "typical day". Depending on the tempo of the week, I can be working on the Senate Floor, drafting bills, meeting with stakeholders, writing letters, and staffing committee hearings. I love that I do not have a "typical" day.

Q: How do you define research?

A: Research, to me, means the act of finding new knowledge. Research is the tool to uncovering new truths about our society, world, and even universe.

Q: What is a book/podcast/show that you would recommend?

A: This is a hard question. I have a lot of favorite books. Right now I am reading *The Emperor of Maladies* by Siddhartha Mukherjee. It is a book on the history of cancer, which is a mixture of science and history. Aside from that, you should read anything by John Steinbeck or Ernest Hemingway.

Q: How does the theme of "exponential growth" relate to you?

A: I love this theme. The idea of "exponential growth" is so true to research and, as an extension, to life. As people, we are always trying to be better and to know more. This is reflected in the "exponential growth" of our collective knowledge, and the vast amount of research that we have completed. It speaks to the ingenuity and unique character of our species. Personally, I am always trying to grow in every aspect of my life whether it be in relationships or knowledge.

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