

Syracuse University

SURFACE

History - Theses

Maxwell School of Citizenship and Public
Affairs

8-2012

Managing the Divine Jurisdiction: Sacred Space and the Limits of Law on the Temple Mount (1917-1948)

Robert W. Nicholson
Syracuse University

Follow this and additional works at: https://surface.syr.edu/hst_thesis



Part of the [History Commons](#)

Recommended Citation

Nicholson, Robert W., "Managing the Divine Jurisdiction: Sacred Space and the Limits of Law on the Temple Mount (1917-1948)" (2012). *History - Theses*. 1.

https://surface.syr.edu/hst_thesis/1

This Thesis is brought to you for free and open access by the Maxwell School of Citizenship and Public Affairs at SURFACE. It has been accepted for inclusion in History - Theses by an authorized administrator of SURFACE. For more information, please contact surface@syr.edu.

ABSTRACT

This paper probes the history of the Temple Mount complex during the British Mandate for Palestine. Approaching this sacred space from three different perspectives—British, Arab, and Jewish—this paper examines how people and events surrounding it contributed to the evolution of Palestine after World War I. Ultimately, I argue that Britain’s non-policy on the Temple Mount undermined the Mandate project and ultimately contributed to the rise of the Israeli-Palestinian conflict. Fearful of angering Muslims in Palestine and around the world, the British handed control of the space to an indigenous Arab-Muslim administration. This policy of “affirmative deference” allowed certain Muslim leaders to carve out a sphere of de facto sovereignty inside the site and establish a base for resistance to the British government. For many Jewish settlers in Palestine, sanctioned and unchecked Arab power inside Judaism’s holiest site led them to abandon faith in the Mandate and formulate their own plans for independence. Stated simply, Britain’s mismanagement of the Temple Mount intensified the fragmentation of Palestine from its geographical and ideological center. In addition to telling an important micro-history of the period, I also hope to provide a useful case study for broader analysis of the interaction between secular and traditional authority and the dynamics of sacred space.

**MANAGING THE DIVINE JURISDICTION: SACRED SPACE AND THE LIMITS OF LAW ON THE
TEMPLE MOUNT (1917-1948)**

by

Robert W. Nicholson

B.A., SUNY Binghamton, 2009

J.D., Syracuse University, 2012

Thesis

Submitted in partial fulfillment of the requirements for the degree of
Master of Arts in History

Syracuse University

August 2012

Copyright © Robert W. Nicholson 2012

All Rights Reserved

ACKNOWLEDGEMENTS

Only two people truly deserve praise for completing this project: to my wife Lyndsey and daughter Brooke, I will always love you. To everyone else who supported me and offered wise counsel, I am eternally grateful. Special thanks go to William Wiecek, Miriam Elman, Andrew Cohen, Patti Bohrer, Elisabeth Lasch-Quinn, and the entire History Department of Syracuse University.

TABLE OF CONTENTS

Abstract	i
Title Page	ii
Copyright	iii
Acknowledgements	iv
Table of Contents	v
I. Introduction	1
II. Historiography	5
III. Crusaders of Law and Order	9
A. British Palestine: A Background	13
B. Towards a Holy Places Policy	20
IV. Wall of the Worlds	32
A. The Arab State of Palestine	33
B. Israel's Last Remaining Relic	44
C. The Sacred and the Violent	52
V. Fear of the Sanctuary	74
A. Cornerstone of Redemption	75
B. Refuge from the Law	84
VI. Conclusion	96
VII. Bibliography	98
VIII. Vita	114

MANAGING THE DIVINE JURISDICTION: SACRED SPACE AND THE LIMITS OF LAW ON THE TEMPLE MOUNT (1917-1948)

I. INTRODUCTION

The Temple Mount complex, known as the Haram ash-Sharif in Arabic, is a sacred space inside Jerusalem that holds profound significance for the Abrahamic faiths.¹ In all three traditions it is a place of supernatural power and the gateway to another world.² Great Britain captured this holy site from the Ottoman Empire in World War I and received an international mandate to manage it and the rest of Palestine on behalf of its inhabitants. Britain's goal in this overwhelmingly Arab land was to create both a self-governing state *and* a national home for the Jewish people. The inherent contradictions underlying this regime led to its ultimate collapse in 1948, when the British fled the country "amid bloodshed, chaos, recrimination and ignominy."³ Chaos and bloodshed still persist in the present day and powerfully influence international affairs. In the early twenty-first century, the Temple Mount stands at the center of this tumult as a perennial wellspring of radicalism and violence. Noting the situation in the present, this paper returns to the early years of the Jewish-Arab conflict to understand the significance of the Temple Mount at the conflict's very beginning.

Although they will be cautious to quantify it, most scholars will acknowledge the Temple Mount as a significant variable in the conflict today. It is well-known to be significant to Jews

¹ In this paper I will use the phrase "Temple Mount complex" to describe the Temple Mount platform and its Western Wall. I would argue this phrase is better than other recently-invented phrases such as "the Holy Basin" and "the Sacred Esplanade" because it specifically denotes the ancient Jewish temple and its historical footprint as the central cog around which the rest turns.

² See generally Oleg Grabar & Benjamin Z. Kedar (eds.), *Where Heaven and Earth Meet: Jerusalem's Sacred Esplanade* (Jerusalem: Yed Ben-Zvi, 2009); John M. Lundquist, *The Temple of Jerusalem: Past, Present, and Future* (Westport: Greenwood Publishing Group, 2008).

³ Bernard Wasserstein, *Divided Jerusalem: The Struggle for the Holy City* (New Haven: Yale University Press, 2008), 82.

and Muslims who live in the region as well as in other parts of the world.⁴ Both sides regularly call for exclusive possession of the site.⁵ At the Camp David talks in 2000, Israeli and Palestinian leaders refused to concede sovereignty over it.⁶ Their deadlock sealed the fate of the Oslo Accords and helped pave the way for the Second Intifada.⁷ Protests, riots, and police actions have been regular occurrences at the site ever since. Today, the Temple Mount continues to frustrate attempts at political compromise.⁸

But how significant was the Temple Mount during the British Mandate? Scholars often minimize religious themes during the Mandate period and focus instead on issues of immigration, land, or labor.⁹ If named at all, the Temple Mount is mentioned only as one minor point of contention among many. This silence is unfortunate. Primary sources reveal that the Temple Mount, like other religious issues, was in fact very relevant to the history of the period. The site's significance lay not so much in stimulating radicalism as it does today, but in spatially and conceptually linking Palestine's three competing regimes. All three of these regimes—

⁴ Rashid Khalidi, *Palestinian Identity: The Construction of a Modern National Consciousness* (New York: Columbia University Press, 1997), 18. In his book *Jerusalem and Its Role in Islamic Solidarity* (New York: Macmillan, 2008), Yitzhak Reiter makes a compelling argument that Jerusalem and its Temple Mount did not attain its present level of significance until after 1967. However, Reiter neglects a substantial examination of the Mandate years and thereby understates the importance of the Temple Mount before the Six Day War.

⁵ Amnon Ramon, "Delicate Balances at the Temple Mount," in Marshall Breger & Ora Ahimeir (eds.), *Jerusalem: A City and Its Future* (Syracuse: Syracuse University Press, 2002), 326.

⁶ Prime Minister Ehud Barak would not give up Israeli sovereignty over the Temple Mount (though he was ready to give up 93 percent of the West Bank), and Yasser Arafat was just as adamant. Ron E. Hassner, *War on Sacred Grounds* (Ithaca: Cornell University Press, 2009), 80.

⁷ Ron E. Hassner, "The Pessimist's Guide to Religious Coexistence," in Marshall J. Breger et al (eds.), *Holy Places in the Israeli-Palestinian Conflict: Confrontation and Coexistence*. (New York: Routledge, 2010), 153.

⁸ See secret discussions between Israeli and Palestinian leaders recently published by Al-Jazeera. Clayton Swisher, *The Palestine Papers: The End of the Road?* (Chatham: Hesperus Press, 2011).

⁹ While it cannot be disputed that these issues were central to the Mandate, they do not tell the full story. Religion, religious hierarchies, and religious spaces played a major role in the history of the period. My focus on religion is not based on the assumption that everyone in Palestine was devout, but on the fact that religion was the main organizing principle of Mandatory society. The British, like the Ottomans before them, maintained a legal system that divided and isolated Palestine's religious communities. This legal system ensured that conflicts in Palestinian society almost always broke along religious lines. The Temple Mount complex stood at the center of one such conflict. This structural connection between Mandatory law, Palestine's fragmented religious society, and management of the Temple Mount lies at the heart of this thesis.

British, Arab, and Jewish— recognized the Temple Mount as profoundly sacred. However, each approached the site very differently. The British chose to govern it “hands off” for fear of upsetting the worldwide Muslim community.¹⁰ The Arab Muslim leaders who controlled it used its autonomous status to create a zone of de facto sovereignty and the center of a would-be independent Arab state in Palestine. The site’s physical impregnability only reinforced its independence.¹¹ Surrounded on all sides by walls, accessible only by a few gates, and honeycombed with subterranean passageways, the Temple Mount provided a natural sanctuary from government authority. Meanwhile, Jews trying to create a national home in Palestine viewed unbridled Arab power inside the Temple Mount—Judaism’s ancient holy place—as an outrage, and began to devise their own plans to throw off British rule.

Stated simply, this paper argues that Britain’s non-policy on the Temple Mount undermined the Mandate project and ultimately contributed to the rise of the Israeli-Palestinian conflict.¹² Specifically, Britain’s policy of “affirmative deference” in this shared holy site exacerbated rather than defused tensions between Arabs and Jews. This failure was at its base a failure of

¹⁰ If Breger and Hammer are correct that sacred spaces should be evaluated on a continuum of holiness, the Temple Mount must certainly lie at the highest end of the spectrum. Its shared significance to Judaism, Christianity, and Islam makes it perhaps the most revered sacred space on earth. See Marshall J. Breger and Leonard Hammer, “The Legal Regulation of the Holy Sites,” in Breger et al (eds.), *Holy Places in the Israeli-Palestinian Conflict*, 26.

¹¹ This paper notes to the dynamic nature of sacred space itself. The Temple Mount is presented here not merely as a legal or political black box, but as a vibrant social and cultural space at the center of Palestine. Sacred spaces, by their very nature, have the ability to powerfully shape surrounding societies and limit the authority of secular government. In her book *From Empire to Empire: Jerusalem between Ottoman and British Rule*, Abigail Jacobson highlights how space in general can impact local society: “Space and place are...intimately bound with the constitution of social identities, and are deeply embedded in historical conflicts and processes, such as war. Urban space is viewed not as a passive, fixed, or abstract arena where things simply ‘happen,’ but rather as a site of political action that involves conflicts over the meanings and interpretations of public space. History of people, then, is integrated here with history of place.” Abigail Jacobson, *From Empire to Empire: Jerusalem between Ottoman and British Rule* (Syracuse: Syracuse University Press, 2011), 53.

¹² Nowhere in this paper do I argue that the Temple Mount was the only cause for the failure of the Mandate or the rise of the Israeli-Palestinian conflict. The wider clash between competing nationalisms over a finite piece of land is certainly the central theme. However, I do contend that the inviolable status of the Temple Mount played a major role in limiting British law and thereby affecting the result of the Mandate experiment.

governance: by refusing to apply the rule of law to the site, Britain effectively created a zone of lawlessness at the center of Palestine that was bound to undermine the entire regime. This argument is based on analysis of primary sources drawn from government records, personal memoirs, newspaper accounts, speeches, and religious literature from all three parties.¹³ By approaching the subject from three different perspectives, this paper attempts to reconstruct an objective picture of the Temple Mount as it actually functioned in Mandate society.¹⁴ At the very least, this paper hopes to explain the Mount's seemingly "sudden" prominence after 1967.

Following a brief literature review, the first section of this paper details the formation of the British colonial regime and its approach toward the holy places. The second section describes the consolidation of an organic Muslim regime inside the Temple Mount and its defense against Jewish and British encroachment. The third and last section details the Jewish perspective on the Mount and how this perspective contributed to the birth of Jewish independence movement.

¹³ This paper's greatest methodological challenge is its author's insufficient mastery of Arabic and inability to examine contemporary Arabic sources. This challenge, while formidable, is minimized by using English translations of Arabic texts and speeches wherever possible.

¹⁴ It may be argued that viewing Palestinian society as three monolithic communities is an over-generalization that will skew analysis. Assaf Likhovski has attacked this "essentializing" tendency in his recent study of Mandate law and identity: "The story of law in Palestine cannot be told on the basis of a reductionist framework in which Jews and British worked in tandem as colonizers and the Arabs were merely passive and muted victims," he writes. "Nor can this story be told on the basis of a simply binary framework that ignores internal conflicts and rifts within the three communities. Instead the legal history of Palestine reveals a complex web of connections and conflicts within and between the three main groups that forces us to abandon the conventional framework, making us realize that British rule as well as Zionist and Arab nationalism represent phenomena that cannot be accurately captured by essentializing categories." Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006), 7. While recognizing the fundamental truth of this statement, I would argue that ignoring the essential coherence of the British, Muslim, and Jewish communities in terms of their basic desires would be to deconstruct Mandate Palestine beyond all recognition. A more pointed criticism would be that the Christian perspective is missing here. In response, I would point out that Palestine's Christian community was not involved in the Temple Mount conflict in any significant way.

II. HISTORIOGRAPHY

Focused analysis on the Temple Mount is lacking in current literature of the British Mandate.¹⁵ Most authors mention it only as a pretext for political activity or a convenient banner for leaders trying to rally the masses. While neither of these characterizations is completely incorrect, there is a deeper history of the space that needs to be told.

Assaf Likhovski's *Law and Identity in Mandate Palestine* is currently the leading work on the legal history of the Mandate. Likhovski portrays Mandate law as a medium of cultural exchange—a “balancing act” between Western and non-Western culture, and “an arsenal of mediating tools” rather than a coherent body of legal thought. In order to manage Palestine's diverse population, the British maintained a legal regime that gave considerable autonomy to the country's religious communities. These communities embraced Mandate law only insofar as it helped assert their identity and carve out a sphere of power. For this reason, the Mandatory landscape was a web of overlapping and competing jurisdictions. Likhovski focuses mainly on secular identities, and despite the universal title of his book virtually ignores religion and religious authority. He makes no mention of the Holy Places. This gap is a glaring one considering Palestine's famous religious associations. While Likhovski has contributed a monumental work to the history of the Mandate, more investigation into the link between law and religion is needed.

¹⁵ The most exhaustive works on the Temple Mount focus primarily on events after June 1967. See Shmuel Berkovitz, *Ma Nora ha-Makom ha-Zeh! Kedusha, Politika, ve-Mishpat bi-Yerushalyim u-Mekomot ha-Kedushim bi-Israel* (Jerusalem: Karta, 2006); Yitzhak Reiter, *Ribonut ha-El ve-ha-Adam: Kedusha, u-Merkaziut Politit be-Har ha-Bayit* (Jerusalem: Mekhon Yerushalyim le-Chaker Israel, 2001); Nadav Shragai, *Har Ha-Merivah: Ha-Ma'avak al Har ha-Bayit. Yehudim ve-Muslimim, Dat ve-Politika me'az 1967* (Jerusalem: Keter, 1995).

Ronen Shamir does acknowledge religion in *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine*.¹⁶ However, Shamir's focus is mainly on the conflict between the Hebrew Peace Courts (established by secular Jews before World War I to circumvent Ottoman and rabbinical authorities) and the pre-state Zionist institutions and rabbinical leaders (supported by the colonial regime). Shamir turns the usual relationship between religion and state on its head. Usually portrayed as enemies, Shamir describes them here as allies in the fight against the "organic" system of secular Hebrew Peace Courts. He accuses Zionist leaders and Orthodox rabbis of joining to blot out these courts and "take over" Palestine's legal system. In doing so, the "Jewish State-ists" inherited the British colonial model and all its illegitimate trappings. Shamir's approach is notable for its distinction between "imposed" and "organic" authority. This distinction is relevant for examining the relationship between the British officials and indigenous Muslim leaders inside the Haram ash-Sharif. Shamir's approach is uncomfortably counterfactual, however, and he appears overly desirous to prove a "missed opportunity" in the history of Israel/Palestine. He, too, makes no mention of the Holy Places.

Naomi Shepherd examines British administrative failures in her *Ploughing Sand: British Rule in Palestine 1917-1948*.¹⁷ Yet her chapter entitled "The Law Factory," while fascinating, repeats the standard view that land and immigration were the only two legal issues worth mentioning. A more stimulating account of the Mandate is Tom Segev's *One Palestine, Complete*.¹⁸ Segev's goal in this narrative work is both to entertain readers with fascinating stories of the period, but

¹⁶ Ronen Shamir, *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine* (Cambridge: Cambridge University Press, 2000).

¹⁷ Naomi Shepherd, *Ploughing Sand: British Rule in Palestine 1917-1948* (New Brunswick: Rutgers University Press, 1999).

¹⁸ Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate*. Transl. by Haim Watzman (New York: Henry Holt & Co., 2000).

also to complicate traditional historiography by exposing the dubious motives of all parties involved. Rather than focus on Jewish heroes, Arab enemies, and indifferent British administrators, Segev tells stories that transgress these categories and spread the blame around. His work is revisionist in that it problematizes the idea that Zionism owed its success directly to British protection. As with much literature on the Mandate, his focus is the British-Jewish dynamic and pays far too little attention to the Muslim perspective.

Other works have dealt with the Muslim community in more detail. Perhaps the most well-known is Yehoshua Porath's two volume *The Emergence of the Palestinian Arab National Movement*.¹⁹ Porath notes the centrality of the Haram during the period, but woefully leaves out an explanation of why it was significant to Muslims and Jews in the first place. Uri Kupferschmidt's *The Supreme Muslim Council: Islam under the British Mandate for Palestine* is another seminal work on the topic, and provides a major point of departure for this paper.²⁰ Kupferschmidt's description of the inner workings of the Supreme Muslim Council is exhaustive, but his focus is too narrow and does not account for British and Jewish views of the Temple Mount. He also falls into the common trap of depicting the Haram simply as a political tool for the ever-present Mufti of Jerusalem, Haj Amin al-Husseini. The Mufti receives more favorable treatment in Phillip Mattar's *The Mufti of Jerusalem*, a revisionist work that challenges the longstanding belief that the Mufti was responsible for all that was wrong in Palestine.²¹ While Mattar makes important new conclusions, his look at the Haram is routine and obligatory.

¹⁹ Yehoshua Porath, *The Palestinian Arab National Movement* (London: Frank Cass, 1977),

²⁰ Uri M. Kupferschmidt, *The Supreme Muslim Council: Islam under the British Mandate for Palestine* (Leiden: Brill, 1987).

²¹ Philip Mattar, *The Mufti of Jerusalem: Al-Hajj Amin al-Husayni and the Palestinian National Movement* (New York: Columbia University Press, 1988).

Although more abstract in its approach, Yaron Z. Eliav's *God's Mountain: The Temple Mount in Time, Place, and Memory* is helpful for seeing the Temple Mount as a historical character in its own right.²² Eliav describes the powerful influence of this sacred space on the people surrounding it down through history. He accurately notes that "insufficient attention has been given to the way the Mount has functioned in and influenced history, to its conceptualization, and to the place it has occupied in the consciousness of those involved with it." Unfortunately, his narrative ends long before the British Mandate begins.

In addition to histories of the period, this paper also takes cues from recent scholarship at the intersection of law and geography. Nicholas Blomley, one of the pioneers in this field, explores the spatial construction of law in his *Law, Space, and Geographies of Resistance*.²³ Blomley depicts "law" as a diffuse set of power relations rather than a unified regime imposed from above. Law, as he defines it, is not the result of social balance but an imbalanced framework of control that reflects and perpetuates social boundaries constructed in space. Blomley's view of power is Foucauldian and at times overly abstract. However, his interrogation of legal norms and recognition of concurrent legal authorities is relevant to the colonial-indigenous dynamic that lies at the center of this paper.

This paper aims to fill the gap left by these other works. By placing the Temple Mount front and center, it tells the deeper history of the space and defines its role at the beginning of this unique and significant conflict.

²² Yaron Z. Eliav's *God's Mountain: The Temple Mount in Time, Place, and Memory* (Baltimore: Johns Hopkins University Press, 2005).

²³ Nicholas Blomley, *Law, Space, and Geographies of Resistance* (New York: Guilford Press, 1994).

*A hundred ancient cities, whose very names are now forgotten, have risen to greatness amid great empires, and have fallen into decay. But Jerusalem has remained a City of Cities to millions who have never entered her gates, the capital of the ideal State, the goal of the unending pilgrimage.*²⁴

*The visitor who has visualized Jerusalem, and those in or about it, in the rosy tints of Scripture, is doomed to disillusion, swift and complete. The inner city is a city of slums and smells, and a considerable number of the people in and about it are found to be a feckless folk, spoon-fed in idleness and fanaticism.*²⁵

III. CRUSADERS OF LAW AND ORDER

The Allied armies breached the perimeter of the crumbling Ottoman Empire and arrived at the gates of Jerusalem in late 1917. The Turks and Germans shortly withdrew northward, and Jerusalem's Arab mayor surrendered to the Allies on December 9.²⁶ Two days later, British General Sir Edmund Allenby entered as the city's first Christian conqueror since the Crusades. Unlike his predecessors, Allenby was careful to demonstrate goodwill to the inhabitants and humility before the hallowed reputation of the city.²⁷ Standing on the steps of the Tower of Herod, he announced that Southern Palestine was now under military occupation but that "every sacred building, monument, holy spot, shrine, traditional site, endowment, pious bequest, or

²⁴ "A New Era in Jerusalem," *The Times*, Dec. 22, 1920, at 6.

²⁵ "Jerusalem To-day: First Impressions," *The Times*, May 11, 1920, at 15. These are the words of G. B. Barnes, former Labour minister of the War Cabinet who was in Palestine during the Nebi Musa riots of April 1920.

²⁶ The text of the statement of surrender read, "Due to the severity of the siege of the city and the suffering that this peaceful country has endured from your heavy guns; and for fear that these deadly bombs will hit the holy places, we are forced to hand over to you the city through Hussein Bey al-Husseini, the mayor of Jerusalem, hoping that you will protect Jerusalem the way we have protected it for more than five hundred years." It was signed by Izzat Pasha, the Turkish governor of Jerusalem. "My Last Days as an Ottoman Subject: Selections from Wasif Jawhariyyeh's Memoirs" (trans. by Amal Amireh), *Jerusalem Quarterly*, Vol. 3, No. 1 (Summer 2000), 31.

²⁷ The British Crown had tangible interests in Palestine that demanded such a humble display. Cabinet member Lord Curzon, like most of his colleagues, viewed the country as a strategic bulwark for the Suez Canal, the "nerve-centre of the British Empire." Curzon felt that "any British statesman would indeed be blind who ever allowed the Turks to reappear in the Holy Land." The best policy would be to garner European support for a long-term British presence in Palestine by framing the situation in religious terms. "The whole world," he wrote, "America included, will wish this to be the last crusade for the expulsion of the Ottoman Turk, and the recovery of the Holy Places of Christendom." Lord Curzon, German and Turkish Territories Captured in the War, Dec. 5, 1917, CAB/24/4.

customary place of prayer of whatsoever form of the three religions will be maintained and protected according to the existing customs and beliefs of those to whose faith they are sacred.”²⁸

It was not coincidental that these were Allenby’s first words in Jerusalem. The British were eager to show abundant neutrality in this city coveted by millions around the world. “The steps taken on the occupation of the city of Jerusalem should ensure tranquillity [sic] and good feeling,” directed one British official to his colleagues just after the city’s capture.²⁹ Britain’s audience was not only the local population. Most important were the international stakeholders located in Rome, Russia, and across the Islamic world.³⁰ By publicly abstaining from Palestine’s religious quarrels and showing deference to its holy places, the British hoped to play supreme mediator in mankind’s holiest city.³¹

The capture of Jerusalem was a major psychological victory for the British.³² In the midst of a brutal war, its moral significance far surpassed pure military concerns.³³ As one soldier explained, “[O]ur prestige, which for three years had been at a very low ebb, by the capture of

²⁸ “Proclamation of General Allenby,” in Charles F. Horne (ed.), *Source Records of the Great War*, Vol. V (Stuart-Copley Press, 1923), 417.

²⁹ Foreign Office, Appreciation of the Attached Eastern Report no. 46, Dec. 14, 1917, CAB/24/144, at 2.

³⁰ At this point, the British were highly concerned about the Bolshevik menace rising in the east. One official suggested that non-Bolshevik Russians might be “won” using Palestine-centered propaganda. “It has been suggested...to make known to the Russian peasantry that the capture of Jerusalem will make their pilgrimages to the Holy Land easier. If properly worked this would be most useful propaganda, as the revolutionary party will doubtless persuade the ignorant peasants that our taking of Jerusalem will hinder the pilgrimages, for which they save up their kopecks for years.” Foreign Office, Eastern Report no. 46, Dec. 13, 1917, CAB/24/144, at 3.

³¹ British aims in governance were twofold: “(1) To ensure orderly government in a country where disorder would react upon neighbouring countries in which Great Britain is interested; and (2) to prevent the possibility of any of the international bodies interested in Palestine feeling resentment against Great Britain as a party to an arrangement there which they might consider unfair to themselves. In particular, His Majesty’s Government desire to insure reasonable facilities in Palestine for Jewish colonization, without giving Arab or general Moslem opinion an opportunity for considering that Great Britain has been instrumental in handing over free Arab or Moslem soil to aliens.” Foreign Office: Political Intelligence Department, Memorandum Respecting the Settlement of Turkey and the Arabian Peninsula, Nov. 21, 1918, CAB/24/72, at 14.

³² Jacobson, *Empire to Empire*, 121.

³³ Gaston Bodart, “The Conquest of Jerusalem,” in *Source Records of the Great War*, 403.

Jerusalem leapt at one bound to a height never before attained in Egypt.”³⁴ The city’s ancient ambience and its moorings in the Judeo-Christian imagination inspired universal awe. A reporter for *The Times* wrote, “British soldiers and officers are almost always reserved in the expression of religious emotion, but there are great and rare occasions when the ice of reserve melts, and the capture of Jerusalem was one of these.”³⁵ For the British Empire, whose religious foundations are well known, taking the ancient City of David was inestimably significant.³⁶

The primeval core of Palestine’s importance arguably lay in the Temple Mount, a small hill tucked inside in the southeastern corner of the Old City of Jerusalem. The walled-off complex that dominated this hill rose majestically above the city and defined its skyline for miles.³⁷ This Temple Mount was more than just a holy site: it was an active, three-dimensional space serving tens of thousands of local Muslims on a regular basis. At its center lay “The Rock” (*as-Sakhra* in Arabic) and the “Foundation Stone” (*Even Shtiyah* in Hebrew)—a sacred rock formation that had been a place of Semitic worship for at least three thousand years. Overtop the rock, the Israelite temples of Solomon and Herod had once stood. The Muslim armies of the Caliph Omar had captured the site in the seventh century and converted it into an Islamic holy place, renaming it the *Haram ash-Sharif* or Noble Sanctuary.³⁸ They had also constructed a decorative dome over the rock and a large mosque on the southern edge of the platform. For the next thousand

³⁴ Antony Bluett, *With Our Army in Palestine* (London: Andrew Melrose Ltd., 1919), 221-222.

³⁵ “Holy Places of Jerusalem,” *The Times*, Mar. 29, 1918, at 3.

³⁶ For recent works on the religious character of the British Empire, see Hilary M. Carey, *God’s Empire: Religion and Colonialism in the British World, 1801-1908* (Cambridge: Cambridge University Press, 2011); and Carla Gardina Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (Philadelphia: University of Pennsylvania Press, 2009).

³⁷ Yasser Ibrahim Rajjal, “Jerusalem: Occupation and Challenges to Urban Identity,” in Salma Khadra Jayyusi & Zafar Ishaq Ansari (eds.), *My Jerusalem: Essays, Reminiscences, and Poems* (Northampton: Olive Branch Press, 2005), 34.

³⁸ Hugh Kennedy, *The Great Arab Conquests: How the Spread of Islam Changed the World We Live In* (Philadelphia: Da Capo Press, 2007), 90-93.

years almost without interruption, this sacred complex had operated under the exclusive control of Muslims and remained inaccessible to most everyone else.

The First World War turned this and every other situation in Palestine on its head. The region was abruptly cut off from its Greater Syrian setting and fenced in by arbitrary borders devised by Europeans. Gone was the framework of Muslim government that had ruled the land for centuries. Gone were the Islamic caliphate and its unified hegemony over the holy places of Mecca, Medina, and Jerusalem. The Christians controlled everything and were calling Jews to settle a newly-created state of Palestine. “[A]fter the settlement of the Great War...,” writes one scholar, “the various communities of the Arab East found themselves to be nationals of independent political entities to which they owed no allegiance.”³⁹ The Haram ash-Sharif would become important in this fluid environment as the one place in Palestine where Muslims could conduct their affairs independently.

Although the Haram had fallen into disrepair in the final years of the Ottoman Empire, it still retained its holy spell. Visitors universally described it as a stunning contrast to the filthy streets of Jerusalem below. One visitor was impressed by its “sunlit beauty” and its “strange and beautiful” tranquility.⁴⁰ A British soldier felt a childlike sense of wonder gazing at the inside of al-Aqsa Mosque: “The size and the beauty of this place is beyond description...,” he wrote. “The dome is simply lovely, and is some of the most wonderful work of human hands I have ever seen.”⁴¹ British civic architect C.R. Ashbee probed the deeper ambience of the space:

³⁹ Abbas Kelidar, “States without Formation: The Political Evolution of State and Society in the Arab East,” *Journal of Contemporary History*, Vol. 28, No. 2 (Apr., 1993), 319.

⁴⁰ George Napier Whittingham, *The Home of Fadeless Splendour: or, Palestine of Today* (London: Hutchinson & Co., 1921), 142.

⁴¹ “The Holy Places of Jerusalem,” *The Times*, Oct. 28, 1918, at 5. A more sarcastic American travel writer found comment futile. “Of the beauty of the glazed tiles...of the religious atmosphere of the interior, the awesome

Whenever I want to do a little quiet thinking—to dream—I go to the Haram al Sharif. There is no place like it in the world for silence, reverence, spaciousness, dignity, and the sun. The nearest I can recall is some Greek temple, Girgenti perhaps. But then the Haram is alive.⁴²

How did the British approach this sacred space? What influenced their decision to manage it the way they did? This chapter introduces the British Mandate and its policy of affirmative deference on the Temple Mount. The reason for this policy lay in the well-known sanctity of the place, the limiting power of religion more generally, and Britain's self-conscious position as Christian ruler of a large part of the Islamic world.

A. British Palestine: A Background

The creation of Palestine after World War I was one of the most significant events of the twentieth century. In this one act, Great Britain laid the foundation for an ethno-religious and territorial conflict that shaped at least a century of world history. Because the story of the Temple Mount is inextricably connected with this broader conflict, this section will explain the presence of the British in Palestine and the conflicting wartime promises that brought them there.

The British, like the French, pursued a civilizing mission in their imperial activity.⁴³ They were accustomed to seizing foreign lands and bringing them under the rule of law.⁴⁴ There was

impressiveness, others have raved. Why should I?" Harry A. Franck, *The Fringe of the Moslem World* (New York: Century, 1928), 79.

⁴² C.R. Ashbee, *Palestine Notebook, 1918-1923* (Garden City: Doubleday, 1923), 51.

⁴³ See generally Harold Fischer-Tine & Michael Mann (eds.), *Colonialism as Civilizing Mission: Cultural Ideology in British India* (London: Wimbledon, 2004); Alice L. Conklin, *A Mission to Civilize: the Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford: Stanford University Press, 1997). Alison Twells, among others, has traced this ideology back to the Christian missionary ethos. Alison Twells, *The Civilising Mission and the English Middle Class, 1792-1850* (New York: Palgrave, 2009).

⁴⁴ For some of the more critical views of British colonial law, see Nasser Hussein, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003); Diane Kirby & Catharine Coleborne (eds.), *Law, History, Colonialism: The Reach of Empire* (Manchester: Manchester University Press, 2001); Joseph A. Massad, *Colonial Effects: The Making of National Identity in Jordan* (New York: Columbia University Press, 2001), 18-99; Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India*

initially no reason to believe that Palestine would be any different than India or Egypt; however, this ancient land presented several unique challenges that haunted the British until their final retreat in 1948. Most visibly, the country stood mired in deep material depression. It had virtually no physical infrastructure.⁴⁵ The population had been ravaged by conscription, famine, and poverty during the war.⁴⁶ The Turks and Germans had taken most of the food before retreating, and Jerusalem lay on the edge of starvation.⁴⁷ For many months, the country was still submerged in war. When Allenby entered Jerusalem, the battle lines were only a few thousand yards away.⁴⁸

Palestine's deeply spiritual atmosphere presented a more lasting challenge. Despite a few pockets of secularism, religion was the dominant factor in Palestinian society. The country was riven by a sectarian social structure called the *millet* that legally divided the population into self-contained religious communities. One British official arriving in country was surprised to find it "beset by a strange form of nationalism based not so much on race as on religion."⁴⁹ Traditional leaders still controlled most towns and villages.⁵⁰ Muslims, Jews, and Christians frequently resorted to religious courts to resolve their disputes.⁵¹ Indeed, if one scholar was correct that

(Princeton: Princeton University Press, 1996), 57-75. This list of titles by no means exhausts the literature on the subject, which is quite vast.

⁴⁵ At this time, Palestine still had no roads on which a car could comfortably drive. Norman & Helen Bentwich, *Mandate Memories, 1918-1948* (London: Hogarth Press, 1965), 24.

⁴⁶ Jacobson, *From Empire to Empire*, 22-49; Edward Keith-Roach, *Pasha of Jerusalem: Memoirs of a District Commissioner under the British Mandate* (New York: Radcliffe Press, 1994), 60-62.

⁴⁷ John Gilbert Lockhardt, *Palestine Days and Nights: Sketches of the Campaign in the Holy Land* (London: Robert Scott Roxburghe House, 1920), 26.

⁴⁸ W.T. Massey, *How Jerusalem Was Won* (London: Constable & Co., 1919), 204.

⁴⁹ Keith-Roach, *Pasha of Jerusalem*, 78.

⁵⁰ See Norman Bentwich, "The Legal System of Palestine under the Mandate," *Middle East Journal*, Vol. 2, No. 1 (Jan. 1948), 33-46.

⁵¹ For one especially compelling contemporary account of Bedouin justice, see Omar Effendi el-Barghuthi, "Judicial Courts among the Bedouin of Palestine," *Journal of the Palestine Oriental Society*, Vol. 2 (1922), 35-65.

“legal unity is of the essence of sovereignty,” the Ottomans barely controlled Palestine before World War I and the British would not far surpass them.⁵²

Jerusalem presented perhaps the most difficult challenge of all. As the capital of British Palestine, the city’s natural spiritual significance was amplified tenfold. The city had become an Ottoman administrative center in the mid-nineteenth century after European consulates began sprouting up to protect pilgrims and exert influence.⁵³ Recognizing its growing significance, the Ottomans made Jerusalem the capital of its own semi-autonomous district in 1841 with a jurisdictional hinterland extending to Jaffa, Hebron, Gaza, and Beersheba. The Ottomans managed the city from day to day with the help of a Muslim aristocracy whose competing families traced their ancestry back to the days of Muhammad. These elites dominated the local political and religious posts.⁵⁴ They were jealous of their independence, and were notoriously rebellious to the government in Constantinople.⁵⁵ In 1910, Jerusalem’s jurisdiction was extended to Nablus. These expanded legal borders enclosed what could arguably be viewed as an organic Arab Muslim “Palestine” prior to British arrival.⁵⁶

Jerusalem’s greatest difficulty lay in its dense concentration of holy sites. Of these, the British identified the Haram ash-Sharif as particularly sensitive. “The Dome of the rock,” wrote one official, “which was the point of prayer to which Mohammed himself turned, before he established Mecca, gives Jerusalem a special sanctity to Moslems of all sects.” Both before and after Allenby’s entry, policymakers were unanimous that Muslims should be given complete

⁵² Douglas W. Campbell, “Sovereignty and Social Dynamics,” *The American Political Science Review*, Vol. 28, No. 5 (Oct., 1934), 831.

⁵³ David Kushner, “Ali Ekrem Bey, Governor of Jerusalem, 1906-1908,” *International Journal of Middle East Studies*, Vol. 28, No. 3 (Aug., 1996), 350-351.

⁵⁴ Muhammad Muslih, *The Origins of Palestinian Nationalism* (New York: Columbia University Press, 1988), 218.

⁵⁵ David Kushner, “The District of Jerusalem in the Eyes of Three Ottoman Governors at the End of the Hamidian Period,” *Middle Eastern Studies*, Vol. 35, No. 2 (Apr., 1999), 97-98.

⁵⁶ Muslih, *Origins of Palestinian Nationalism*, 218.

control of the site and all other Islamic holy places. Making this concession, they believed, would soften the impact of the “Crusader victory” and even prove a positive force for Britain’s image. “The effect of the fall of Jerusalem will...be considerable among Moslems as a whole,” one official predicted, “and have a tendency to produce Anglophil [sic] sentiments, and to lessen the malignant power of political Pan-Islamists.”⁵⁷

But the British created their biggest challenges to governance before they even entered Palestine. Three conflicting promises made during the course of World War I profoundly affected the future of post-war Palestine and the wider Middle East. The Balfour Declaration was undoubtedly the most radical of these promises. A month before Allenby took Jerusalem, British Foreign Secretary Arthur Balfour wrote a public letter to Baron Walter Rothschild, leader of Britain’s Jewish community, announcing that Great Britain “view[ed] with favour the establishment in Palestine of a national home for the Jewish people.” Balfour pledged that the British would “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[.]” His plan was to carve “a small notch” out of the Arab world and set it aside for Jewish immigration and development.⁵⁸ Although Zionism had already existed for several decades, backing from the world’s most powerful nation signaled a major turning point in its history.

But British had made another promise during the war. In 1915, British governor of Egypt Sir Henry McMahon had secretly contacted Sheikh Hussein bin Ali of Arabia and asked him to lead

⁵⁷ Foreign Office, Appreciation of the Attached Eastern Report no. 46, Dec. 14, 1917, CAB/24/144, at 1.

⁵⁸ Bentwich, *Mandate Memories*, 69. For further reading on the Balfour Declaration see Jonathan Schneer, *The Balfour Declaration: The Origins of the Arab-Israeli Conflict* (New York: Random House, 2010); Ronald Sanders, *The High Walls of Jerusalem: A History of the Balfour Declaration and the Birth of the British Mandate for Palestine* (New York: Holt, Rhinehart, & Winston, 1983).

an Arab revolt against the Ottomans. As custodian of the shrines at Mecca and Medina, Hussein ostensibly had the legitimacy to lead such a revolt.⁵⁹ McMahon promised Hussein a massive swath of the Ottoman Empire for his efforts—a territory that would form the basis for a unified Arab kingdom in the Middle East.⁶⁰ For Hussein and others who acted upon this promise, the Balfour Declaration came as a shock.⁶¹ A deep feeling of betrayal overtook them, and it was only magnified when they learned that Britain had made yet a third promise. This promise, known as the “Sykes-Picot Agreement,” was executed between Britain and France with the support of Russia for the purposes of divvying up the Ottoman Empire between themselves.⁶² Colonel Ronald Storrs, the first military governor of Jerusalem, described the feeling of Arabs in Palestine:

With the British “Liberation” of their country they found their hopes not accomplished but extinguished. Throughout history the conqueror had kept for himself the territory he conquered (save in those rare instances when he returned it to the inhabitants): and that Britain should take and keep Palestine would have been understood and welcomed. Instead she proposed to hand it, without consulting the occupants, to a third party: and

⁵⁹ One British official described Hussein as “the High Priest and religious Chief of Islam” whose fight to liberate the Islamic holy places from the hands of the Turk would convince the Muslim world that “we are, in fact, fighting a ‘Jihad’ or *Holy War* against the Turks and their German masters.” Foreign Office, Eastern Report no. 2, Feb. 7, 1917, CAB/24/143, at 10. The focus on liberation of the holy places was indeed a major part of British propaganda.

⁶⁰ The McMahon promises specifically excluded certain territory from Hussein’s would-be Arab kingdom, namely, “The two districts of Mersina and Alexandretta and portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo cannot be said to be purely Arab, and should be excluded from the limits demanded.” The exact meaning of this sentence would be debated *ad nauseam* over subsequent decades. The British and the Zionists claimed that the excluded area encompassed the Ottoman *vilayet* of Beirut and the independent district of Jerusalem. Arabs on the other hand argued that Jerusalem did not lie west of Beirut, and as such had not been excluded from McMahon’s promises. For his part, McMahon later stated that he had intended to exclude all of Palestine lying west of the Jordan River. See Letter from Sir Henry McMahon to John Shuckburgh, Mar. 12, 1922, quoted in Efraim & Inari Karsh, *Empires of Sand: The Struggle for Mastery in the Middle East, 1789-1923* (Cambridge: Harvard University Press, 2001), 238. See also “Emir Fiesal and Chaim Weizmann: Agreement (January 3, 1919),” in Walter Laquer & Barry Rubin (eds.), *The Israel-Arab Reader*. 6th ed. (New York: Penguin, 2001), 13-16.

⁶¹ Despite their push for European control in the Middle East, the British and French were not ignorant of Arab opinion. Officials in London kept a very close eye on feeling amongst the Arabs of Palestine. One official warned, “[O]ur adoption of Zionism and our capture of Jerusalem will tend to a certain extent to somewhat abate Arab enthusiasm.... There is no doubt...that this aspect of the situation requires careful consideration and attention, otherwise the enemy will not be slow to profit by the event.” War Cabinet, Eastern Report no. 46, Dec. 14, 1917, CAB/24/144.

⁶² “The Sykes-Picot Agreement,” in Laquer & Rubin (eds.), *The Israel-Arab Reader*, 13-16.

what sort of third party! To the lowest and (in Arab eyes) the least desirable specimens of a people reputed parasitic by nature, heavily subsidized, and supported by the might of the British Empire.⁶³

Although favored under the Balfour Declaration, the Zionists also became disappointed by the British. They had been promised a national home—an unprecedented idea to be sure—but they quickly comprehended practical limits of this promise on the ground. Rather than receiving proactive support from British officials, the Jews received indifference and even interference at times. Most military officers viewed Balfour’s promise as a fool’s errand, the product of sentimental imaginations back in London.⁶⁴ Many of them had spent careers in Egypt, Sudan, and India, and were more comfortable with Islamic culture.⁶⁵ Some were outright anti-Semites.⁶⁶ It soon became clear to everyone that, despite the Balfour Declaration, the military government of Palestine was not sympathetic to Zionism.⁶⁷ The Jews, like the Arabs, were confused and suspicious of Britain’s ultimate intentions.⁶⁸

Britain’s three promises defined the general outline of the Mandate: Muslims claiming independence, Jews claiming the right to a national home, and the British claiming the right to decide their joined destiny. The promises also defined the conflict around the Temple Mount complex. Arabs claimed it as an autonomous area and the would-be capital of their independent state. Jews claimed it as the center of their ancient glory, and viewed its Western Wall as the cornerstone of their national future. The British meanwhile enjoyed possession of the Temple

⁶³ Storrs, *Memoirs*, 371.

⁶⁴ Bentwich, *Mandate Memories*, 24.

⁶⁵ John J. McTague, Jr., “The British Military Administration in Palestine 1917-1920.” *Journal of Palestine Studies*, Vol. 7, No. 3 (Spring, 1978), 72-73. “The Jews were a new element in the record of British Overseas administration,” wrote Norman Bentwich, “a people who regarded themselves as at least the equals of the ruling class.” Bentwich, *Mandate Memories*, 91.

⁶⁶ Storrs, *Memoirs*, 383; Paul L. Hanna, *British Policy in Palestine* (Washington: American Council on Foreign Affairs, 1942), 41.

⁶⁷ McTague, “The British Military Administration in Palestine 1917-1920,” 60.

⁶⁸ Hanna, *British Policy in Palestine*, 42.

Mount and all its sacred associations, but found maintenance of law and order at the site impossible. I contend that Britain's failure to resolve its three competing promises impaired its ability to resolve disputes at the Temple Mount as it did in the rest of Palestine. By promising Arabs an independent state and Jews a national home, and by limiting the power to govern to themselves only, the British turned the Temple Mount into a microcosm of the wider conflict.

The Treaty of Versailles ended World War I in June 1919 and gave birth to the League of Nations. The establishment of this international entity tasked with preserving world peace was truly unprecedented. In April 1920, the Allied Powers met in San Remo, Italy, to discuss the fate of captured Ottoman territories. There it was tentatively decided to approve the Balfour Declaration and give Great Britain a "mandate" to manage Palestine, although the Mandate's terms were left to be decided later.⁶⁹ In anticipation of receiving it, the British ended military administration of the country and instituted a civil government on July 1, 1920.⁷⁰ This signaled a major shift in the country's political system and a sweeping change in administrative style.⁷¹ Sir Herbert Samuel, an accomplished British Jew and Zionist, was appointed to lead the new government and apply the terms of the Mandate. This Mandate stood "in favour of the establishment in Palestine of a national home for the Jewish people," while at the same time ordering that "nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine[.]" This paradox in policy goals was nowhere more evident than in Britain's policy toward the holy places.

⁶⁹ Colonel Storrs later affirmed that, until the Mandate was handed down, the administration was not a government with power. Instead, they were "a temporary, provisional, military administration, bound to administer the country according to the laws as they found them." "A New Era in Jerusalem," *The Times*, Dec. 22, 1922, at 6.

⁷⁰ This government was given a formal constitution in the Palestine Order-in-Council of 1922.

⁷¹ Norman Bentwich, "Palestine," *Journal of Comparative Legislation & International Law*, Vol. 4, No. 3 (1922), 177.

B. Towards a Holy Places Policy

How to honor promises made to two nations for the same land? Colonel Ronald Storrs described Britain's dilemma as "how A should 'restore' the property of B to C without deprivation of B."⁷² This dilemma was vividly illustrated at the Temple Mount complex. This sacred space belonged to Palestine's Muslim community, but it also belonged to the Jews in a way that was difficult to ignore. The space was recognized early as a potential challenge to law and order. Two weeks before the Balfour Declaration went public, Lord Curzon identified the Temple Mount as an insuperable obstacle facing any potential Jewish state in Palestine. Jerusalem was the only possible Jewish capital, but Curzon knew that Muslims would never allow Jews to take the Haram ash-Sharif. He believed that the only hope for the British was to set up a European-style government, guarantee the safety of the holy places, give control of the Haram to the Muslims, allow Jews to buy land, and protect equal rights for everyone.⁷³

I would argue that Britain's policy toward the Islamic holy places can best be described as "affirmative deference." That is, the British enforced a proactive policy of non-intervention and neutrality in Islamic sacred space. This policy was intended as a visible departure from the "policy" of the Latin Crusaders. Those bloody warriors had shown little regard for the holy places when they had arrived in the eleventh century:

[T]he pilgrims entered the city, pursuing and killing the Saracens up to the Temple of Solomon, where the enemy gathered in force. The battle raged throughout the day, so that the Temple was covered with their blood. When the pagans had been overcome, our men

⁷² Storrs, *Memoirs*, 380.

⁷³ Referring to the upcoming Balfour Declaration, Curzon wrote, "For important as may be the political reasons (and they seem to be almost exclusively political)...we ought to at least consider whether we are encouraging a practicable ideal, or preparing the way for disappointment and failure." Lord Curzon, *The Future of Palestine*, Oct. 26, 1917, CAB/24/30, at 1. The King-Crane Commission of 1919 also viewed the Muslim holy places as an irreconcilable barrier to any form of Jewish sovereignty in Palestine. King-Crane Commission Report, in *Paris Peace Conference, 1919*, Vol. XII (Washington, D.C.: GPO, 1919), 794-795.

seized great numbers, both men and women, either killing them or keeping them captive, as they wished.⁷⁴

The British knew how Muslims remembered the Crusades, and wanted desperately to dispel this memory.⁷⁵ Just prior to Allenby's entry, a British official in Constantinople suggested that a proclamation be made "announcing that we are the protectors of the Moslem religion and would pay every respect to the Moslem Holy Places."⁷⁶ This suggestion was followed to the letter. "Guards have been placed over the holy places," Allenby reported to his superiors soon after his arrival. "The Mosque of Omar and the area around it have been placed under Moslem control, and a military cordon of Mohammedan [Indian Muslim] officers and soldiers has been established around the mosque. Orders have been issued that no non-Moslem is to pass within the cordon without permission of the Military Governor and the Moslem in charge."⁷⁷ Meanwhile, Lord Balfour dispatched a telegram to Sharif Hussein reassuring him that the Allies would appoint a regime "approved of by the world" to manage Palestine's holy sites. Muslim authority over Islamic holy sites would be undisputed, he promised. "As regarded the mosque of Omar," he explained, "it would be considered as a Moslem concern alone and would not be subjected, directly or indirectly, to any non-Moslem authority."⁷⁸ Britain's policy of affirmative deference encouraged Muslim autonomy over the holy sites in an effort to show goodwill.

⁷⁴ *Gesta Francorum*, quoted in August C. Krey, *The First Crusade: The Accounts of Eyewitnesses and Participants* (Princeton: Princeton University Press, 1921), 256-257.

⁷⁵ W.T. Massey, a London reporter and witness of the battle for Jerusalem, found the contrast between the past and present "crusade" striking. "When Jerusalem was won and small parties of our soldiers were allowed to see the Holy City, their politeness to the inhabitants, patriarch or priest, trader or beggar, man or woman, rebuked the thought that the age of chivalry was past, while the reverent attitude involuntarily adopted by every man when seeing the Sacred Places suggested that no Crusader Army or band of pilgrims ever came to the Holy Land under a more pious influence." Massey, *How Jerusalem Was Won*, 202.

⁷⁶ War Cabinet, Meeting Minutes, Nov. 19, 1917, CAB/23/4, at 3.

⁷⁷ Sir Edmund Allenby, in *Sources of the Great War*, 416-417. Three months later, Allenby lifted this order and British visitors flocked to the site. War Cabinet, Eastern Report no. 61, Mar. 27, 1918, CAB/24/145.

⁷⁸ Foreign Office, Eastern Report, no. 50, January 10, 1918, CAB24/144, at 4-5.

The few scholars who note the significance of the Haram ash-Sharif at this time usually ignore its connection with British policy at other Islamic holy places in the region. Hundreds of miles away, the British were also guaranteeing the safety of the two shrines at Mecca and Medina and the Shiite shrines of Iraq.⁷⁹ In the absence of a caliphate, Great Britain stood as the effective guardian of these holy places. This situation vexed Muslims around the world. In mid-1919, protestors in places as remote as Samarkand and Tashkent were calling for Muslims to unite in defense of their holy places. The feelings of Indian Muslims were a special concern to Great Britain.⁸⁰ In October 1919, ten thousand members of the “Bombay Caliphate Committee” gathered to condemn European dismemberment of the Ottoman Empire and seizure of the holy places.⁸¹ In February 1921, a delegation of Indian Muslims told a conference of Allied powers that, “All Arab provinces should be given complete autonomy without any direct or indirect control or interference of any non-Muslim Power. They should be left alone to themselves as the Mussalmans of India consider it contrary to the last will and injunction of the Holy Prophet that any non-Muslim Power should exercise any control or authority over these provinces.” The delegation called for sovereignty to be restored to the Turkish sultan, the only true Caliph of Islam.⁸² Britain scrambled to reassure Muslims under its dominion that Britain would render unto Allah that which was his.

⁷⁹ Foreign Office, Memorandum on British Commitments to King Hussein, CAB/24/68; Foreign Office, Political Intelligence Report, CAB/24/72; see also Telegram from Viceroy, Foreign and Political Department to British Cabinet, Mar. 3, 1920, CAB/24/99.

⁸⁰ As one British official in India put it, “It is to the British Empire, as greatest Moslem Power in World, that Muhammedans of India now look, and we therefore trust that Your Excellency will continue to press with vigour the representations of our Moslem fellow subjects to effect that, especially as regards Constantinople and Holy Places of Hedjaz, every care will be taken in Turkish Peace terms to avoid interference with Moslem religious beliefs and scruples.” Telegram from Viceroy, Home Department, to the British Cabinet, Mar. 6, 1920, CAB/24/100.

⁸¹ War Cabinet, British Empire Report no. 3, Oct. 29, 1919, CAB/24/156, at 4-5.

⁸² See Telegram from Viceroy, Home Department, to Secretary of State for India, Feb. 23, 1921, CAB/24/120; Letter from Government of India, Home Department (Political), to Sir William Duke, Under Secretary of State for

The government in Palestine pursued affirmative deference under the principle of the *status quo*. This term of law and art had its roots in the nineteenth century when Ottoman officials had attempted to resolve Christian disputes over their holy sites.⁸³ The basic idea was to “freeze” a sacred space in time with all the rights attached thereto. Sultan Abdul Mecid was the first to implement the idea when he published a set of decrees in 1852 on management of the Christian holy sites.⁸⁴ The British seized on this attractive “non-policy” and made it the bedrock of their administration. Storrs called it their “strong tower of defence against the encroachments from all quarters.”⁸⁵ Even urban planners felt hemmed in by its intangible power. “Here is a force that often makes for what is picturesque and conservative,” wrote one planner, “but as often checks the administrator in genuine and rational improvement, because the sanction for what he wants to do rests not in the city itself, but in the great world outside somewhere, hidden away.”⁸⁶

The obvious problem was that the status quo stood at odds with the goals of the Balfour Declaration.⁸⁷ Zionism by its definition sought to transform Palestine into a Jewish homeland, and the British now openly supported this plan. Such a transformation would logically alter every aspect of life in Palestine including the holy places. Although the status quo was a pragmatic response to sensitive issues, it was ignorant of the fact that Jewish immigration was

India, Mar. 3, 1921, CAB/24/121; and Telegram from Viceroy, Foreign and Political Department to the British Cabinet, Mar. 3, 1922, CAB/24/133. See also Khwaja Kamal-ud-Din, *India in the Balance: British Rule and the Caliphate* (Woking: The Islamic Review, 1922), 105-113.

⁸³ Kushner, “The District of Jerusalem in the Eyes of Three Ottoman Governors,” 87-92.

⁸⁴ These decrees were subsequently confirmed by the Congress of Berlin in 1878 after the Russo-Turkish War.

⁸⁵ Storrs, *Memoirs*, 312.

⁸⁶ C.R. Ashbee (ed.), *Jerusalem 1920-1922, Being the Records of the Pro-Jerusalem Council during the First Two Years of the Civil Administration* (London: Murray, 1924), 4.

⁸⁷ McTague, “The British Military Administration in Palestine 1917-1920,” 72.

destined to change the face of the country.⁸⁸ The more the Jewish community grew, the less it would be content with Arab dominance and vice versa.⁸⁹

It should be noted that the British intended the status quo only as a temporary remedy.⁹⁰ They recognized the impossibility of pleasing everyone and doubted their ability to make rules that would be accepted by the world. It was decided that a final resolution could only be provided by an international legal body constituted under the League of Nations. This international body had been called for both by the King-Crane Commission and Article 95 of the Treaty of Sèvres, in addition to the Mandate for Palestine itself.⁹¹ Throughout the period, the British remained convinced that only this body had the legitimacy to resolve holy places disputes.⁹² However, the Holy Places Commission called for under Article 14 of the Mandate was never created due to disagreement among the Christian powers. As one British analyst wrote, “[I]n Palestine there are

⁸⁸ Of course, the expectation of keeping any society static faces the reality that society is inherently dynamic. In the words of U.S. Supreme Court Justice Robert Jackson, “Any peace that is indissolubly wedded to a status quo—any status quo—is doomed from the beginning. The world will not forgo movement and progress and readjustments as the price of peace.” Supreme Court Justice Robert H. Jackson, “The Challenge of International Lawlessness,” Address before the American Bar Association, Indianapolis, Oct. 2, 1941, reprinted in *American Bar Association Journal*, Vol. 27 (Nov. 1941), 690.

⁸⁹ Frank Jannaway, a Christian writer, expressed his ire at Britain’s deference to Islam. “To permit a false religion to hold sway in ‘the city of the Lord’ (Matt. v. 35), or any other portion of the Holy Land, would be to thwart and countermine God’s set purpose, and be altogether contrary to His plans regarding the earth and man upon it.” Frank G. Jannaway, *Palestine and the World* (London: Maranatha Press, 1922), 232-233.

⁹⁰ Report of the High Commissioner on the Administration of Palestine, 1920-1925 (Colonial No. 15, 1925), 49.

⁹¹ The King-Crane report observed, “There is already a ‘Custodian of the Holy Places’ for the Roman Catholics. Might not this idea be extended to the constitution of a permanent Commission for the Holy Places, on which might be placed this man, and representatives of Greek Orthodox Christianity, Protestant Christianity, Sunnite Islam, Shiite Islam, and Judaism. The Commission might be given authority and means to guard and care for all the places in Palestine that are sacred to the three religions, and to adjudicate all disputes about their custody. Its composition should ensure conservatism and promote harmony.” King-Crane Commission Report, in *Paris Peace Conference, 1919*, Vol. XII (Washington, D.C.: GPO, 1919), 774. The Treaty of Sevres incorporated the idea and stated, “The mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of this commission the religious interests concerned will be taken into account. The chairman of the Commission will be appointed by the Council of the League of Nations.”

⁹² Breger & Marshall, “Legal Regulation of Holy Sites,” 29. However, Lord Balfour suggested early on to resolve disputes at the holy places “not through intermediaries, but directly with the religious chiefs, and the maintenance of order therein by a civilian police, under British control, recruited from the various denominations having a religious interest in their custodianship.” Foreign Office, Eastern Report no. 53, Jan. 31, 1918, CAB/24/144, at 5.

international religious interests so important, and so difficult to reconcile, that they almost overshadow the internal problems of the native inhabitants.”⁹³

The Christian sects—primarily the Latin and Orthodox churches—had been arguing for centuries over control of Jerusalem’s holy sites. Since the mid-nineteenth century, their spheres of power had been frozen by the status quo. With the arrival of the British, however, they found a new opportunity to jockey for power.⁹⁴ The Vatican was especially interested in negotiations over the plan to divide the Middle East into mandates.⁹⁵ The Vatican’s main goal was to expand Latin influence in Jerusalem at the expense of the other Christian churches. This story is one of the less studied aspects of the Temple Mount complex.⁹⁶ When told, however, it reveals that the Vatican played a part, however peripheral, in instigating the Wailing Wall riots of 1929.

The British Mandate was not officially approved until 1922, a full five years after Allenby took Jerusalem. The delay was caused by several factors, most notably Catholic filibustering in the League of Nations.⁹⁷ On November 2, 1921, Arab riots in Jerusalem killed five Jews.⁹⁸ For

⁹³ Foreign Office: Political Intelligence Department, Memorandum Respecting the Settlement of Turkey and the Arabian Peninsula, Nov. 21, 1918, CAB/24/72, at 22.

⁹⁴ One reporter for *The Times* noted, “There may be something in the atmosphere of Jerusalem which seems to dry up the springs of tolerance and sweet reasonableness in the breasts of those who live there for any length of time, and the same atmosphere of religious, sectarian, and racial antagonism makes nearly everybody regard the status quo as a thing which must at all costs be preserved so far as everybody else is concerned, but to be undermined and altered if possible for the benefit of themselves.” “The Wailing Wall: Clash of Creeds in Jerusalem,” *The Times*, Aug. 27, 1929, at 9.

⁹⁵ War Cabinet, Western and General Report no. 114, Apr. 9, 1919, CAB/24/150, at 9.

⁹⁶ However, see Bernard Wasserstein, *Divided Jerusalem*, 90-100; H. Eugene Bovis, *The Jerusalem Question 1917-1968* (Stanford: Hoover Institution Press, 1971), 1-20.

⁹⁷ The British Colonial Office noted, “Opposition to Zionism is particularly strong in Roman Catholic circles. The Vatican is openly hostile, and many of our severest critics are Roman Catholics. The objection to handing over the Holy Land to the secular enemies of Christianity is intelligible; so also is the feeling of resentment that the Jews should derive the main benefit from the valour and self-sacrifice of British soldiers. Whatever we may do or say, sentiments of this kind will always have to be reckoned with.” Colonial Office: Middle East Department, Policy in Palestine, Feb. 16, 1923, CAB/24/159, at 12.

⁹⁸ “Me’ora’ot November 2 bi-Yerushalayim,” *Doar Ha-Yom*, Nov. 4, 1921, at 1.

several weeks, Jews refrained from visiting the Western Wall for fear of being harmed.⁹⁹ The Jewish National Assembly in Palestine (the *Va'ad Le'umi*) appealed to the British government for protection of Jewish rights at the Wall, but resolved to wait until the formation of the Holy Places Commission to make a final determination.¹⁰⁰

Colonial Secretary Winston Churchill convened the Cairo Conference in 1921 in the wake of regional unrest to plan the future of the British Middle East. One of the main items on his agenda was to resolve the gridlock over the holy places. After considerable discussion, the conference resolved to recommend to the League that the Holy Places Commission be comprised of six jurists—two Christians (Catholic and Orthodox), two Muslims (Sunni and Shi'i), and two Jews (Zionist and Orthodox)—and chaired by a British official. The government of Palestine would also hold a seat on the commission. In making its rulings, the commission would consult with specially-constituted religious panels that would argue their interests on behalf of coreligionists.¹⁰¹

The British government presented Churchill's proposal to the League of Nations and asked it to approve the mandates for Syria and Palestine. Leaving these territories in limbo would gravely prejudice the work of the Mandatory powers.¹⁰² Britain also requested the establishment of the Holy Places Commission enumerated in Article 14:

In view of the world wide importance and interest attaching to the obligations which Article 14 will impose, and seeing that it has not yet been found possible for the Council to approve the Draft Mandate, His Majesty's Government are of opinion that it is highly

⁹⁹ "Be-Chatzer Kotel ha-Ma'aravi," *Doar Ha-Yom*, Nov. 21, 1921, at 3.

¹⁰⁰ "Hoda'ot ha-Va'ad ha-Le'umi," *Doar Ha-Yom*, May 5, 1922, at 2.

¹⁰¹ Colonial Office, Report on Middle East Conference Held in Cairo and Jerusalem, June 1921, CAB/24/126, at 138-141.

¹⁰² Appointment of Chairman of Special Commission in Palestine, Jan. 13, 1922, CAB/24/132, at 155-156.

desirable that the appointment of the Commission in question should be undertaken without further delay.¹⁰³

The Catholic powers refused to acquiesce. “It is no exaggeration,” Balfour cabled back to London, “that the reluctance of the French, Polish, Spanish, Italian and Brazilian representatives on the Council to discuss now the Palestine mandate or the question of the chairmanship of the Holy Places Commission has been due to the representations which have been made to their Governments by the Papal representatives.” Balfour asked the League to recall Britain’s well-known tradition of fairness. “We are a Protestant country,” he told the Council, “but I boldly say that I do not believe that in any country, Protestant or Catholic, has the Catholic religion received fairer or more generous treatment than it has within the British Isles.”¹⁰⁴ The British repeated its support for Churchill’s model.¹⁰⁵ However, this model was unsatisfactory to the Catholic countries and the gridlock remained unresolved.¹⁰⁶

The Council met again in London in July 1922, and the Catholic bloc demanded answers from the British. Who would form the majority on the commission? Would the commission be charged with defining a new legal regime at the holy places? Balfour stressed Britain’s impartiality but the Catholics remained unconvinced. Exasperated, Balfour offered a compromise: if the Council agreed to approve the mandates for Syria and Palestine, Article 14 would be rewritten so that the commission’s jurisdiction and structure could be contemplated at a later date. Balfour’s compromise succeeded, and the Council approved the mandates on July 24,

¹⁰³ Herbert A.L. Fisher, Letter to Secretary General of the League of Nations, Jan. 13, 1922, CAB/24/132, at 46-48.

¹⁰⁴ Mandate for Palestine, May 17, 1922, CAB/24/136, at 1-4.

¹⁰⁵ Colonial Office, Memorandum on Holy Places Commission, May 13, 1922, CAB/24/136, at 4-7.

¹⁰⁶ *Palestine*, Vol. 11, No. 1 (May 13, 1922), at 3. The British attempted to quell American fears stirred by the Vatican by assuring Secretary of State Charles Hughes that His Majesty’s Government was “fully alive to the paramount necessity of ensuring to all Christian communities the consciousness that nothing will be done in Palestine which might be construed as negligence of, or indifference to, Christian sentiment.” Letter from H.G. Chilton to Charles Hughes, July 10, 1922, in United States Department of State, *Papers Relating to the Foreign Relations of the United States, 1922*, Vol. 2 (1938), 284-286.

1922.¹⁰⁷ Unfortunately, this compromise was partly responsible for delaying resolution to the Temple Mount question for so long.

Mandates were new to the world of international law. As one American lawyer put it, “nothing of the same legal nature had ever done before.”¹⁰⁸ Lord Balfour defined a mandate as “a self-imposed limitation by the conquerors on the sovereignty which they obtained over conquered territories” to be carried out for the “general welfare of mankind.” This idea of managing conquered territories as a trust for the world was an innovation. The idea was to place backward peoples under the tutelage of wiser nations to learn the habits of good governance.¹⁰⁹ The League of Nations would act as the “trustee acting in the interest of the community of nations” and would hold “the relation of a guardian to a ward” with respect to the territories under its mandate.¹¹⁰ Of course, such a program begs many questions about the intentions of its creators.

The mandate system was not without criticism.¹¹¹ Many viewed it as an unwarranted novelty in international relations. Implementing such an awkward system, they said, would be plagued by all sorts of practical problems. Who would hold sovereignty over a mandated territory, the mandatory power or the inhabitants? Issues of indigenous rights, immigration, and legal title muddied the waters. Others saw the Mandate system as a thin cloak for imperialism. Its legitimacy was suspect in that Mandatory powers made decisions “dictated obviously by their own interest in the first instance, and probably hard, if not impossible, to justify if regarded

¹⁰⁷ Provisional Minutes, July 22-24, 1922, CAB/24/138.

¹⁰⁸ David Hunter Miller, “The Origin of the Mandates System,” *Foreign Affairs*, Vol. 6, No. 2 (Jan. 1928), 277.

¹⁰⁹ See Covenant of the League of Nations, art. 22.

¹¹⁰ See Nele Matz, “Civilization and the Mandate System under the League of Nations as Origin of Trusteeship,” in A. von Bogdany & R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), 47-95.

¹¹¹ Despite questions about the overall legitimacy of the mandate system, British officials like Colonel Storrs did not question it since “it is the united voice of fifty-two peoples speaking through the League of Nations, which for all its defects is the nearest approach to a world conscience hitherto evolved by humanity.” Storrs, *Memoirs*, 402

solely from the point of view of the peoples entrusted to them.”¹¹² One British statesman claimed that the “system of Mandates differ[ed] only in theory from actual annexation.”¹¹³

In Palestine, the mandate was heavily criticized.¹¹⁴ It was challenged perhaps most vociferously by the country’s Arabs. “From the beginning, the Arabs deemed the Mandate, an instrument entered into without their consent, as void, and considered its terms, in their entirety, arbitrary in character,” wrote one Arab lawyer in Palestine. They argued that Mandate was contrary to Article 22 of the League of Nations Covenant, which called for strictly “administrative assistance” in establishing self-governing states in former Ottoman territories. In addition, the Mandate’s favored treatment of Jews was unlawful. They thus deemed the instrument to be illegitimate, and dismissed full cooperation with the British as impossible.¹¹⁵

The Mandate did make specific provision for Muslim sovereignty over Islamic holy places in the country. Article 13 stated, “[N]othing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.” This provision had stayed intact through successive drafts of the Mandate, and effectively carved out *de jure* zones of Muslim autonomy inside Palestine.¹¹⁶ Two years later, the British enacted the Palestine (Holy Places) Order-in-

¹¹² A. Berriedale Keith, “Mandates,” *Journal of Comparative Legislation and International Law*, Vol. 4, No. 1 (1922), 75.

¹¹³ H. St. J. B. Philby, “The Arabs and the Future of Palestine,” *Foreign Affairs*, Vol. 16, No. 1 (Oct., 1937), 158.

¹¹⁴ David Wasserstein describes the British government of Palestine as “a colonial regime masquerading as a League of Nations mandate.” Wasserstein, *Divided Jerusalem*, 82.

¹¹⁵ Mogannam A. Mogannam, “Palestine Legislation under the British,” *Annals of the American Academy of Political and Social Science*, Vol. 164 (Nov., 1932), 47.

¹¹⁶ See draft versions of the Mandate at CAB/CAB/24/111 (listed in Article 15), CAB/24/115, CAB/24/125, and CAB/24/127. A draft dated June 10, 1920, did not contain this provision but did provide “that the control and administration of Wakf shall be exercised in accordance with religious law and the dispositions of the founders.” CAB/24/107. Ostensibly, implementation of Article 14 (the Holy Places Commission) would ensure that Muslim autonomy did not go too far.

Council. This law formally removed the holy places from the jurisdiction of Palestine's civil courts and assigned resolution of disputes at these places to the executive branch:

[N]o cause or matter in connection with the Holy Places or religious buildings or sites in Palestine, or the rights or claims relating to the different religious communities in Palestine shall be heard or determined by any Court in Palestine. Provided that nothing herein contained shall affect or limit the exercise by the Religious Courts of the jurisdiction conferred upon them by, or pursuant to, the said Palestine Order-in-Council. If any question arises whether any cause or matter comes within the terms of the preceding Article hereof, such question shall, pending the constitution of a Commission charged with jurisdiction over the matters set out in the said Article, be referred to the High Commissioner, who shall decide the question after making due enquiry into the matter in accordance with such instruction as he may receive from one of His Majesty's Principal Secretaries of State. The decision of the High Commissioner shall be final and binding on all parties.

The (Holy Places) Order-in-Council was highly significant in that it made matters connected to the holy places political questions above the purview of ordinary justice.¹¹⁷ The law's ostensible purpose was to withdraw civil jurisdiction over the sites until the Holy Places Commission came into being.¹¹⁸ However, because the commission was never created, British policy on the Mount effectively remained a non-policy. They relied on executive decision-makers to handle sensitive disputes, while disregarding the fact that these officials would be highly averse to ruling on these disputes in the interests of security. The British, it seems, were not cognizant of how indigenous authority inside the Temple Mount could legitimize and empower indigenous leaders seeking to destabilize the regime.¹¹⁹

Overall, British policy on the Mount was driven by a fear of triggering religious conflict in the local and international arena. Tasked with managing one of the world's holiest lands, the British followed a policy of affirmative deference toward the country's Muslim community as

¹¹⁷ Breger & Hammer, "The Legal Regulation of Holy Sites," 29.

¹¹⁸ Norman Bentwich, "Palestine," *Journal of Comparative Legislation and International Law*, Vol. 8, No. 1 (1926), 230.

¹¹⁹ Hassner, "The Pessimist's Guide to Religious Coexistence," 151.

well as the Vatican. Their already precarious position as rulers of Jerusalem was further undermined by promising Palestine three times over to competing parties. The results of these promises are perhaps nowhere better demonstrated than in the conflict over the Temple Mount's Western Wall, where the conflict finally bubbled over into the Wailing Wall riots of 1929. The following chapter examines the origins of these riots and challenges commonly-held ideas about the motivations of the parties involved.

*I have often wondered whether those who criticized us in Europe and America could have the faintest conception of the steep, narrow and winding alleys within the Old City of Jerusalem, the series of steps up or down which no horse or car can ever pass, the deadly dark corners beyond which a whole family can be murdered out of sight or sound of a police post not a hundred yards away. What did they know of the nerves of Jerusalem, where in times of anxiety the sudden clatter on the stones of an empty petrol tin will produce a panic?*¹²⁰

IV. WALL OF THE WORLDS

In his classic history of the Supreme Muslim Council under the Mandate, Uri Kupferschmidt describes the attitude of Palestine's Muslim community as "Islam on the defensive." Severed from the Ottoman Empire and surrounded by Christians and Jews, many Arabs turned to Islam as the most important aspect of their identity. Consequently, they took every opportunity to reify and give outward expression to their faith. Kupferschmidt is careful to qualify this Islamic revival as "subjective and passing," but notes it as a direct reaction to Jewish and Christian advances. Religious symbols and holy places took on increased importance, and even prayers became politicized. He notes how the Supreme Muslim Council "turned sanctified places into political symbols," and how the call for the defense of the holy places emerged—"[o]r, rather...was gradually discovered as a suitable medium to arouse the religious susceptibilities of the masses who remained indifferent to nationalistic slogans[.]"¹²¹

Kupferschmidt is generally suspicious of the Supreme Muslim Council and its proclaimed attachment to the holy places. Invocation of sacred space was, in his analysis, mere political gamesmanship. The holy places were not important to the Council in and of themselves, but only as a convenient means for rallying the masses against the Jews. This explanation is commonly accepted by scholars who often assume that Haj Amin al-Husseini "played up" the

¹²⁰ Ronald Storrs, *The Memoirs of Sir Ronald Storrs* (New York: Putnam & Sons, 1937), 348. Colonel Storrs was the first British governor of Jerusalem.

¹²¹ Kupferschmidt, *The Supreme Muslim Council*, 221-254.

Jewish bogeyman and convinced Muslim peasants that the Jews wanted to take the Haram to suit his political program. This “lie,” disseminated by elites, is assumed to be the main cause for the Wailing Wall riots.

In this section, I attempt to show that this assumption is incorrect. While Kupferschmidt’s description of “Islam on the defensive” is generally on point, his assessment of the importance of the Haram to Palestine’s Muslim community is grossly understated. I argue that the Haram was critically important to Muslim identity and contemporary visions of Arab self-determination. The Haram was the country’s central Muslim sanctuary and the nucleus of an organic jurisdiction that survived from Ottoman times. Haj Amin did not manipulate Arabs to believe a lie; he simply articulated what he and the rest of his community actually believed. The fear that Jews would take the Haram—not altogether unfounded considering their historic attachment to the site and their aggressive activity in the rest of Palestine—was not feigned. In fact, it had existed since the beginning of British rule. The underlying clash that sparked the Wailing Wall riots was, I argue, a struggle between preserving Muslim authority in the Haram and a struggle to establish Jewish authority at the Haram’s Western Wall.

A. The Arab State of Palestine

If Palestine existed at all as an identifiable unit prior to the arrival of the British, its historic center undoubtedly lay in Jerusalem. Of course “Palestine” did not exist as a real location before 1917 except in the minds of Europeans.¹²² Under the Ottomans, the Eastern Mediterranean had

¹²² The word “Palestine” derives from the Philistines who lived on the Eastern Mediterranean coast in ancient times. The term first appeared in Europe in Herodotus’ *Histories* and was repeated in later sources. “Palaestina” was the name that the Romans gave Judea after destroying the Jewish temple and expelling the Jews from Jerusalem, which the Romans renamed Aelia Capitolina. See Bernard Lewis, “Palestine: On the History and Geography of a Name,” *The International History Review*, Vol. 2, No. 1 (1980), 1-12.

been divided into several districts, none of which corresponded with what later became British Palestine. To its inhabitants the region was part of *Bilad ash-Sham*, or Greater Syria.

The increased prominence of Jerusalem after 1841 marked a major shift in the country's power dynamic.¹²³ Authority had been previously concentrated with rural sheikhs who managed communities and villages according to ancient custom. After 1841, power shifted to an aristocracy of prominent Muslim families living in Jerusalem. These families held practical control over the city and its hinterland by dominating the local Ottoman government and clerical posts attached to the Haram. These aristocrats, or *effendi*, derived power from their ancestry and their position as mediators between Istanbul and the local community.¹²⁴ In this way they consolidated vast wealth and lands in the surrounding countryside. When the British arrived, they found that the Husseini family was the most dominant in Jerusalem. Since the 1908 Young Turk revolution, the Husseins had been pioneering Arab nationalism in Palestine.¹²⁵ Unlike some other families, the Husseini approach to Arab nationalism had a distinct Islamic flavor.¹²⁶

With the arrival of the British, the Muslim aristocracy suffered a crippling blow. The source of its power—the backing of the Ottoman Empire—was suddenly gone. No longer could elites operate with impunity in the local environment. No longer could they even claim preeminence as Muslims under a Muslim government.¹²⁷ Their power was now confined almost exclusively to matters touching on religion and tradition. For obvious reasons, religion thus became

¹²³ David Wasserstein, *Divided Jerusalem*, 66-67.

¹²⁴ Joel S. Migdal, *Palestinian Society and Politics* (Princeton: Princeton University Press, 1980), 11-12; B. Abu-Manneh, "Jerusalem in the Tanzimat Period: The New Ottoman Administration and the Notables," *Die Welt des Islams*, Vol. 30, No. 1 (1990), 14-15.

¹²⁵ Wasserstein, *Divided Jerusalem*, 66-68.

¹²⁶ Abu-Manneh, "Jerusalem in the Tanzimat Period," 40. Moshe Ma'oz, *Palestinian Leadership on the West Bank: The Changing Role of the Mayors under Jordan and Israel* (New York: Routledge, 1988), 4-5.

¹²⁷ Donna Robinson Divine, "Islamic Culture and Political Practice in British Mandated Palestine, 1918-1948," *Review of Politics*, Vol. 45, No. 1 (Jan., 1983), 71-72.

immensely important for Muslims trying to distinguish themselves from foreigners and to lay the groundwork for an authentic Arab State of Palestine.

Britain's official mission was to foster the establishment of a self-governing state—a development that Palestine's Arabs universally welcomed. Holding a clear demographic majority in the country, they understood that self-government would necessarily entail the creation of an Arab state. They rejected any excuse for delaying the establishment of this state based on promises made by Sir Henry McMahon. Musa Kazem Husseini wrote to Winston Churchill stating, "Whilst the position in Palestine is, as it stands to-day, with the British Government holding authority by an occupying force, and using that authority to impose upon the people against their wishes a great immigration of alien Jews...no constitution which would fall short of giving the People of Palestine full control of their own affairs could be acceptable."¹²⁸

In the absence of democratic government and political parties, Palestinian society was guided solely by its sectarian structure. The British chose to leave much of Ottoman law and its *millet* system intact.¹²⁹ This system was based formal grants of legal autonomy to Palestine's religious communities. While progressive in one sense, the *millet* reinforced religious divides in Palestinian society and inhibited any meaningful integration. The most dominant *millet* (the Arabic word *millah* means "nation") was naturally the Arab Muslim community. Under the Ottomans, this community had been favored above the rest. "The millet system of the Ottoman Empire...while providing diverse religious groups with control over their internal affairs," writes

¹²⁸ Letter from the Palestine Arab Delegation to the Secretary of State for the Colonies, Feb. 21, 1922, in *Correspondence with the Palestine Arab Delegation and the Zionist Organisation* (London: HMS Stationery Office, 1922), 2.

¹²⁹ But see Shepherd, *Ploughing Sand*, 74-125; Martin Bunton, "Inventing the Status Quo: Ottoman Law-Law during the Palestine Mandate, 1917-1936," *International History Review*, Vol. 21, No. 1 (Mar., 1999), 28-56.

one scholar, “also maintained Islamic hegemony by institutionalizing local social boundaries and by asserting the primacy of Islamic law in conflicts between Muslims and non-Muslims.”¹³⁰ By leaving the *millet* intact the British perpetuated traces of Muslim hegemony, of which Islamic law provided the essential foundation.¹³¹ In late 1918, the military government enacted the Moslem Religious Courts Regulation giving appellate review to the Sharia Court of Appeal based in Jerusalem.¹³² By 1921, *sharia* courts of first instance were hearing twenty percent of Palestine’s non-criminal cases. At the appellate level, they were hearing twenty-five percent.¹³³

Arab desires for self-determination grew stronger as the British regime continued.¹³⁴ On February 27, 1920, over a thousand Arab Muslims and Christians joined for the first combined demonstration of Arab nationalism.¹³⁵ A few weeks later, a group of Arabs attacked Jews praying at the Western Wall and mauled an old rabbi.¹³⁶ Muslim leaders inside the Haram prevented the philanthropic Pro-Jerusalem Society from completing a scenic pathway along the ramparts of the Old City by refusing to allow engineers access to parts of the wall inside the Haram. *Waqf* officials also obstructed efforts to restore the Tariq Bab al-Silsileh, a famous street in Jerusalem.¹³⁷ These activities were intended as open assertions of Arab authority over Jerusalem’s physical space.

¹³⁰ Roger W. Stump, *The Geography of Religion: Faith, Place, and Space* (Lanham: Rowman & Littlefield, 2008), 276

¹³¹ For an impassioned defense of the millet, see Karen Barkey, “Islam and Toleration: Studying the Ottoman Imperial Model,” *International Journal of Politics, Culture, and Society*, Vol. 19, No. 1/2 (Dec. 2005), 5-19.

¹³² *Legislation of Palestine, 1918-1925* (Alexandria: W. Morris, 1926), 461-465.

¹³³ Sir Harry Luke & Edward Keith-Roach (eds.), *The Handbook of Palestine* (London: Macmillan & Co., 1922), 143. For a description of the jurisdiction of these courts, see Norman Bentwich, “The Law and Courts of Palestine,” *Cambridge Law Journal*, Vol. 2, No. 1 (1924), 47-50.

¹³⁴ War Cabinet, Eastern Report no. 120, May 15, 1919, CAB/24/145, at 4-5.

¹³⁵ Jacobson, *From Empire to Empire*, 172.

¹³⁶ “Hitnafluyot ve-ha-Ca’ot,” *Doar Ha-Yom*, Jan. 17, 1921, at 3.

¹³⁷ Ashbee, *Jerusalem 1920-1922*, 12-14.

Serious riots broke out in Jerusalem for the first time in April 1920. Tens of thousands of Arabs had converged on Jerusalem from all over Palestine for that year's Nebi Musa pilgrimage.¹³⁸ Unluckily for the British, the event happened to coincide with the crowing of King Faisal in Damascus as "King of Syria and Palestine." Damascus had always been the chief city of Greater Syria, and many Arabs in Palestine looked to King Faisal as their rightful king. As the pilgrimage began, a crowd of about 70,000 Arabs took to Jerusalem's streets and listened to impassioned speeches calling for casting off British rule and uniting Syria and Palestine under the leadership of Faisal. The Grand Mufti of Palestine, Musa Kazem al-Husseini, delivered a heated speech to the crowd while his brother, a former Ottoman army officer named Haj Amin al-Husseini, called upon Arabs to proclaim allegiance to Faisal.¹³⁹ Stirred with emotion, the crowd suddenly rose up and turned on the city's Jewish residents.¹⁴⁰

Colonel Storrs later said that news of the riots struck him like "a sword into my heart."¹⁴¹ In a moment "all the carefully built relations of mutual understanding between British, Arabs and Jews seemed to flare away in an agony of fear and hatred."¹⁴² These riots were the first real sign that the British mission in Palestine might not go as smoothly as planned. In a report to the British parliament, however, the High Commissioner of Palestine Sir Herbert Samuel tried to downplay anti-Zionist feeling among the Arabs. "Many men of education and enlightenment

¹³⁸ The Nebi Musa pilgrimage was an event that took place every spring during the Easter holiday. Arab Muslims from all over Palestine met at the Haram and traveled *en masse* to a spot south of Jericho that they believed to be the grave of Moses. Bernard Wasserstein, *Divided Jerusalem*, 101-104.

¹³⁹ *Ibid.*, 104.

¹⁴⁰ The violence of the riots was wanton and senseless. "Origin of Jerusalem Riots," *The Times*, Apr. 8, 1920, at 9. "Murderous and most brutal attacks," Edward Keith-Roach later described them, "followed by an orgy of pillage[.]" Keith-Roach, *Pasha of Jerusalem*, 87.

¹⁴¹ Storrs, *Memoirs*, 347.

¹⁴² Storrs, *Memoirs*, 348. It was argued by some that Storrs and other British officers not only knew about the riots beforehand but also had a hand in organizing them. The fact that a commission investigated the incident and filed a report that was never made it public only added to Jewish suspicion.

among the Arabs took no part...in this antagonism,” he wrote. “They recognized that the fears that had been expressed were illusory.”¹⁴³ *The Times* optimistically reported that the riots had likely “cleared the air.”¹⁴⁴ However, this optimism could not obscure the fundamental conflict festering beneath the surface.

Two months after the riots, Faisal was chased out of Damascus by the French—a major blow to Arab nationalism. Palestinian Arabs suddenly found themselves without a king and permanently disconnected from Greater Syria.¹⁴⁵ Jerusalem, whose importance has already been noted, now became even more significant as the rallying point of Palestinian Arab identity. The British, sensing their dominion beginning to unravel, decided to incorporate the old Ottoman aristocracy into the government. The Husseini family especially benefited from this new arrangement, and Musa Kazem al-Husseini received charge of the Arab Executive Committee. The British knew the power of the Husseinis in local Arab society and conferred on Musa Kazem no less than three powerful titles: Head of *Awaqf* (Islamic endowments), President of the Sharia Court of Appeal, and Grand Mufti of Palestine. In 1921, Musa Kazem died and the British appointed his brother Haj Amin to replace him.¹⁴⁶ In November of that year, the British convened Muslim leaders to decide long-term management of Islamic affairs. Following intense negotiations, the government established the Supreme Muslim Council.¹⁴⁷ Although meant merely to supervise Islamic affairs, this organic Arab regime quickly carved out a sphere of unprecedented power in Palestine.¹⁴⁸

¹⁴³ Interim Report on the Civil Administration of Palestine, July 1, 1920-June 30, 1921 (Cmd. 1499), at 5.

¹⁴⁴ “Moslem and Jew: Politics under the Cloak of Religion,” *The Times*, Apr. 17, 1920, at 15.

¹⁴⁵ Wasserstein, *Divided Jerusalem*, 101.

¹⁴⁶ Migdal, *Palestinian Society*, 19-22.

¹⁴⁷ Kupferschmidt, *The Supreme Muslim Council*, 17.

¹⁴⁸ Wasserstein, *Divided Jerusalem*, 106; Kupferschmidt, *The Supreme Muslim Council*, 5.

The Supreme Muslim Council consisted of five elected members: a president and four other officials.¹⁴⁹ Its official jurisdiction lay in managing the machinery of Islam: administering and controlling *awqaf*,¹⁵⁰ approving the *waqf* budget, nominating judges and inspectors for the *sharia* courts, and appointing muftis and administrative officials.¹⁵¹ Officially, the Council was an organ of the British government. Its members received a salary in addition to income derived from the *awqaf*.¹⁵² This revenue stream significantly bolstered its influence in Palestine.¹⁵³ However, the Council saw itself as the organ of an independent Arab government.¹⁵⁴ The creation of the Council has been described as an “attempt to tame Palestinian [Arab] wrath” against the Balfour Declaration, and an “act of appeasement towards the Palestinian Muslims.”¹⁵⁵ Yet the creation of the Supreme Muslim Council should be seen primarily as an effort to

¹⁴⁹ These representatives included two from Jerusalem, one from Nablus, one from Acre.

¹⁵⁰ A *waqf* (pl. *awqaf*) is a charitable endowment made under Islamic law in which a person endows their property and reserves its profit in perpetuity for charitable purposes. The unique feature of a *waqf* is that once the property is classified as such, it and the rights attached to it are frozen in time forever. No transfers of the property are allowed, and the most that will be permitted is a short term lease. The underlying principle of the *waqf* is the permanence of its dedication—a living memorial to its founder and a way to continue one’s good works even after death. *Waqf* formation is a product of both social and religious motivations, neither of which has to be diminished for the other to exist. See Yitzhak Reiter, *Islamic Endowments in Jerusalem under British Mandate* (Portland: Frank Cass, 1996).

¹⁵¹ *Legislation of Palestine*, 398-402.

¹⁵² Reiter, who has done excellent research on the subject, argues that British *waqf* policy in Palestine was unique among other mandatory and colonial regimes in being exceptionally “hands-off.” Reiter, *Islamic Endowments*, 223.

¹⁵³ The power to control *awqaf* was significant, and the Supreme Muslim Council used its position over this network of revenue-producing endowments to expand its economic and social authority. More significantly, it used *waqf* income to buy Muslim land and obstruct Jewish land purchases. *Ibid.*, xii. “The Council made enormous efforts, pressing legal charges for this purpose, and succeeded in convincing many villages to sell their lands to the Supreme Muslim Council so that they would become Waqf land belonging to the people.” Haj Amin al-Husseini, *The Enemies Spread False Propaganda and Misleading Rumours about the Palestinians* (1954), in Zvi Elpeleg (ed.), *Through the Eyes of the Mufti: The Essays of Haj Amin, Translated and Annotated*. Transl. by Rachel Kessel (Portland: Vailentine Mitchell, 2009), 9.

¹⁵⁴ Colonel Storrs reported that the Mufti “was genuinely surprised at the theory proposed to him that he and the Supreme [Moslem] Council are in any way a branch of the Administration. He honestly regards himself as the elected millet-bashi of the Moslems of Palestine for all purposes.” Secret Political Report for Jerusalem District, June 17, 1922. Storrs Papers, Pembroke College, Cambridge, Box III/2, quoted in Bernard Wasserstein, “Clipping the Claws of the Colonisers”: Arab Officials in the Government of Palestine, 1917-48,” *Middle Eastern Studies*, Vol. 13, No. 2 (May, 1977), 179.

¹⁵⁵ Zeina Ghandour, “Religious Law in a Secular State: The Jurisdiction of the Shari’a Courts of Palestine and Israel,” *Arab Law Quarterly*, Vol. 5, No. 1 (Feb., 1990), 27; Kupferschmidt, *The Supreme Muslim Council*, 17.

legitimize the British government by incorporating into it the Muslim power structure from Ottoman times.

Only a few days after becoming president of the Council, Haj Amin al-Husseini moved his offices from the British government building into the Haram ash-Sharif.¹⁵⁶ This was a major turning point for Palestine's Muslim community: now, for the first time, a coherent and autonomous Muslim regime held control over Palestine's most important Muslim space. The Haram gave this regime a territorial center, a source of legitimacy, and a means of mobilizing international Islamic solidarity.¹⁵⁷ It was the only place in Palestine that Arabs could legitimately exclude Christians and Jews. "There is no doubt that the Haram al-Sharif was of major concern to the Supreme Muslim Council," writes Uri Kupferschmidt, "at least throughout the 1920s. It was not only a sanctuary of profound religious meaning and attachment, but also a focus and symbol of solidarity for all Palestinian Arabs."¹⁵⁸

That the Haram would play an important role in aspirations for Arab self-determination should have been evident from the beginning. The Haram holds an esteemed place in Islamic tradition, and the Quran describes it as divinely blessed.¹⁵⁹ One *hadith* explains that a prayer offered inside the Haram is worth five hundred prayers said anywhere else on earth.¹⁶⁰ According to tradition, Muhammad was praying in Mecca one day when Gabriel appeared to him leading a centaur-like creature called the *Buraq*. Muhammad mounted this beast and soared across the desert to "the furthest mosque" (*masjid al-aqsa*), where he tethered the animal and

¹⁵⁶ Kupferschmidt, *The Supreme Muslim Council*, 26-27, 58.

¹⁵⁷ Kupferschmidt points out that possession of the Haram was almost a *conditio sine qua non* for the rise of the Supreme Muslim Council. *Ibid.*, 62, 237-240.

¹⁵⁸ *Ibid.*, 132.

¹⁵⁹ *Al-Isra* 17:1.

¹⁶⁰ Ismail Adam Patel, *40 Ahadith Concerning Masjid al-Aqsa* (Leicester: Al-Aqsa Publishers, 2008), 9. Prayers said at Mecca and Medina are respectively worth 100,000 times and 1,000 times more than average prayers.

ascended the mountain of God.¹⁶¹ There, Muhammad led Moses, Jesus, and other saints in prayer. Afterward he mounted the Buraq again and flew into heaven where he saw visions and learned how to pray from Allah. *As-Sakhra*, the sacred rock inside the Haram, served as the original *qibla* or prayer direction for Muhammad's followers.¹⁶²

Besides its theological significance, the Haram was also important as a social and cultural center for local Muslims. They viewed this holy site as their collective inheritance.¹⁶³ Every year tens of thousands of Muslims converged on the Haram to make the Nebi Musa pilgrimage. Villagers living near Jerusalem came every Friday to attend prayers, hear sermons, and shop in nearby markets.¹⁶⁴ Muslims who lived inside Jerusalem came to the Haram even more frequently, using it as an administrative space, public park, and place of worship by turn.¹⁶⁵

Colonel Storrs described it as the Arabs' "favourite playground."¹⁶⁶ The Haram was also a place of pan-Islamic cultural interchange, since Muslims on *hajj* often visited it before returning home.

¹⁶¹ Islamic tradition holds that this "furthest mosque" was the Haram ash-Sharif in Jerusalem.

¹⁶² Muhammad later changed the *qibla* to the *Ka'aba* rock in Mecca. Al-Bukhari transcribed the following *hadith*: "Al-Bara narrates, 'We prayed along with the Prophet facing al-Quds (Jerusalem) for sixteen or seventeen months. Then Allah ordered him to turn his face toward the Ka'bah (in Makkah).'" Patel, *40 Ahadith*, 13.

¹⁶³ This collective possession was significant in its own right, and not dependent on Jews and Christians. In fact, the Haram sometimes served as a point of contention between fellow Muslims. In March 1918, a British official in Palestine reported that local Muslims were "surprised" and offended that neither Sharif Hussein nor Sharif Feisal had yet made a visit to Jerusalem to pray at the Haram. "[I]f he or Sherif Feisal could pay a visit," the official wrote, "it could stimulate interest in the Arab movement." The implication was that Palestinian Muslims would otherwise not be interested in Hussein's Arab national movement. War Cabinet, Eastern Report no. 61, Mar. 27, 1918, CAB/24/145, at 3.

¹⁶⁴ "Testimony of Haj Amin al-Husseini," *Report of the Commission on the Palestine Disturbances of August, 1929: Evidence Heard during the 1st-47th Sittings* [Shaw Report], 506

¹⁶⁵ One Arab resident of Jerusalem recalls how the "awe-inspiring beauty of the Dome of the Rock" dominated his childhood memories. Every Friday his father would bring him to the Haram, and "would explain to me its history and point out its artistic beauty. To me, however, what was most enjoyable was to sit on the clean stone pavement in the coolness of the shade and to eat the kinds of things I usually did not get to eat at home, namely ka'ak and falafel with a bit of za'tar and a hardboiled egg." Fouad Moughrabi, "Reflections of a Native Son," in Munir Akash & Fouad Moughrabi (eds.), *The Open Veins of Jerusalem* (Arlington: Jusoor, 2005), 216.

¹⁶⁶ Storrs, *Memoirs*, 331.

This social and cultural dimension of the Haram is rarely examined, but is important to understand its place in Mandate society.¹⁶⁷

Ron E. Hassner has attempted to define the latent power of sacred space. Sacred space, he says, provides access, legitimacy, meaning, and a sense of community for the religious communities who claim them. It provides a location where worshippers can access the divine and make rules to prevent desecration of divine authority.¹⁶⁸ Sacred space also provides the visible essence of their faith—the tangible expression of their religious and national identity. Hassner notes the unique social function that these spaces can play. “Believers are drawn to sacred places not only because of the religious functions these sites perform but also because these places perform specific social roles. In their function as legal, political, or financial centers, sacred places draw powerful actors from all walks of life into their orbit.”¹⁶⁹

Hassner’s observation is relevant for understanding the Haram. This sacred space provided access to the divine for believers—a fact perennially underappreciated by scholars. The Haram likewise conferred legitimacy on the indigenous Arab leaders who controlled it, ensuring their continued hegemony within the Arab community. The physical restoration of the Haram throughout the 1920s suggests tacit recognition by the Supreme Muslim Council of the site’s legitimizing power.¹⁷⁰ The Haram provided meaning for Muslims in its embodiment of what it meant to be an authentic “Palestinian.” It also empowered communal life by providing an autonomous space where Muslims could conduct their affairs independently of foreign intrusion.

¹⁶⁷ Kupferschmidt, *The Supreme Muslim Council*, 229-231.

¹⁶⁸ Hassner, “The Pessimist’s Guide to Religious Coexistence,” 147.

¹⁶⁹ *Ibid.*, 148-149.

¹⁷⁰ See Yildirim Yavuz, “The Restoration Project of the Masjid al-Aqsa by Mimar Kemalettin (1922-1926),” *Muqarnas*, Vol. 13 (1996), 149-164.

Rasseem Khamaisi has also examined the power of holy places in local society. “[H]oly places form and represent community symbols,” he writes, “existing within a landscape and wielding power and spatial and resource control.” The fundamental power of such a space derives from its rootedness in national and religious identities. “Every community has its own narrative and memories related to holy sites, to which the members of that community feel that they belong. When they gain power, they try to take control and dominate the holy place and the surrounding territory, including the city where the holy place exists.” Religious groups find in sacred spaces more than just ritual “workspaces” or political talking points. As Khamaisi writes, “They provide a center for our identity and offer us a place in which, momentarily transcending our usual selves, we merge with the past, with future and with eternal being.”¹⁷¹

In a *Michigan Law Review* article entitled “Law’s Territory: A History of Jurisdiction,” Richard T. Ford explored the conceptual nature of jurisdiction, that peculiar power framework that he argues grew out of the modern science of cartography.¹⁷² The notion of fixed legal boundaries, derived from Western European law, and the creation of “synthetic” regimes displaced many “organic” jurisdictions already in existence around the world. Organic legal systems, Ford reminds us, often survive and compete with the authority of the former. “Organic jurisdictions appear as matters of right,” he explains, “and are defended against attack in terms of autonomy, self-determination and cultural preservation.” Ford’s observation sheds light on the

¹⁷¹ Rasseem Khamaisi, “Holy Places in Urban Spaces: Foci of Confrontation or Catalyst for Development?,” in Breger et al (eds.), *Holy Places in the Israeli-Palestinian Conflict*, 128-144.

¹⁷² Ford’s guiding light here is Thongchai Winchikaul’s *Siam Mapped: The History of the Geo-Body of a Nation* (Honolulu: University of Hawaii Press, 1994), which examines how Southeast Asian cultures conceived of sovereignty before European contact. Unlike Europeans who divided the world into discreet territories with fixed boundaries, Thongchai shows that indigenous “Siamese” peoples traditionally saw the world as a network of mutually interdependent power centers. These centers, usually cities, sat atop networks of towns and villages over which they exercised what may be called “sovereignty.” Needless to say, this pre-modern conception of sovereignty was much more nuanced than its Western counterpart. Richard T. Ford, “Law’s Territory (A History of Jurisdiction),” *Michigan Law Review*, Vol. 97 (1999), 843-930.

confrontation between the “synthetic” British government and the “organic” Muslim regime that survived from the Ottoman period and claimed sovereignty over Palestine from its citadel in the Haram.

B. Israel’s Last Remaining Relic

If Muslims felt pride when they gazed at the Temple Mount, Jews felt profound loss.¹⁷³ Two millennia before, the Mount had belonged to them and had served as the center of their religious and political life. Jewish tradition portrayed the site as the cosmological nexus of space and time.¹⁷⁴ Most importantly, it was the place where God’s presence, or *shekhinah*, dwelled on earth.¹⁷⁵ Rabbinical tradition held that the ancient stone in the center of the Mount was the foundation stone upon which the world had been created.¹⁷⁶ This stone reappeared throughout the history of Israel, beginning with the story of creation.¹⁷⁷ Here Adam had been formed from dust, Noah had offered his sacrifice after the flood, and Abraham had laid his son Isaac for sacrifice. According to the rabbis, Abraham had seen Solomon’s Temple in a prophetic vision.¹⁷⁸ Almost a thousand years later, David bought the hilltop from a Canaanite named Ornah and made it the center of his kingdom. His son Solomon constructed a large temple there for the offering of sacrifices to Yahweh. For a brief period, the Temple Mount stood at the center of a thriving and powerful state of Israel

¹⁷³ See Judah Nadich, *Jewish Legends of the Second Commonwealth* (Philadelphia: Jewish Publication Society, 1983), 339-373.

¹⁷⁴ Jacob Neusner, “Map without Territory: Mishnah’s System of Sacrifice and Sanctuary,” *History of Religions*, Vol. 19, No. 2 (Nov., 1979), 110.

¹⁷⁵ Isaiah 8:18; Song of Songs 2:9; Psalm 3:5. See also Nadich, *Jewish Legends of the Second Commonwealth*, 367-369.

¹⁷⁶ *Midrash Tanchuma* 10; *Yoma* 54b.

¹⁷⁷ *Genesis Rabbah* 14:9.

¹⁷⁸ *Yalkut, Vayyera* 40:17; 216:102.

But the political glory of Israel was not to last. Soon after Solomon's death the polity split into two competing kingdoms—Israel and Judah—and a few centuries later the Babylonian King Nebuchadnezzar captured Jerusalem and burned the Temple to the ground. Some “Jews” (exiled citizens of the Kingdom of Judah) later returned from captivity in Babylon to rebuild the Temple and restore the sacrifices. However, the Roman general Titus took the city a few centuries later and sacked the Temple again. This time the destruction was complete.¹⁷⁹ Titus's victory, followed by Emperor Hadrian's crushing of a Jewish revolt a generation later, marked a cataclysmic moment in Jewish history—the beginning of “exile.” This exile was both physical separation from the Land of Israel and a loss of favor in the eyes of God. Certainly the most devastating fact was the separation from the Temple Mount and its sacrifices which, until then, had formed the essence of Hebrew religion. Judaism, if it may be called such at this point, had mainly been a priest- and blood sacrifice-centered faith. After the exile, it became a religion of prayer, study, and observance of Jewish law.

Physical separation from the Temple Mount was not total, however. Although Jewish religious authorities forbid entrance to the site until the time of Messiah, Jews continued to visit its western retaining wall to pray and lament the loss of the Temple. They believed that the divine presence still lived inside the Mount, and cried to him through the holes in the Western Wall.¹⁸⁰ The Jews who arrived in Palestine in the late nineteenth and early twentieth century never dreamed of unseating Muslim hegemony on the Mount. Instead, both secular and religious

¹⁷⁹ When the Bordeaux pilgrim visited Jerusalem a few hundred years later he noted the ancient rock at the center of the platform, now located not far from two statues of the Roman Emperor Hadrian. “[T]here is a perforated stone,” he wrote, “to which the Jews come every year and anoint it, bewail themselves with groans, rend their garments, and so depart.” *Account of the Bordeaux Pilgrim*, 7a.

¹⁸⁰ *Tanchuma Hakadum*, Exodus; *Midrash of Song of Songs 2:9. Baba Bathra 25a.*

Zionists looked to the Western Wall as the last remaining relic of Israel's ancient glory and the cornerstone of its modern rebirth.¹⁸¹

Despite its later infamy in Mandate history, the Western Wall was little more than a narrow alley wedged between the exterior wall of the Haram and a row of ramshackle stone hovels. Roughly thirty meters long and four meters wide, the alley was barely wide enough for several people to walk abreast. The place was filthy by all accounts and lined with beggars. Light was poor and heat was high. On holy days the space was packed with Jews standing shoulder to shoulder in prayer. Towering above them loomed the immense façade of the Haram ash-Sharif, and to their left loomed the *Mahkama* building that protruded outward from the Haram and housed the Sharia Court of Appeal. There, and from other perches on the walls, Muslims often stood and watched the seething mass of Jews below for any sign of impropriety.

Many progressive Jews found the behavior of co-religionists at the Western Wall pathetic.¹⁸² Norman Bentwich, British Jew and Attorney General during the first half of the Mandate, was uncomfortable with “[m]en and women mourn[ing] apart in little groups, resting their sacred books against the mighty wall that towers above to exclude them from the Temple Area; tears run[ning] freely down the wrinkled faces of aged men and women, some of whom rock themselves to and fro in their emotion.”¹⁸³ However, even secular Jews like Bentwich recognized the significance of the place for Jewish identity.¹⁸⁴ Itamar Ben-Avi, editor of *Doar Ha-Yom*, wrote a front page editorial in 1920 illustrating the secular view of the site. Though

¹⁸¹ Doron Bar, “Wars and Sacred Space: The Influence of the 1948 War on Sacred Space in the State of Israel,” in Breger et al (eds.), *Holy Places in the Israeli-Palestinian Conflict*, 70.

¹⁸² Norman Bentwich, *A Wanderer in the Promised Land* (New York: Charles Scribner's Sons, 1933), 64.

¹⁸³ Maude M. Holbach, *Bible Ways in Bible Lands* (London: Kegan Paul, 1912), 54.

¹⁸⁴ Norman Bentwich, *Palestine of the Jews, Past, Present and Future* (London: K. Paul Trench Trubner & Co., 1919), 112.

irreligious, Ben-Avi still viewed the Wall as a major factor in the Jewish renaissance. He excoriated the despicable condition of the alley and rebuked fellow Jews for being passive about preserving it. Its condition was directly indicative of the depressed condition of the nation. “New” Jews, brimming with the spirit of the Maccabees, needed to take this site and make it the center of Jewish national life. “The Western Wall is our heart,” wrote Ben-Avi, “—it’s the same whether or not we’re religious, Sephardi or Ashkenazi, believers or free-thinkers. The Western Wall is the heart of all Jewry, from Jerusalem to Vilna, and from New York to Australia.”¹⁸⁵ The symbolic power of the Wall in both secular and religious Jewish discourse echoed throughout the Hebrew literary world.¹⁸⁶

But the Jews did not own the Western Wall. Legally, it was the absolute property of the Muslim community: the Wall itself was part of the Haram, and the alley was part of an ancient *waqf* dedicated to North African Muslims.¹⁸⁷ Islamic tradition venerated the site as the place where Muhammad had tethered his Buraq before ascending into heaven. Under the Ottomans, Muslim ownership was rigidly enforced. In 1840, government officials had denied a Jewish request to pave the alley since it was *waqf* property and connected to the Haram. Jews were forbidden to even raise their voices or display their sacred books before the Wall.¹⁸⁸ In late 1911, the trustee of the *waqf* appealed to the Ottoman government to stop elderly Jews from bringing benches to the Wall. The concern was that it would establish a precedent that later

¹⁸⁵ “Ha-Kotel, Shema’ah,” *Doar Ha-Yom*, July 25, 1920, at 1.

¹⁸⁶ Yonah Rozenfeld, “Ha-Kotel ha-Ma’aravi,” *Ha-Zfira*, Mar. 7, 1921, at 3; A. Shushan, “Zilzul Kodshei ha-Umah,” *Doar Ha-Yom*, June 1, 1920, at 4.

¹⁸⁷ Storrs, *Memoirs*, 365.

¹⁸⁸ “Official Translation of Document Put in as Shewing the Use of the Term ‘Burak,’” Ex. 84A, *Shaw Report*, 1080.

generations might imply as a sign of ownership.¹⁸⁹ Similar disputes occurred in 1912 and 1914.¹⁹⁰ These events show that Muslim attempts to restrict Jewish access to the site had been occurring long before the Balfour Declaration.

Zionists had special hopes for the Western Wall, seeing it as a natural starting point for creating a Jewish national home in Palestine. Within only a few months of the Balfour Declaration, Chaim Weizmann, the president of the Zionist movement, wrote to British diplomat William Ormsby-Gore proposing a conveyance of the Western Wall to the Jews for fair market value. The Wall presently was “surrounded by ill-kept, ramshackle buildings” and had become “the haunt of Arab loafers and vagrants.” Jews seeing it for the first time often found the sight “painful beyond description.” Weizman explained that, “The dignity and solemnity which should attach to this monument of the ancient glories of Israel are obscured by a scene which speaks only of humiliation and degradation.” He was very candid about his objective: “We feel that the present time, when Jewry is looking forward to a revival of its national life, would be of all times the most fitting for the carrying out of this project.”¹⁹¹ Weizmann knew that by acquiring the Western Wall he might be able to draw the ultra-Orthodox into the Zionist fold.¹⁹² He forecasted the effect of purchasing the Wall as “an enterprise whose success would [be] so dramatic as to exalt the horn of Zionism with joy and honour throughout the world.”¹⁹³

¹⁸⁹ “Copy of the Decision Passed by the Majles Idarah [Administrative Council] of the Liwa, under No. 1680 of the 12th of November, 1327,” Ex. 84B, *Shaw Report*, 1080.

¹⁹⁰ “Correspondence between the Office of the Deputy District Commissioner, Jerusalem, and the Chief Rabbis, Regarding the Customs and Appurtenances at the Wailing Wall which were Permitted by the Ottoman Government,” Ex. 55A, *Shaw Report*, 1056-1058.

¹⁹¹ Letter no. 185, May 1, 1918, *Letters and Papers of Chaim Weizmann*, Vol. 8 (Piscataway: Transaction Publishers, 1977).

¹⁹² Segev, *One Palestine, Complete*, 72.

¹⁹³ Storrs, *Memoirs*, 365.

Colonel Storrs recognized the value of Weizmann's idea and attempted to mediate a deal with the *waqf*. He relented, however, when the city's Arabs heard about it and demanded an explanation. Weizmann circumvented Storrs and requested permission from Lord Balfour to approach the *waqf* directly. "[T]he satisfactory settling of this point would mean an enormous access of prestige to us," Weizmann reminded Balfour. "It would make the Jewish world fully realize what the British regime in Palestine means; it would help to rally all the Jews, especially the great masses of orthodox Jewry in Russia, Galicia and Roumania, as well as England, Germany and America round the platform which we have created, namely a Jewish Palestine under British auspices."¹⁹⁴ However, Balfour withheld permission and the deal died before birth.

Many Zionists accused Storrs of personally causing the negotiations to fail.¹⁹⁵ Unfortunately, the negotiations were oral and no minutes remain. Some scholars, Tom Segev among them, doubt that the Jews could have ever purchased the courtyard from the Muslims.¹⁹⁶ However, the conveyance (or at least long-term rental) of *waqfs* to non-Muslims was not unprecedented.¹⁹⁷ At any rate, Storrs lamented in later life that the deal had not been made. In his view, the deal would have "obviated years of wretched humiliations, including the befouling of the Wall and pavement and the unmannerly braying of the tragi-comic Arab band during Jewish prayer and culminating in the horrible outrages of 1929."¹⁹⁸

¹⁹⁴ Letter no. 208, May 30, 1918, *Letters and Papers of Chaim Weizmann*, Vol. 8.

¹⁹⁵ Storrs, *Memoirs*, 383.

¹⁹⁶ Segev, *One Palestine, Complete*, 72.

¹⁹⁷ Around the same time, the Pro-Jerusalem Society entered into a ten-year lease with the Abu Liya *waqf* to turn a parcel of derelict land in the Old City into a children's playground. C.R. Ashbee (ed.), *Jerusalem: 1918-1920, Being the Records of the Pro-Jerusalem Council during the Period of the British Military Administration* (London: Murray, 1921), 4.

¹⁹⁸ Storrs, *Memoirs*, 366-67.

For Storrs, the governor of Jerusalem, the Western Wall courtyard would remain a perennial source of anxiety.¹⁹⁹ Once the status quo was made law, Storrs's job was to determine what the status quo at the Wall actually was. The most pressing issue involved, of all things, wooden benches. Elderly and infirm Jews who came to the Wall often brought these benches to sit on during long hours of prayer. Muslims alleged that the benches established a precedent for unlawful Jewish rights in the alley. Storrs combed through Ottoman records to determine what rights the Jews actually had been granted. Muslim authorities provided him with several rulings against bringing benches to the Wall. However, it was known that Muslims often entered into practical arrangements allowing Jews to bring these items anyway. Storrs eventually decided that the benches were illegal and that Jews only had a right of way at the Wall. They had the right to visit, but no more than anyone else.²⁰⁰ Storrs tried to persuade the Muslims to allow the benches on humanitarian grounds but they refused.²⁰¹ As he explained, "[I]n Jerusalem...any concession or abrogation of existing rights tended to become the thin edge of the wedge before which other rights were apt to disintegrate."²⁰²

It should be noted that Arab fears of intrusion on the Haram was not directed only at Jews. One incident in 1911 illustrates this point. At that time, Muslim notables and peasants had rallied against the Ottoman government when they learned that British adventurer Montague Parker was exploring tunnels beneath the Haram for lost treasure. Parker had bribed the Turkish governor and the sheikh of al-Aqsa to allow him to conduct excavations below the sacred rock. Unfortunately for Parker, an off-duty employee decided to spend the night in the Haram and

¹⁹⁹ Ibid., 420.

²⁰⁰ Ibid., 365-366.

²⁰¹ Ibid., 420.

²⁰² Ibid., 402.

discovered Parker's men hacking away under the holy shrine. When word got out, a violent mob took to the streets demanding blood.²⁰³ Parker made his escape, but barely.²⁰⁴ Louis Fishman, who has investigated the incident, believes that the incident reveals an emerging Palestinian nationalism directly connected to possession of the Haram.²⁰⁵ I would add that it demonstrates that Jerusalem's Muslims were prepared to protect the Haram against any foreign invasion, regardless of the invader's ethnicity or religion.

The Arab riots of 1920 suggested to Jews that they could not rely upon the British for protection. A few weeks after the riots, Jews gathered at the Western Wall to remember the victims. They blew the *shofar* at a nearby synagogue and proclaimed a new era in Jewish history.²⁰⁶ Their fury with Arab impunity was exacerbated when, only a few weeks later, the *waqf* began making repairs to the upper portions of the Western Wall.²⁰⁷ The Jews saw this act as a flagrant violation of the status quo, and the Zionist Commission duly protested to the government:

The Wailing Wall is the western wall of our temple, and has stood since the destruction of the Temple. This Wall is regarded as their holiest possession by fifteen million Jews throughout the world. They have not forgotten it for one moment ever since the Dispersion. Before the stones of the Wailing Wall the Jewish people pour out their heart to God. After the occupation of Jerusalem by the British armies, the Commander-in-Chief promised, in the name of the British Government, to protect the Holy Places, without outside interference. And now the Wailing Wall, the Holy of Holies of the Jewish people, is being repaired without ever the opinion of the local Hebrew community having been asked. A sacrilege has been committed, both in the religious and the historical sense. If there is any real danger of the falling of the uppermost courses of the Wall, the local Hebrew community should have been informed, when the necessary steps

²⁰³ Neil Asher Silberman, *Digging for God and Country: Exploration, Archaeology and the Secret Struggle for the Holy Land, 1799-1917* (New York: Alfred A. Knopf, 1982), 180-188.

²⁰⁴ Safely back home, Parker refused to discuss the events surrounding the incident but optimistically planned to return to his excavations. "Captain Parker's Excavations," *The Times*, May 8, 1911, at 8.

²⁰⁵ Louis Fishman, "The 1911 Haram al-Sharif Incident: Palestinian Notables versus the Ottoman Administration," *Journal of Palestine Studies*, Vol. 34, No. 3 (Spring, 2005), 6-22.

²⁰⁶ "Teki'a ha-Shofar be-Vet ha-Knesset ha-Sfardi," *Ha-Zfira*, May 11, 1920, at 1.

²⁰⁷ "Le-Inyan Kotel ha-Ma'aravi," *Doar Ha-Yom*, May 18, 1920, at 3.

to repair the Wall would have been taken. We beg even to doubt the reality of any such danger. Why has this danger become so suddenly apparent—just at a moment when the minds of the inhabitants are disturbed by political events? Was there a need for these repairs to proceed on Saturday—when hundreds of Jews stand in prayer near the Wall? Are the religious feelings of the Jews entitled no consideration whatsoever?

I most emphatically request that an order be given to stop the repairs. If an architectural survey shows that there is any immediate danger and that it is necessary to repair the upper courses of stones, let the work of reparation be entrusted to the Jewish community of Jerusalem.

Storrs viewed Muslim repairs to the Wall, while legal, as a “piece of unwarrantable and calculated bad manners.”²⁰⁸ C.R. Ashbee, his civic architect, stated that the repairs were necessary but noted that the Muslims were being intentionally provocative. “To the devout Moslem mason perched on the eyrie of his scaffolding eighty feet up in the sky the temptation of dropping a goblet of wet mortar upon the furry hat of the idolatrous Israelite beneath... was a severe one.”²⁰⁹ Ashbee advised Storrs that the repairs were not so needed as to require work during Jewish prayer. The government decided that repairs to the upper parts of the Wall could be done by the *waqf* (outside traditional Jewish prayer times), but that repair to the lower courses—where the Jews stood—could only be done by the Department of Antiquities. This limitation on Muslim authority provoked sharp protest from the Mufti.²¹⁰ Despite the subject matter, however, Storrs saw this incident as “religious hardly even in name.”²¹¹

C. The Sacred and the Violent

The conflict at the borderland of the Temple Mount grew more explosive as the Mandate progressed. In March 1925, Arabs protested Lord Balfour’s visit to Jerusalem by barricading the

²⁰⁸ Storrs, *Memoirs*, 350.

²⁰⁹ Ashbee, *Palestine Notebook*, 146-147.

²¹⁰ This push for local autonomy even opposed fellow Muslims who tried to claim authority over the site. In 1924, King Hussein claimed the holy places of Jerusalem as part of his would-be Caliphate, but Haj Amin al-Husseini and the Supreme Muslim Council rejected his right to rule them. “The Caliphate,” *The Times*, Apr. 4, 1924, at 11.

²¹¹ Storrs, *Memoirs*, 350.

entrances to the Haram.²¹² For the first time, Christians were admitted inside and allowed to make speeches against Zionism and the British regime.²¹³ On September 28, 1925, Jews brought benches to the Wall for the observance of Yom Kippur. Muslims immediately complained to the government, and Storrs ordered police to remove the benches. The Zionist Commission complained that the government should have notified the Jews that it was planning to enforce the law on the books. Worshippers would have then been prepared and have remained undisturbed in their devotions. Storrs contended that the Jews had been given notice, and that police action was the only remedy for violation of the status quo. He hoped that Jewish and Muslim religious leaders would sort out the dispute for themselves, and tried to convince the *waqf* to build stone benches in the courtyard to obviate the need for the Jews to bring portable ones.²¹⁴

The Hebrew newspaper *Ha-Poel Ha-Tzair* published an editorial soon afterward decrying the police action and blasting the government's "no benches" policy as arbitrary and ridiculous. "Laws certainly have to be observed," the author wrote. "But one also needs to know how to implement laws in a humane manner." The author placed most of the blame on Storrs, and called him an anti-Semite and hater of Israel.²¹⁵ A similar editorial in *Davar* pointed out the perceived legal inconsistencies under the Mandate: "According to the law it is permitted to bring defecating donkeys near the Wall in front of Jews who pray there. But it is forbidden to bring stools... what a sacred law!"²¹⁶

²¹² "Lord Balfour's Visit to Jerusalem," *The Times*, Feb. 27, 1925, at 11.

²¹³ "Lord Balfour in Jerusalem," *The Times*, Mar. 26, 1925, at 16.

²¹⁴ Storrs, *Memoirs*, 421-422. Another novel solution came from a William Rappard, a Swiss member of the League of Nations Mandates Commission. Rappard suggested to a delegation of Palestinian Jews that "worshippers at the Wailing Wall adopt the method employed by Alpine herdsmen who carry portable stools strapped to their waists." "Wailing Wall Question is Solved by League, London 'Morning Post' Reports," *JTA*, June 30, 1926.

²¹⁵ "Chilul," *Ha-Poel Ha-Tzair*, Oct. 2, 1925, at 21.

²¹⁶ A. Z. Rabinovitz, "Galut ha-Cherpah," *Davar*, Oct.

For Arab Muslims, benches were symbolic of growing Jewish power in Palestine. Although this power had been steadily growing since the mid-nineteenth century, the burgeoning presence at the gates of the Haram provoked an especially visceral response. Muslims turned to expressions of physical dominance to assert their authority over the site. Some led their donkeys through the courtyard to disrupt Jewish worship.²¹⁷ In October 1926, one group pelted a crowd of praying Jews with rocks.²¹⁸ In July of the following year, a mob attacked and severely beat a Jew walking alone near the Wall.²¹⁹ Weizmann wrote to Lord Plumer asking Britain to find some way to stop the Arabs from interfering with Jewish worship.²²⁰ On June 22, the Permanent Mandates Commission of the League of Nations discussed the problem, but abstained from making a decision since the matter could only be solved by direct negotiations between Muslims and Jews. The mandatory government was ordered to effect these negotiations.²²¹

Frustrated by ongoing harassment, Jews petitioned the government to prohibit sightseers from gathering near the Western Wall during Sabbath prayers.²²² The Mufti protested immediately, claiming that such a concession would amount to granting the Jews new rights at the Buraq—an innovation contrary to the status quo, and sure to provoke anger among Muslims. The true owners of the site were the North African Arabs who lived there on behalf of the *waqf*. Maybe these Arabs liked sightseers in their neighborhood, in which case it would be unlawful to deprive them of their property rights. Prohibiting sightseers from visiting the Buraq during Jewish prayer would only advance the long-term conspiracy to commandeer the site from the Arabs.

²¹⁷ “Zilzul be-Kotel ha-Ma’aravi,” *Doar Ha-Yom*, July 25, 1928, at 4; “Aged Jew Weepingly Describes Arab Desecrations of Wailing Wall at Commission Hearing,” *JTA*, June 30, 1930.

²¹⁸ “Arabs Make Attack on Jews at Wailing Wall,” *JTA*, Oct. 19, 1926.

²¹⁹ “Shuv Hitnaflot etzel Kotel ha-Ma’aravi,” *Doar Ha-Yom*, July 11, 1927, at 4.

²²⁰ Letter no. 11, May 3, 1926, *Letters and Papers of Chaim Weizmann*, Vol. 13.

²²¹ League of Nations: Permanent Mandates Commission, Minutes of the Ninth Session, June 22, 1926, C.405.M.144.

²²² “The Wailing Wall in Jerusalem,” *The Times*, Nov. 7, 1927, at 13.

Rumors circulated in Jerusalem that the government planned to expropriate the *waqf* for public health reasons and give it to the Jews. The Supreme Muslim Council reacted by commencing several building projects in 1928. One of these was a small *zawiyah*, or prayer niche, at the southern end of the Wall courtyard.²²³ Another was an iron door in the same area that would directly link the courtyard with the inside of the Haram. The Mufti later admitted that during this time the Jews were secretly trying to bribe him. They allegedly offered to pay him 50,000 pounds personally in addition to the cost of the courtyard and payoffs to other members of the Supreme Muslim Council. The total payment would have totaled nearly 400,000 pounds. However, the Mufti refused this offer and ordered his men to continue building. His goal was to obviate any need for the government to seize the courtyard for health reasons by beautifying the space and emphasizing its Muslim character.²²⁴

Throughout this period the Haram was undergoing extensive renovations.²²⁵ Under the direction of Colonel Storrs at the beginning of British rule, the Pro-Jerusalem Society had advanced the *waqf* several hundred pounds to begin restoring the Dome of the Rock.²²⁶ When the *waqf's* income finally stabilized, it repaid the Pro-Jerusalem Society and put an additional 700 pounds toward the work.²²⁷ A gift of 25,000 pounds from a Muslim donor in 1924 ensured completion of renovations to both the Dome of the Rock and al-Aqsa Mosque.²²⁸ In the end, the renovations cost over 60,000 pounds.²²⁹ On August 28, 1928, the birthday of Muhammad, the

²²³ "Testimony of Haj Amin al-Husseini," *Shaw Report*, 529.

²²⁴ *Ibid.*; Mary Ellen Lundsten, "Wall Politics: Zionist and Palestinian Strategies in Jerusalem, 1928," *Journal of Palestine Studies*, Vol. 8, No. 1 (Autumn, 1978), 11.

²²⁵ Yitzhak Reiter & Jon Seligman, "1917 to the Present: Al-Haram al-Sharif/Temple Mount (Har ha-Bayit) and the Western Wall," in Grabar & Kedar (eds.), *Sacred Esplanade*, 234-237.

²²⁶ Ashbee, *Pro-Jerusalem Society, 1918-1920*, 8-10.

²²⁷ *Ibid.*, 32.

²²⁸ "Moslem Helps to Preserve Dome above Abraham's Rock," *The Times*, Oct. 26, 1924, at 8.

²²⁹ "The Aksa Mosque in Jerusalem," *The Times*, Aug. 29, 1928, at 12.

Mufti unveiled the newly-renovated Haram before a vast crowd of British and Arab dignitaries. Some scholars have suggested that the completion of this restoration inspired an upwelling of Islamic pride and intensified calls for Arab sovereignty in Palestine.²³⁰

The Yom Kippur holiday of 1928 marked a watershed in Mandate history. On the evening of September 23, the new British governor of Jerusalem Edward Keith-Roach visited the *Mahkama* building overlooking the Western Wall courtyard. Looking down, he noticed a prayer divider, or *mechitza*, separating Jewish men and women not unlike in an Orthodox synagogue. Keith-Roach ordered the Jewish beadle, or *shammash*, to take down the divider as an infringement of the status quo, and instructed the police that if the divider was still up in the morning to take it down by force. With the dawn of Yom Kippur—Judaism’s most solemn day—police officers noticed that it was still up. They stormed the courtyard, pushed aside protesting Jews, and seized the divider, hauling away an old rabbi when he refused to let go of it.²³¹

The Jewish outcry was instant and loud. The British had violated the sanctity of Judaism’s holiest place on Judaism’s holiest day. The Zionist Commission bypassed the government and appealed directly to the League of Nations. The Chief Rabbinate declared a fast across Palestine. Jewish mystics devoted themselves to meditation on Psalm 79 which began, “O God, the heathen are come into thine inheritance; thy holy temple have they defiled; they have laid Jerusalem on heaps.”²³² Vehement personal attacks were launched against Edward Keith-Roach, but he

²³⁰ Reiter & Seligman, “1917 to the Present,” 237.

²³¹ Keith-Roach, *Pasha of Jerusalem*, 119.

²³² “The Wailing Wall at Jerusalem,” *The Times*, Oct. 20, 1928, at 11.

dismissed them as “far more political than pious.”²³³ Devout Jews, he believed, had little interest in the episode.²³⁴

The Colonial Office was quick to defend Keith-Roach’s decision. In an official statement, it insisted that the use of force had been lawful and that the calamity had been caused by the Jewish violation of the status quo. Such violations required immediate action.²³⁵ “The use of the divider and its attachment to the pavement constituted an infraction of the status quo which the Government was unable to ignore,” the Colonial Office stated. At the same time, it “deplored’ the shock caused to large numbers of Jews on a day so holy.²³⁶ Keith-Roach himself was not sorry. “Justice had been done,” he wrote later. “The status quo had been preserved with as little force as possible.”²³⁷

New rumors began to spread that the British were planning to permanently station a Jewish police officer inside the courtyard to avoid such incidents in the future. The rumor added fuel to what was already a simmering Arab fire. The Supreme Muslim Council submitted a memo to the government accusing the Jews of trying to seize the Haram complex and claiming that this new policy would only further their goals. The Council denounced any further concessions to the Jews since the site was “a purely Moslem place.”²³⁸ The Mufti addressed a personal letter to

²³³ Keith-Roach, *Pasha of Jerusalem*, 120.

²³⁴ Ibid., 120. Both Rabbi Zonnenfeld, the leader of Palestine’s ultra-Orthodox community, and the Sephardi chief rabbi sent their personal sympathies to Keith-Roach. Both men no doubt were responding to the growing displacement of the “Old Yishuv” by the “New Yishuv” recently reinforced by large numbers of secular Eastern European Jews arriving in country.

²³⁵ “Wailing Wall Incident: Colonial Office Statement,” *The Times*, Nov. 28, 1928, at 15.

²³⁶ “Palestine Government Issues Official Statement on Wailing Wall Incident,” *JTA*, Oct. 18, 1928.

²³⁷ Keith-Roach, *Pasha of Jerusalem*, 119.

²³⁸ “Testimony of Sir Harry Luke,” *Shaw Report*, 275-276.

the king of England asking him, as the ruler of Christian world, to protect the holy places as Caliph Omar had done when he was ruler of Jerusalem.²³⁹

A new group headed by the Mufti, calling itself the “Defence Committee of the Noble Buraq,” issued a fiery pamphlet against Jewish aggression at the site. The audience for the pamphlet included Muslims both in Palestine and abroad. It decried the “danger which surrounds the [Aqsa] Mosque through the designs of the Jews to wrench it from the hands of Moslems”—designs that were “clearly shown” by recent Jewish behavior. The Buraq was just as holy as the Haram and formed an inseparable part of the larger complex. Furthermore, the Buraq was *waqf* property and thus inviolate under Mandate law. “The purpose of the Jews in acquiring these Wakfs is the erection of a Synagogue in the place thereof which will be higher than the wall of the Mosque and will base itself thereon when it will be easier for them to penetrate into the Aqsa Mosque by various means.”²⁴⁰ Muslims had to resist this aggression and make “their sacred right a lawful weapon for the defence of their religious places.” The Committee called upon all Muslims to act since the Haram was their shared heritage. “Let them make of their forces one force which shall guard the houses of Allah, and of their voices one voice which shall ring in every space and be heard by every ear.”²⁴¹

On November 1, 1928, the Mufti hosted a conference of Arab notables including delegations from Transjordan, Damascus, and Beirut. The congress emphasized Muslim authority over the Haram and the Buraq, and resolved to fight Jewish infiltration by appealing to the Muslim world

²³⁹ “Extracts from Correspondence between the Palestine Government and the President of the Supreme Moslem Council in Connection with the Wailing Wall,” Ex. 75, *Shaw Report*, 1076-1077.

²⁴⁰ The Zionists were indeed hoping to build a synagogue at the Western Wall courtyard. Letter no. 454, Oct. 10, 1928, *Letters and Papers of Chaim Weizmann*, Vol. 13.

²⁴¹ “Translation of a Pamphlet Issued in October, 1928, by the Defence Committee of the Noble Burak,” Ex. 86, *Shaw Report*, 1081-1084.

and the League of Nations.²⁴² In the meantime, they held the British government responsible for any violence that resulted from Muslims defending their heritage. They pointed to the 1924 Expropriation Ordinance as proof that the government, manipulated by its Jewish Attorney General Norman Bentwich, was planning to expropriate all *waqfs* and Islamic holy sites for transfer to the Jews.²⁴³ The congress demanded a promise that this ordinance would not be used for such a scheme. A *waqf* could only be exchanged for another *waqf*, and then only by power of an Islamic court.²⁴⁴ The Mufti and several prominent sheikhs visited the Buraq right after the congress and conducted an impromptu religious service in which a *muezzin* called the faithful to prayer from a nearby rooftop. One Hebrew newspaper described this demonstration of Muslim authority under the headline, “First Step Toward a Mosque of the Western Wall?”²⁴⁵

Frustrated by persistent rumors that Jews wanted to seize the Temple Mount, the Jewish National Assembly published an open letter to the Muslim community, stating: “We herewith declare emphatically and sincerely that no Jew has ever thought of encroaching upon the rights of Moslems over their own Holy Places, but our Arab brethren should also recognize the rights of Jews in regard to the places in Palestine which are holy to them.” The National Assembly called on Arab leaders to dispel the rumors about Jews trying to infiltrate the Haram. They also reminded the Arabs that Jews would not concede their rights at the Wall but would view

²⁴² “Moslems and the Wailing Wall,” *The Times*, Nov. 3, 1928, at 11.

²⁴³ Bentwich claimed that this law was intended only to establish a single procedure for exercising eminent domain. Norman Bentwich, “Palestine,” *Journal of Comparative Legislation and International Law*, Vol. 10, No. 3 (1928), 175.

²⁴⁴ “Resolutions of the Great Moslem Congress Held at Jerusalem on November 1, 1928, for the Defence of the Holy Burak and the Holy Moslem Places,” Ex. 45(i)A, *Shaw Report*, 1051-1052.

²⁴⁵ “Tza’ad Rishon le-Misgad ha-Kotel?” *Doar Ha-Yom*, Nov. 21, 1928, at 1.

opposition to this right as a serious offense.²⁴⁶ In the meantime, a group of concerned Jews created their own “Pro-Wailing Wall Committee” to defend their rights at the site.²⁴⁷

In late December the Mufti wrote to Keith-Roach and called upon him to halt Jewish innovation at the Wall. The Mufti sent two more letters in early 1929 repeating his request.²⁴⁸ High Commissioner John Chancellor met with him and asked him to halt construction at the Wall until he received guidance from London on whether it was allowed. After some prodding, the Mufti agreed. Chancellor then pushed his idea of selling special licenses to Jews that would allow them to bring benches to the Wall. That way, Chancellor suggested naively, everyone would win. Needless to say, the Mufti was not interested in the idea.²⁴⁹ The Muslim community was geared for resisting threats to its autonomy, not compromising with the Jews.

A few days later the Chief Rabbinate, the Jewish National Assembly, and the anti-Zionist Agudat Israel sent a joint letter to the British government complaining that Arabs were trying to provoke the Jews at their holy site. Concerning the *zawiyah*, the letter stated, “It is obviously difficult to imagine that a new religious need has arisen now after hundreds of years, and that it is this need which has prompted them to erect an additional small Mosque beside the famous larger Mosque.”²⁵⁰ Jewish anger intensified with the commencement of a new *zikr* ceremony in the southern end of the courtyard. This raucous ritual involved groups of Muslims chanting and clanging cymbals to achieve a mystical state of devotion. For Jews praying just a few meters

²⁴⁶ “Open Letter of November, 1928, from the Va’ad Leumi to the Moslem Community in Palestine,” Ex. 108, *Shaw Report*, 1101-1102.

²⁴⁷ Fannie Fern Andrews, *The Holy Land under Mandate*, Vol. 2 (Boston: Houghton Mifflin, 1931), 252-253.

²⁴⁸ “Extracts from Correspondence between the Palestine Government and the President of the Supreme Moslem Council in Connection with the Wailing Wall,” Ex. 75, *Shaw Report*, 1077.

²⁴⁹ “Minutes of a Meeting Held in the Office of His Excellency the High Commissioner on the 6th of May, 1929,” Ex. 120, *Shaw Report*, 1106-1108.

²⁵⁰ “Letter of the 9th of May, 1929, from Chief Rabbi Kook and Others to the Palestine Government,” Ex. 118, *Shaw Report*, 1105.

away, it was a blatant violation of the status quo and an offense to the site's sanctity. The Mufti meanwhile moved into to a house overlooking the courtyard to watch what the Jews would do.²⁵¹

In mid-June, the Law Officers of the Crown ruled that the Supreme Muslim Council could resume its building operations. Interim-High Commissioner Harry Luke sent a letter to the Supreme Muslim Council informing them of the ruling. However, Luke explained, the ruling had been granted on several conditions: one, the erection of the *zawiyah* and the door could not interfere with Jewish worship; two, the observance of Muslim rituals should not take place in the presence of Jewish worshippers; three, Muslims could not pass through the door during times of Jewish prayer.²⁵² Luke also wrote to the Zionist Executive notifying them of the decision, assuring them that a final determination of the status quo had yet to be made.²⁵³

A few weeks later, the new door was opened in the southern end of the Western Wall courtyard linking it to the interior of the Haram. Foot and animal traffic in the narrow space immediately increased, and it effectively became an extension of Muslim authority outside the walls of the Haram. During the next few months the alley became the stage for daily verbal and physical altercations between Jews and Muslims which, unfortunately, are largely undocumented. Needless to say, Muslims grew continually bolder in their provocations and Jews grew continually angrier at the invasion of their holy place. Chief Rabbi Kook said, "[T]his place, which from early times had been an intimate place for the concentration and deep feelings

²⁵¹ "Testimony of Haj Amin al-Husseini," *Shaw Report*, 530-531.

²⁵² "Letter of the 11th of June, 1929, from the Palestine Government to the President, Supreme Moslem Council, Regarding the Grant of Permission for the Resumption of Building Operations Near the Wailing Wall," Ex. 37, *Shaw Report*, 1046.

²⁵³ "Letter of the 13th of June, 1929, from the Palestine Government to the Palestine Zionist Executive Regarding the Grant of Permission for the Resumption of Building Operations Near the Wailing Wall," Ex. 38, *Shaw Report*, 1046.

of the Jewish heart, has been turned into a highway, open to every passer by[.]”²⁵⁴ Luke would later argue that the new door was actually beneficial for the Jews in that it allowed Muslims to reach the *zawiyah* at the southern end of the alley without forcing them to cross the Wall pavement.²⁵⁵ However, Luke also recognized that all Muslim activity in the courtyard—the door, the *zawiyah*, the *zikr*, and the call to prayer—was all intended to assert their sovereignty over the site.²⁵⁶ For their part, the Jews wanted more than just access to the Western Wall: they also wanted the right to congregational worship and the recognition of the site as effective Jewish property.²⁵⁷

The atmosphere in Jerusalem was tense, and the Jewish and Arab communities were growing more restless. The British police monitored both communities closely. On the Ninth of Av, the traditional day of Jewish mourning for the Temple, a Jewish police officer slipped into Jerusalem’s Yeshurun Synagogue to observe the crowd. After several speeches on defending the Western Wall, he noted that “feeling amongst the congregation was running very high.” At the Wall itself, worshippers packed the courtyard and effectively blocked any lateral movement. Muslims pedestrians nevertheless forced their way through this crowd and berated those Jews who confronted them.

The next day a number of Jewish young men assembled to march to the Wall as a demonstration of Jewish authority at the site. Most belonged to both the Pro-Wailing Wall

²⁵⁴ “Petition, Dated the 4th of August, 1929, from the Chief Rabbi and Others to the Secretary of State for the Colonies,” Ex. 115, *Shaw Report*, 1104.

²⁵⁵ “Testimony of Sir Harry Luke,” *Shaw Report*, 280.

²⁵⁶ *Ibid.*, 281.

²⁵⁷ *Ibid.*, 283.

Committee and the Revisionist Zionist Alliance of Vladimir Jabotinsky.²⁵⁸ A spokesman for the group stated that they were officially protesting the government's failure to protect Jewish rights at the Wall. Several hundred "excited and hot-headed young men" marched to the Wall, raised the Zionist flag, and sang the Zionist anthem. Their leaders read several resolutions and ordered two minutes of silence. Then they exited the Old City, shouting "The Wall is ours!," "Shame on those who profane the holy places," and "Shame on the government."²⁵⁹ Despite the ferocity of their words, police at the scene reported that the group was on the whole "quite well behaved."²⁶⁰ The Mufti watched the entire event from his window.²⁶¹

The next day police met with members of the Arabic press to defuse the expected gush of Arab anger. Arabs indeed flocked to the Wall that evening as "spectators" hoping to stir Jewish passions. Men and boys filled the windows of the *Mahkama* building and shouted at the Jews below. Police officers observing the event described the Arab crowds as "a menace to peace." On Friday August 16, a large group of Muslim men flooded out of al-Aqsa Mosque after midday prayers and proceeded *en masse* to the Buraq. There, they shattered Jewish instruments and burned prayer books.²⁶² A few days later, several Arabs stabbed a Jew to death in a tomato patch

²⁵⁸ Jabotinsky's brand of Zionism had emerged as a competitor to mainstream Zionism in that it advocated unabashed territorial maximalism, Jewish statehood, and mass Jewish immigration from all over the world. For an especially detailed account of Jabotinsky and the evolution of his program in Palestine-Israel, see Yaakov Shavit, *Jabotinsky and the Revisionist Movement, 1925-1948* (New York: Frank Cass & Co., 1988), and Nadav G. Shelef, *Evolving Nationalism: Homeland, Identity, and Religion in Israel, 1925-2005* (Ithaca: Cornell University Press, 2010).

²⁵⁹ That same evening Rabbi Kook received the young men in his home. Kook told them that building the Temple was God's business, not man's, but he was glad to see them interested in the Western Wall as their spiritual heritage. Devotion to the Wall, he reminded them, should not be limited to certain occasions but should inform their entire lives. "Testimony of Rabbi Avraham Kook," *Shaw Report*, 691.

²⁶⁰ "Report of Albert John Kingsley-Heath on the Jewish Demonstrations on the 15th of August, 1929," Ex. 3, *Shaw Report*, 957-958.

²⁶¹ "Testimony of Haj Amin al-Husseini," *Shaw Report*, 503.

²⁶² "Statement of Mr. L. Harrington about the Moslem Demonstration of the 16th of August (Laurence Harrington, Deputy District Superintendent of Police, Jerusalem District)," Ex. 5A, *Shaw Report*, 962-963.

near a soccer field.²⁶³ The next day, a group of Jews attacked Arabs passing through the Jewish quarter.²⁶⁴ Palestine stood on the brink of anarchy, but the British government seemed helpless to quell it.

The following Saturday morning, Jewish worshippers came to the Wall to worship. Arabs again began to walk through the courtyard to demonstrate their authority over the space. Later, Arabs attacked a group of Jews in the Bukharan Quarter of the city.²⁶⁵ The following Friday, August 23, Muslims from around Palestine converged on Jerusalem for midday prayers brandishing sticks and knives. The Mufti arranged for Imam Sa'ad ad-Din to preach to a massive crowd gathered inside al-Aqsa Mosque. Sa'ad ad-Din unsheathed a large sword and launched into a fiery sermon:

If we give way an inch to the Jews in regard to their demands at the Wailing Wall, they will ask for the Mosque of Aqsa; if we give them the Mosque of al-Aqsa, they will demand the Dome of the Rock; if we give them the Dome of the Rock they will demand the whole of Palestine, and having gained the whole of Palestine they will proceed to turn us Arabs out of our country. I ask you now to take the oath of God the Great to swear by your right hand that you will not hesitate to act when called upon to do so, and that you will, if need be, fight for the Faith and the Holy Places to the death.

The crowd became hysteric, and Sa'ad ad-Din seized on their emotion: “[G]o,” he told them, “pounce upon your enemies and kill that you in doing so may obtain Paradise.” A vast crowd surged out of the Haram shouting, “The country is our country and the Jews are our dogs,” and “The religion of Mohammed came with the sword.”²⁶⁶ The crowd fell upon Jews wherever they could be found, killing and maiming without distinction. The violence spread quickly to other

²⁶³ “Testimony of Rabbi Avraham Kook,” *Shaw Report*, 738.

²⁶⁴ “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 504.

²⁶⁵ “Report of Messrs. Binah and Bergman on Events in Jerusalem from the 14th to the 20th of August, 1929,” Ex. 4, *Shaw Report*, 958-962.

²⁶⁶ Keith-Roach, *Pasha of Jerusalem*, 123. However, there were contradictory statements about whether the Muslims shouted violent slogans directed the Jews. Compare the “Statement of Sub-Inspector Langer about the Moslem Demonstration of the 16th of August, 1929,” Ex. 5B, *Shaw Report*, 963-964, with the “Statement of Sub-Inspector Ali Saleh about the Moslem Demonstration of the 16th of August, 1929,” Ex. 5C, *Shaw Report*, 964.

parts of Palestine, and the government stood overwhelmed and powerless. There were only 175 British officers and 1500 policemen in the entire country, most of the latter being either Arab or Jewish. In Hebron, Arabs massacred almost seventy Jews.²⁶⁷ In Safed, they killed almost twenty. In the end, almost three hundred people were killed. It took five warships, three infantry battalions, several squadrons of armored cars, and a squadron of RAF airplanes to regain order.²⁶⁸ In the end, 133 Jews lay dead and 198 wounded.

The British were shocked at the display of barbarity. Indictments were brought against those who were directly responsible. Almost a thousand Arabs were charged and sentenced, and seventeen capital sentences were handed down.²⁶⁹ The government imposed collective fines on towns and villages that condoned the riots, and requested 100 new recruits for Palestine's police force. High Commissioner Chancellor cabled London reporting that the conflict at the Wall was ultimately "irreconcilable" through legislation or executive order. He called for the immediate establishment of the Holy Places Commission described in Article 14 of the Mandate, feeling that no other judicial body had the authority and credibility to deal with the issue.²⁷⁰ The Secretary of State for the Colonies responded by appointing a British commission to investigate the immediate causes of the riots, and called upon the League to establish the Holy Places Commission immediately.²⁷¹

²⁶⁷ Some Arabs, however, bravely risked their lives to shield Jewish neighbors from violence and thereby saved their lives. See Jerold S. Auerbach, *Hebron Jews: Memory and Conflict in the Land of Israel* (Lanham: Rowman & Littlefield, 2009), 72.

²⁶⁸ Colonial Office, The Situation in Palestine, Sept. 6, 1929, CAB/24/205, at 1.

²⁶⁹ Mandatory Report to the League of Nations, sec. 11 (1929)

²⁷⁰ Chancellor noted that the Vatican might once again frustrate attempts to establish the commission, but he believed that its reservations might be withdrawn since the Western Wall held no significance for Christianity. Telegram from the High Commissioner for Palestine to the Secretary of State for the Colonies, Sept. 4, 1929, CAB/24/205, at 3-4.

²⁷¹ Colonial Office, The Situation in Palestine, Sept. 6, 1929, CAB/24/205, at 2.

Most of Palestine's Arabs denied any responsibility for the violence. One group of Muslim and Christian lawyers claimed that the Arabs were in fact the real victims of the episode. Arab rioters had been "armed [only] with the weapon of Right and of the conviction that they defended the sanctities, their religious and political rights, their national dignity." Jewish crimes against the Arabs were much worse.²⁷² A declaration from the Society for the Protection of the Mosque Al-Aqsa and the Moslem Holy Places similarly blamed the Jews for provoking the Muslims and causing the riots.²⁷³ The tension had not abated. Secret shipments of arms were arriving from sympathizers abroad for both Arabs and Jews. British intelligence uncovered the existence of an Arab assassination team known as the "Boycott Committee" created by members of the Supreme Muslim Council to kill Arabs acting against "Arab national interests."²⁷⁴ Other private militias were being organized in Arab towns and villages to repel the Jews and rise up against the British. The Arabs were in a "state of extreme excitement that approximated to a revolutionary disposition."²⁷⁵ The Muslim regime in Jerusalem meanwhile felt untouchable, knowing that their vast constituency in Palestine would follow their lead and that Arab states outside would come to their defense.²⁷⁶ The High Commissioner begged the War Office to keep additional troops in Palestine despite financial worries, noting that money could not rank above protecting the Jews.²⁷⁷

The British government spent the following months in heated debate over how to fix Palestine. The riots had proved that the current system was unworkable. The mixed Arab and

²⁷² "Arab Lawyers' Protest against Proclamation Issued by the High Commissioner for Palestine on the 1st of September, 1929," Ex. 23, *Shaw Report*, 1036-1037.

²⁷³ "Declaration on the Wailing Wall Incidents by the Society for the Protection of the Mosque Al Aqsa and the Moslem Holy Places," Ex. 22, *Shaw Report*, 1036.

²⁷⁴ Cabinet, Secret Intelligence Reports, CAB/24/207, at 7.

²⁷⁵ Police Report for Week Ending October 26, CAB/24/207, at 6.

²⁷⁶ High Commissioner's Telegram No. 189, Sept. 16, 1929, CAB/24/207, at 2.

²⁷⁷ High Commissioner's Telegram No. 204, Sept. 19, 1929, CAB/24/207, at 2.

Jewish police force had to be scrapped since neither side could be relied upon in a crisis. This force had been “practically valueless” during the riots—in the words of one official, a sword more likely to “pierce one’s own hand.”²⁷⁸ Subsequent investigations revealed British intelligence failures to be also responsible for the riots.²⁷⁹ The commission created to probe the immediate causes of the riots convened in Palestine in late October, headed by former colonial judge Sir Walter Shaw.²⁸⁰ The “Shaw Commission” had no authority to determine final rights at the Wall—these were to be left for the international Holy Places Commission that was still anticipated by many.²⁸¹

Haj Amin al-Husseini was summoned before the tribunal to explain his role in the riots. He denied any responsibility and likewise denied using *waqf* funds to bribe Arab journalists to write articles that fueled the riots.²⁸² The pressure to revolt, he claimed, had come from the bottom up.²⁸³ He deflected questions about his application for visas from Turkey, Greece, Italy, Romania, and Syria before the riots.²⁸⁴ The British, he insisted, should take the entire blame. Their adherence to the Balfour Declaration, their failure to establish a national parliament, and

²⁷⁸ Evidence of Brigadier Dobbie Given before the Chairman and Members of the Palestine Commission of Inquiry *in camera* on Wednesday, November 6, 1929, CAB/24/214, at 15-16.

²⁷⁹ Committee of Imperial Defence, Palestine—Situation In, Dec. 20, 1929, CAB/24/209.

²⁸⁰ Sir John Chancellor was concerned about the outcome of the Shaw Commission and the interim maintenance of law and order. “I hope that the Arabs will remain quiet during the inquiry,” he wrote, “but I am quite certain of this, that unless as the result of the inquiry of the Commission, they obtain some concessions and the ambitions of the Zionists are curbed, there will be a rebellion. That is the opinion of people who know the country best.” Letter from High Commissioner to Sir J. Shuckburgh, Oct. 18, 1929, CAB/24/207, at 4.

²⁸⁰ “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 494.

²⁸¹ *Ibid.*, 494-495.

²⁸² *Ibid.*, 528.

²⁸³ *Ibid.*, 510.

²⁸⁴ These attempts to secure exit from the country seemed to support the allegation that the riots had been premeditated, and that the Mufti had incited them (or at least condoned them) with plans to flee if things got out of hand. *Ibid.*, 504-505.

their refusal to honor the McMahon-Husseini agreements provided the fundamental causes for Palestine's instability.²⁸⁵

Haj Amin emphasized the Muslim community's autonomy and authority over its holy sites. As the sole owner of both of the Haram and the Buraq, Muslims had the power to exclude whomever they wished from these sites. As leader of the Muslim community, Haj Amin—not the British government—exercised sole jurisdiction over the Haram.²⁸⁶ He also controlled the *zawiyah*, the *waqf*, the street connecting the Haram with the courtyard, and all the houses around it.²⁸⁷ This zone of religious authority, he argued, stood above the British government. His vision of Muslim sovereignty was built on two ideological premises: first, the Haram as the nucleus of Palestine's cosmic sanctity; and, secondly, the Haram as the cornerstone of Arab independence. The Haram was, true to its name, a *place set apart* for Allah and his worshippers.²⁸⁸ The Buraq, by its connection to the Haram, enjoyed the same sanctity. Jewish aggression at the site had initiated a Muslim reaction only because the latter felt its sanctity had been violated.²⁸⁹

²⁸⁵ The Mufti stated, "The policy which the Government of Palestine has actually adopted in this country, which is an Arab country, under such economic conditions, political conditions and social conditions as will make of it a home for another nation which will come from various parts of the world in order to compete with the actual inhabitants of the country and actually take their place, gradually get hold of the land, and introduce immigrants to the country to such an extent that the country cannot absorb them. Many of them are communistic, many of them have social principles inconsistent with the circumstances and conditions prevailing in this holy land. Their number will be in excess of the Arab inhabitants here, thus making the Arabs a minority. In short, I would say that the policy adopted in Palestine is a policy of the annihilation of one section of the community in the interests of another." Ibid., 514.

²⁸⁶ Ibid., 534.

²⁸⁷ Ibid., 531.

²⁸⁸ The Arabic word *haram*, derived from the root "forbidden," is a term from Islamic urban planning that denotes a supremely holy place and inviolate "safe zone" where God's authority supersedes human law and where violence is prohibited.

²⁸⁹ The holiness of the Buraq, according to Haj Amin, derived from a penumbra of sanctity that emanated outward from the Haram and sanctified objects in proportion to their distance from the center. Ibid., 494. On cross examination, opposing counsel pointed out that Arabs often led donkeys through the Wall courtyard, an act absolutely forbidden inside the Haram. Furthermore, Muslims frequently smoked at the site. The Mufti answered that the Buraq's "holiness is not the same as that of the Haram area" due to its distance from the sacred rock. Ibid., 530.

Kupferschmidt claims that the Mufti's interest in the Buraq was mere political opportunism. However, Kupferschmidt undermines his own argument by acknowledging that appeals for the defense of the Haram took place as early as 1922—long before the riots or any real indication of Jewish power at the Western Wall. Kupferschmidt also notes that the Buraq was mentioned in the very first official statement of the Supreme Muslim Council, and that squabbles over the Wall had often taken place before 1928.²⁹⁰ Kupferschmidt attempts to dismiss these earlier events as “predominantly technical problem[s] of trespassing rights” without explaining the basis for this distinction. He claims that Haj Amin was merely “playing up and misrepresenting utterances by Jewish personalities,” and that his religious rhetoric about defending the Haram from Jewish aggression was simply political propaganda.²⁹¹ Kupferschmidt, like many scholars, relies on arbitrary distinctions between politics and religion. I would argue that in the case of Mandate Palestine such distinctions are impossible to make.

I would also argue that the Mufti and the Muslim community genuinely believed that the Jews wanted to take the Haram.²⁹² The findings of the Shaw Commission and statements of the then-High Commissioner of Palestine seem to substantiate this argument.²⁹³ The Mufti described Muslim feeling before the riots as one of “grave anxiety” marked by a conviction that their “civil

²⁹⁰ For a fuller description of the many conflicts that arose over the Western Wall between 1917 and 1929, see Lundsten, “Wall Politics”; also Report of the International Commission on the Wailing Wall (1930), 49-52.

²⁹¹ Kupferschmidt, *The Supreme Muslim Council*, 237-240.

²⁹² “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 515; Philip Mattar, “The Role of the Mufti of Jerusalem in the Political Struggle over the Western Wall,” *Middle Eastern Studies*, Vol. 19, No. 1 (Jan., 1983), 110. Emir Faisal, the would-be king of Syria-Palestine and later the King of Iraq, noted as early as 1918 that “people who regard themselves as civilized” in Jerusalem were warning him that the Jews were planning to destroy the Haram and rebuild their ancient Temple. *Jewish Chronicle*, Jan. 3, 1919, at 20, quoted in M. Perlmann, “Chapters of Arab-Jewish Diplomacy, 1918-1922,” *Jewish Social Studies*, Vol. 6, No. 2 (Apr., 1944), 134.

²⁹³ Palestine: High Commissioner's Views on Policy, Jan. 17, 1930, CAB/24/211, at 7. High Commissioner Chancellor noted that some Jews did in fact want to possess the Haram. With respect to a statement released by the Zionist Executive denying Jewish plans for the Haram, Chancellor wrote, “It may be noted that the Government were made aware that the publication of a communique by the Jews disclaiming any aspirations towards the Harem itself might be embarrassing since such a statement would not be accepted by all Jews.” *Ibid.*, 28.

and religious rights” were “in danger.”²⁹⁴ Muslims had seen pictures printed by Jews displaying the Zionist emblem emblazoned over the Haram.²⁹⁵ They had read the 1911 Encyclopedia Britannica article on “Zionism” that spoke of the movement’s desire to rebuild the Jewish temple. They had read speeches in which prominent Zionists had openly declared their desire to possess the Mount and make it the center of the national home. They noticed Jewish visitors at the Wall change from Orthodox old men to aggressive and secular youth.²⁹⁶ These trends convinced Arabs that the Zionists were planning to take the Haram.²⁹⁷ Years after the riots, Haj Amin remained convinced of this conspiracy.²⁹⁸ Whether the Zionists wanted to take the Haram immediately or some day in the future was irrelevant to him. The Zionists planned to take all of Palestine because “the only place they would gather is round the Temple of Solomon. . . . Other countries richer than this country were offered to the Jews and they refused to take them, and the Jews fell upon Palestine because of the presence of this holy place in Palestine.”²⁹⁹ This statement was not as paranoid as it seems. While most Zionists truthfully had no interest in possessing the Temple Mount, some did in fact wish to make it the center of Jewish national life.

The riots revealed the government’s inability to restrict Muslim autonomy in the Haram. Harry Luke, the interim High Commissioner, was called before the Shaw Commission and asked why he had not stopped Muslim rioters as they exited the Haram. Luke denied his ability to do so, since it would have involved the use of force either inside the Haram or very close to it. Because there was an exceptionally large group of Muslims in Jerusalem that day, such an act

²⁹⁴ “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 495-496.

²⁹⁵ Lundquist, *Temple of Jerusalem*, 203.

²⁹⁶ “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 502.

²⁹⁷ *Ibid.*, 497.

²⁹⁸ Haj Amin al-Husseini, “The Solutions Presented by Britain Were a Chain of Deceit,” in Elpeleg (ed.), *Through the Eyes of the Mufti*, 24.

²⁹⁹ “Testimony of Haj Amin al-Husseini,” *Shaw Report*, 499.

was sure to lead to “conflict and inevitable bloodshed.” Of course, the effect on worldwide Muslim opinion was “impossible to forecast.”³⁰⁰ Luke insisted that his police could not have stopped the Muslims without putting themselves in danger and violating the sanctity of the Haram. “[W]ell,” said Luke, “there was no knowing what the result or consequences of that might be.”³⁰¹

The final report of the Shaw Commission suggested for the first time that the Balfour Declaration and Arab opposition to it were the fundamental causes of instability in Palestine. Although other factors had proximately caused the riots—most notably the Jewish demonstration at the Wall and the incendiary Arabic reaction—the wider clash between Jewish and Arab nationalism was underlying catalyst. The British placed some of the blame on the League of Nations for delaying the establishment of the Holy Places Commission. Early creation of this body would have obviated the chance that tensions at the site would have gotten so out of hand. League officials adamantly denied this charge, and one member on the Permanent Mandates Commission rebuked the British for airing inter-Christian quarrels. “Was it giving a good example to Arabs and Jews in Palestine to allow them to witness the difficulties raised by Christian Powers in regard to the appointment of this Commission?” the official asked.³⁰²

In mid-1930, a bastardized version of the much-awaited Holy Places Commission convened in Palestine. While international in character, this commission was not the same entity envisioned by Article 14. Instead, this “International Commission for the Wailing Wall” was an *ad hoc* body tasked with determining rights at the Western Wall only. Comprised of three judges, all of which were from Christian nations (Switzerland, Sweden, and the Netherlands), the

³⁰⁰ “Testimony of Sir Harry Luke,” *Shaw Report*, 270.

³⁰¹ *Ibid.*, 286.

³⁰² Minutes of the Seventeenth (Extraordinary) Session of the Permanent Mandates Commission, June 7, 1930.

commission's legitimacy was suspect from the beginning. Muslims denied that it had jurisdiction over the subject matter since only an Islamic court could rule on the status of a Muslim holy place.³⁰³ Nevertheless, the Supreme Muslim Council organized a legal team to argue its case before the commission, as did the Zionists. The commission sat for a month and heard the testimony of fifty-two witnesses. In the end, it ruled that the Muslims had absolute ownership of the site; the Jews had the right of access and worship established by ancient custom; the Jews were entitled to bring objects of worship to the Wall but not furniture; Muslims were prohibited from building during times of Jewish worship and from interfering with such worship; the Jews were prohibited from blowing the *shofar*; and political speechmaking of any kind was forbidden.³⁰⁴

The Wailing Wall riots marked a major turning point in the history of Palestine.³⁰⁵ They convinced the Jews that they alone were responsible for protecting themselves. The British, despite their many promises, appeared either unwilling or unable to safeguard the Jewish national home. The riots also catapulted the Arab Muslim regime inside the Haram to the peak of its power and influence. Haj Amin al-Husseini emerged from the riots with little more than a slap on the wrist, and his popularity soared at home and abroad. Yet a sizeable segment of the Muslim community in Palestine resented his authority and organized to oppose him. The Mufti would not go quietly, however, and organized his ranks for battle. Thus began a protracted gang

³⁰³ Bentwich, *A Wanderer in the Promised Land*, 70; *Report of the International Commission on the Wailing Wall*, 19.

³⁰⁴ *Report of the International Commission on the Wailing Wall*, 57-61.

³⁰⁵ Michael Brenner, *Zionism: A Brief History*. Transl. by Shelley L. Frisch (Princeton: Markus Weiner, 2003), 143; Elie Podeh, *The Arab-Israeli Conflict in Israeli History Textbooks 1948-2000* (Westport: Greenwood, 2002), 97; Wasserstein, *Divided Jerusalem*, 327; Gershom Gorenberg, *End of Days: Fundamentalism and the Struggle for the Temple Mount* (Oxford: Oxford University Press, 2001), 83; Avraham Sela, "The 'Wailing Wall' Riots (1929) as a Watershed in the Palestine Conflict," *The Muslim World*, Vol. 84, No. 1-2 (April 1994), 60-94; Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881-1948* (Oxford: Oxford University Press, 1992), 129.

war between the Husseinis and the Nashashibis, the two rivals for Arab power in Palestine. Not long after the riots, the Mufti closed the Haram to non-Muslims and reinforced his control over the space.³⁰⁶ The final, tragic chapter of the Mandate had begun.

³⁰⁶ Kupferschmidt, *The Supreme Muslim Council*, 237.

*The land of Israel sits at the center of the world, Jerusalem at the center of the land of Israel, the Temple at the center of Jerusalem, the Holy Place at the center of the Temple, the Ark at the center of the Holy Place, and before the Ark the Foundation Stone from which the world was created.*³⁰⁷

V. FEAR OF THE SANCTUARY

The use of holy sites as sanctuaries from the law has not been given the attention it deserves.³⁰⁸ It has long been recognized that juridical authority can be limited by certain subject matter. In the Anglo-American tradition, for example, issues of excessive political import are habitually dismissed by courts in deference to the political branches of government. Religion, too, is often treated deferentially. Holy sites are given especially wide berth by secular authorities hoping to avoid religious quarrels. This abdication of secular power creates a zone of traditional authority that exists concurrently with, and sometimes in defiance of, the authority of the sovereign. Physical autonomy inside holy sites, whether *de jure* or *de facto*, endows traditional leaders with religious legitimacy. These leaders and their followers guard these sites jealously to preserve their authority against foreign intrusion.³⁰⁹

³⁰⁷ *Midrash Tanchuma* 10.

³⁰⁸ The word *sanctuary* comes from the Latin word *sanctuarium* denoting a “holy place” or “shrine.” It suggests a physical location where the normal rules of governance do not apply. This idea of a sacred asylum from law is an old one, and is shared by many cultures around the world. One scholar explains it as “the ancient belief that holy places, by virtue of their sacred nature, are inviolable by pursuing mortals.” Julie A. Mertus, “Ecclesiastical Sanctuary: Worshipers’ Legitimate Expectation of Privacy,” *Yale Law & Policy Review*, Vol. 5, No. 2 (Spring-Summer, 1987), 493-513.

³⁰⁹ Ron E. Hassner argues that sacred sites are highly prone to conflict because they are equally valuable to both religious and political actors. Believers want control over holy sites to access the divine, while political actors want control over the sites to control believers. Religion in this way is “inextricably intertwined” with politics. Hassner’s observation is important for deconstructing the common historiographical distinction between “political” and “religious” motives. Such a distinction may indeed be impossible to make with respect to holy places, especially in a place as spiritually charged as Palestine. Hassner is inherently pessimistic about the prospects of resolving conflicts over sacred space. He believes that only religious leaders with extraordinary authority can initiate paradigm shifts in religious thinking and thus alter the status quo. He criticizes the “dangerously misguided” optimism of colleagues who advocate for policymaking based on hopes for religious coexistence. History has shown, Hassner claims, that such coexistence is not possible. To believe anything else is “nothing short of baffling.” Those who govern sacred space must follow a policy of separation, not forced coexistence, if they want to ensure order. Ron E. Hassner, “The Pessimist’s Guide to Religious Coexistence,” 145-157. For examples of the literature to which Hassner is responding, see William T. Cavanaugh, *The Myth of Religious Violence: Secular*

This chapter examines the last segment of Mandate history and focuses on the Jewish perspective of the Temple Mount, both as a cornerstone for redemption and as an Arab refuge from colonial law. Ultimately, I argue that the site's exemption from British law simultaneously exacerbated the Arab revolt (1936-1939) and encouraged the rise of Jewish rebellion.

A. Cornerstone for Redemption

Jewish history cannot be fully understood apart from the binary concept of exile/redemption. The idea of exile, or *galut*, is woven throughout Jewish history beginning with slavery in Egypt, moving through captivity in Assyria and Babylon, and culminating in the expulsion from Palestine by the Romans. For almost two thousand years Jews saw themselves as a nation in exile, banished from their homeland on account of their sins.³¹⁰ In exile they awaited redemption—a concept quite murky and contested by the various branches of the Jewish world. Orthodox Jews, the majority of world Jewry, had long believed that redemption would only come with Messiah. Until then, they were content to wait patiently. Zionists on the other hand viewed redemption as return to the land of Israel and a proactive revival of Jewish national life. Zionists were largely secular or non-observant, and even though influenced by ideas of exile/redemption they did not embrace the “passivity” of exile.

The idea of rebuilding the Jewish temple was a main tenet of traditional redemption. Indeed, it had been the professed hope of Jews everywhere since the beginning of exile. Three times a day for almost two thousand years, Jews had prayed, “Be favorable, oh Lord our God, to your

Ideology and the Roots of Modern Conflict (Oxford: Oxford University Press, 2009); Douglas Johnston (ed.), *Faith-Based Diplomacy: Trumping Realpolitik* (Oxford: Oxford University Press, 2003); Marc Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford: Oxford University Press, 2002), 75-91.

³¹⁰ The traditional *Musaf Amidah* prayer reads, “*U-mipnei hata'einu galinu me-artzenu*” (“Because of our sins we were exiled from our land”). See also Nadich, *Jewish Legends of the Second Commonwealth*, 365-367.

people Israel and their prayer, and restore the service of the Holy of Holies of Your House, and accept the fire-offerings of Israel and their prayer with love and favor.” Maimonides, one of Judaism’s foremost philosophers, dedicated a significant amount of his *Mishneh Torah* to the expected resumption of Temple worship.³¹¹ In the late nineteenth century, Rabbi Zvi Hirsch Kalischer published a popular book called *Drishat Zion* in which he called for a corporate return to Jerusalem and the reinstatement of animal sacrifices.³¹² Most traditional Jews, however, remained convinced that the messianic age could not be hastened, and that Jews could not build the Temple without divine sanction. In any event, it was obvious that the Temple Mount was occupied by the Muslims.

But this did not mean that Jews were uninterested in the Temple Mount. In fact, most still looked upon it as their holiest site and awaited the day when it would become theirs alone. Zionism, a secular anomaly in Jewish history, had no interest in resuming the old sacrificial system.³¹³ But even secular Zionists understood that rebuilding the Temple would prompt a quantum leap in Jewish evolution.³¹⁴ Herzl himself had envisioned a third Temple in his utopian novel *Old-New Land*, but, true to his assimilated worldview, described it simply as a large synagogue constructed on some other hilltop in Jerusalem. Religious Zionists meanwhile longed for the return of the Temple. Rabbi Yitzhak ha-Cohen Kook, the father of Religious Zionism, said, “The Holy Sanctum is consecrated to Israel for ever, and it should in the end

³¹¹ Maimonides, *Mishneh Torah*, Books VIII-X.

³¹² Rabbi Tzvi Hirsch Kaslischer, *Sefer Drishat Tziyon* (Jerusalem, 1919).

³¹³ Wasserstein, *Divided Jerusalem*, 110-112, 124-125; Tamar Mayer, “Jerusalem In and Out of Focus: The City in Zionist Ideology,” in Tamar Mayer & Suleiman Ali Mourad, *Jerusalem: Idea and Reality* (New York: Routledge, 2008), 224-226.

Karen Armstrong, “The Holiness of Jerusalem,” in Akash & Moughrabi (eds.), *The Open Veins of Jerusalem*, 52-53.

³¹⁴ In 1921, British Minister of Health Sir Alfred Mond—one of London’s wealthiest Jews—called upon the Palestine Foundation Fund to erect a new “edifice” on the Temple Mount that would testify to the legacy of Solomon’s Temple. Lundsten, “Wall Politics,” 9.

revert to Israel and the Temple be rebuilt with great splendor, as promised by the Prophet Ezekiel.’’³¹⁵

During the proceedings of the Shaw Commission, Chief Rabbi Kook was asked his views on rebuilding the Jewish temple. He explained to the panel that this was an otherworldly idea tied to the coming of Messiah. Messiah, he said, would usher in the “final aim of redemption”: the building of the third Temple as a house of prayer for all nations. In the meantime, it could never be built through human effort alone. He explained to the commission the principle of *Mora Mikdash*. This *halakhic* (Jewish religious-legal) principle demanded that Jews refrain from entering the Temple Mount for “fear of the Sanctuary” because they were in a ritually impure state. Treading upon on the Holy of Holies in this state would transgress the site’s divine sanctity and call down a curse of death.³¹⁶ “In accordance with the commands in the Torah,” Kook said, “we are not even allowed, until the day of redemption...to enter the area surrounding the Holy Temple[.]”³¹⁷ On the other hand, he added dubiously, the Jews *were* under a command to settle and improve the land of their fathers.³¹⁸

Motti Inbari claims that Kook saw rebuilding the Temple as a main objective of Zionism. National redemption could only occur when the ancient center of the nation was reactivated in the service of God. There seems to be evidence to support Inbari’s assertion. In 1921, only a few years after the Balfour Declaration, Kook founded Torat ha-Cohanim Yeshiva in the Muslim

³¹⁵ Keith-Roach, *Pasha of Jerusalem*, 119.

³¹⁶ For a more detailed *halakhic* explanation of Jewish entry to the Temple Mount, see Gedalia Meyer & Henoah Messner, “Entering the Temple Mount—in Halacha and Jewish History,” *Hakirah*, Vol. 10 (Summer 2010), 29-72; and Zalman Koren, “The Temple Mount,” in Extra Rosenfeld & Binyamin Tabory (eds.), *Crossroads: Halacha and the Modern World* (Jerusalem: Zomet, 1987), 233-243.

³¹⁷ Segel has doubted that Kook truly believed this statement, and argues that it was made only to mollify Arabs who firmly believed the Jews wanted to take the Temple Mount. Elitzur Segel, “Da’at Meren ha-Ra’ya Kook al Binyan Beit ha-Mikdash be-Yameinu,” *Tehumin*, Vol. 11, 532.

³¹⁸ “Testimony of Rabbi Avraham Kook,” *Shaw Report*, 687.

quarter of the Old City to prepare young priests and Levites to perform the sacrificial rituals. The yeshiva's curriculum focused on the much-neglected Talmudic tractate of *Kodashim* which laid out the painstaking details of the Temple service. Inbari traces Kook's influences back to rabbis like Tzvi Hirsch Kalischer, the Chafetz Chaim, and Chaim Hirschenson. These thinkers all played a part in the new Jewish discourse that anticipated, subtly or overtly, retaking the Temple Mount and returning to ancient Judaism.³¹⁹ Nevertheless, Kook refused to enter the Mount due to *Mora Mikdash*. One day the world would recognize Jewish rights on the Mount—only then could the Temple be rebuilt.³²⁰

Unable to claim the sacred rock, Jews turned to the Western Wall as Judaism's next holiest site. Rabbi Kook told the Shaw Commission that the Wall was “more sacred than all the Synagogues that exist throughout the world,” and was “the only place where every Jew can come and bare his soul for the destruction of the ancient glory of Israel.” With respect to holiness, the Western Wall possessed the “same sanctity as that which pertains to the Holy Temple.”³²¹ The dispute with the Arabs, Kook claimed, was an unfortunate turn of events not connected to a Jewish desire to take the Mount.³²² He believed that the government should have forced an

³¹⁹ Motti Inbari, *Jewish Fundamentalism and the Temple Mount* (Albany: SUNY Press, 2009), 4-6. Despite their desire to possess the Temple Mount, whether to rebuild the Temple or restore national pride, the Jews of Mandate Palestine universally respected *Mora Mikdash*. Given the ancient Jewish longing for the site, this restraint is quite remarkable. There does not seem to be a single instance of a Jew entering the Haram intentionally. Even Religious Zionists did not advocate seizing the Mount by force. Some day it and all the other holy sites in Palestine would belong to the Jews. “Avodato shel ha-Rav Kook be-Dvar ha-P'raot be-Eretz Israel,” *Ha-Zfira*, June 28, 1920, at 3. Until then, they would wait and pray at the Western Wall.

³²⁰ Inbari, *Fundamentalism and the Temple Mount*, 18-21.

³²¹ “Testimony of Rabbi Avraham Kook,” *Shaw Report*, 739.

³²² “We always hoped that we should continue to remain in peace with the Arabs. The greatest sign of our attitude of respect and reverence to the Moslem Mosque, to the place of the sacred Temple is that we stand in the corridor far away from it and we are expressing our devotions to it.” *Ibid.*, 741.

exchange of the Western Wall for another *waqf* property and provided fair compensation to the Muslims who owned it.³²³ That the government had not done so showed a lack of resolve.

The Wailing Wall riots left “an almost complete social cleavage” between Jews and the British government.³²⁴ Mistrust of the British and their ability (or desire) to protect the Jewish community stimulated a strong turn toward self-determination. A welcomed side-effect was the long-awaited reconciliation between Zionist and non-Zionist Jews. In November 1928, Chaim Weizmann and Louis Marshall reached an agreement on the nonpartisan development of Palestine that was formalized at the next Zionist congress in late 1929.³²⁵ The main effect of the riots was a growing conviction among Jews that the Western Wall was a crucial part of national redemption. One night shortly after the riots, Zionist leader Menachem Ussishkin traversed the dark alleys of Jerusalem to visit the Wall. Ussishkin was one of many Jews who were not devout in observance of Jewish law but were strongly sentimental toward Jewish tradition. For these Jews, possession of the Western Wall still represented the ultimate sign of Jewish redemption. Ussishkin’s narrative is rather moving:

And so I stood before the Wall. The sight surrounding this relic of our past always troubles my spirit. This time my spirit was even more troubled inside me at the sight before my eyes. The Wall, a reminder of our great and illustrious past, the lone relic of our Holy Place—there were only two Jews standing before it: the *shammash* and myself. The whole courtyard in front of the Wall was full of British policemen. Above, beside the gate leading into the Mosque of Omar—the place of the Temple—Arabs stood gazing down upon the Jewish desolation. I stood there silently in my sorrow and reminisced on days of old. Two thousand years ago that entire courtyard was bustling with Jews from all over the land. Upon the gate there was written in Latin and Greek a warning to foreigners forbidding them to approach the Temple. So too the rulers of the world in those days, the Romans, were permitted to approach the gate but no farther. Now once again the rulers of the world stand [there] but we, the people of Israel, are not permitted to go up to our Holy Place. Instead we are treated as foreigners.

³²³ *Ibid.*, 742.

³²⁴ Storrs, *Memoirs*, 394.

³²⁵ Mandatory Report to the League of Nations, sec. 24 (1929).

As Ussishkin stood there lost in his thoughts, an old man entered the courtyard. The man approached the Wall reverently and leaned his head solemnly against its massive stones. The man was Rabbi Chaim Zonnenfeld, the leader of Jerusalem's ultra-Orthodox community. Zonnenfeld noticed Ussishkin and his troubled expression, and assured him that there was no need to despair. Ussishkin was encouraged by Zonnenfeld's words:

We will achieve our goals. We won't enter our Holy Place through narrow alleys with lowered heads, but like a king standing tall. Keep working hard and maybe soon, in our days, we will succeed in seeing the real redemption.³²⁶

In the years that followed, the Western Wall became increasingly important for Jewish nationalism. A young man named Moshe Segal visited the Wall courtyard to pray on Yom Kippur of 1930. Segal had participated in the Jewish demonstration at the Wall just before the riots, and like many Zionists carried an equal blend of nationalism and religious sentiment. He knew that the International Commission on the Wailing Wall had prohibited the blowing of the *shofar*, and he saw the policemen positioned all over the courtyard to prevent the act. "I...thought to myself: Can we possibly forgo the sounding of the shofar that accompanies our proclamation of the sovereignty of God? Can we possibly forgo the sounding of the shofar, which symbolizes the redemption of Israel?" He found a *shofar*, blew the traditional blast, and was arrested immediately.³²⁷ For the next eighteen years, young Jewish men imitated Segal's act

³²⁶ Menachem Ussishkin, "Al Yad ha-Kotel," in Pinchas Ben Tzvi Grayevsky, *Sippurei Kotel Ha-Ma'aravi* (Jerusalem: Zuckerman, 1936), 13-16.

³²⁷ In the seconds before Segal blew the shofar, there was a moment when he remained concealed under his prayer shawl standing before the Wall of God. Segal's impression of that moment illustrates his conception of what may be termed divine sovereignty: "I wrapped myself in the *tallit* [prayer shawl]. At that moment, I felt that I had created my own private domain. All around me, a foreign government prevails, ruling over the people of Israel even on their holiest day and at their holiest place, and we are not free to serve our G-d; but under this *tallit* is another domain. Here I am under no dominion save that of my Father in Heaven; here I shall do as He commands me, and no force on earth will stop me." This portrayal of divine power surrounded by hostile forces was intrinsic to the Jewish gaze upon the Wall. Secular law, whether international or mandatory, could not change this fundamental fact. Moshe

of courage by blowing the *shofar* at the Wall every Yom Kippur. Although they were arrested each time, these young men did not regret “staking our claim on the holiest of our possessions.”³²⁸

Although they would not fully blossom until after 1967, trends were developing in Jewish religious thought that seemed to disregard the old principle of *Mora Mikdash*. In May 1924, Rabbi Kook had visited a rabbinical assembly in America and proposed a revival of the old Sanhedrin, or Jewish supreme court.³²⁹ His proposal was rather radical considering that such a court had not existed for almost two millennia. Yet this was not the first time that Kook had suggested reviving an ancient Jewish religious institution. In 1922, a Christian newspaper in Britain had reported on the establishment of Kook’s *Torat ha-Cohanim yeshiva*. The Zionist Executive—realizing the potentially explosive nature of the event—contacted Kook for an explanation.³³⁰ Kook’s response was bold:

The foundation of the nation's renewal must be—despite all of its secular manifestations—based on its sanctified source. The inner desire of the nation is to be rooted once again in all matters of holiness. We must continually stress our eternal aspiration that the Temple be rebuilt speedily in our days—openly and with deep faith, without hesitation and misgivings.... [A]though this [*yeshiva*] is entirely and purely an institution for Torah study, its establishment nonetheless contains a hint to the world. The nations should not think that we have even a moment of despair, G-d forbid, of relinquishing our rights to the site of the Temple, the cornerstone of all holy places[.]³³¹

Palestine’s Muslim community was also undergoing ideological transformation. Not least significant was the emergence of a new brand of Islamic fundamentalism among Palestine’s peasant population. In the early 1930s, a charismatic preacher named Sheikh Izz ad-Din al-

Segol, “The Shofar and the Wall,” Chabad.org, http://www.chabad.org/library/article_cdo/aid/2246/jewish/The-Shofar-and-the-Wall.htm.

³²⁸ Ibid.

³²⁹ “Question of Reviving San Hedrin Discussed at Orthodox Rabbi’s Conference,” *JTA*, May 14, 1924.

³³⁰ “Itton Angli al D’var Yeshivat Torat Kohanim,” *Doar Ha-Yom*, Jan. 18, 1922, at 3.

³³¹ Avraham Yitzhak ha-Cohen Kook, *Zikhron Ra’yah* (Jerusalem: Mossad ha-Rav Kook, 1986), 15.

Qassam captured their attention with his call for a return to “pure Islam” as the only way to cast off British and Jewish rule.³³² Although the Supreme Muslim Council distanced itself from al-Qassam, his fiery rhetoric influenced every corner of Palestine’s Arab community. Edward Keith-Roach noted a growing militancy in certain sectors of Muslim society. “In their war against Jews,” he noted, “they sincerely felt that they were waging a holy war and that their reward in heaven would be great.”³³³

Serious rifts split the Muslim community, however. The Mufti’s subversive activities were far from universally supported by Palestine’s Muslims, and a significant faction led by the Nashashibi clan openly flouted his authority. The battle lines were drawn between the *Majlisiyyun*, or supporters of the Mufti and his Supreme Muslim Council, and the *Mu’aridun*, or the Nashashibi opposition.³³⁴ The *Majlisiyyun* were prepared to do anything to remain in power, and recognized that holding the high ground inside the Haram guaranteed their position. The Nashashibis were known as more moderate and had even made tentative gestures of peace toward the Jews.³³⁵ In December 1931, several prominent Muslim figures including the Emir of Transjordan, the Nawab of Bhopal, King Ali of the Hejaz, and Mustafa Pasha Nahas of Egypt met in Jerusalem for a pan-Islamic congress. This congress was quickly divided by the rift

³³²Charles Townshend, “The Defence of Palestine: Insurrection and Public Security, 1936-1939,” *English Historical Review*, Vol. 103, No. 409 (Oct., 1988), 920. Al-Qassam had been born in Syria and attended famed al-Azhar University in Cairo, and had gained a reputation for his military activity against the French. Al-Qassam eventually turned his sights on the British and obtained a *fatwa*, or religious ruling, from a celebrated sheikh condoning violence against British and Jewish targets. He died in the hills near Jenin in 1935, but his boldness and self-sacrifice profoundly influenced Palestinian Arabs. Segev, *One Palestine, Complete*, 360-362; Ted Swedenburg, “Palestinian Peasantry in the Great Revolt,” in Edmund Burke et al (eds.), *Islam, Politics, and Social Movements* (Berkeley: University of California Press, 1990), 189-190.

³³³ Keith-Roach, *Pasha of Jerusalem*, 148.

³³⁴ Wasserstein, “Clipping the Claws of the Colonisers,” 171.

³³⁵ Bentwich, *Mandate Memories*, 195.

between the Palestinian factions. When Haj Amin was elected president of the congress, his opposition openly declared their plans to dethrone him.³³⁶

This intra-Arab divide continued to grow throughout the early 1930s. In May 1932, trustees of a Hebron *waqf* filed a petition in the secular courts against the Supreme Muslim Council alleging mismanagement of funds. Although Court dismissed the claim as unfounded, it is worth nothing that these Hebronites were willing to sue the Supreme Muslim Council in secular court.³³⁷ In 1933, the *Majlisiyyun* and *Mu'aridun* physically clashed inside the Haram just before the Nebi Musa festival.³³⁸ On December 18, 1933, British High Commissioner Sir Arthur Wauchope wrote to the Secretary of State for the Colonies expressing concern over mounting tensions. Palestine, he reported, was pervaded by a “general feeling of hostility.” More violence seemed inevitable. “It is not the present, but the future, that chiefly concerns me,” Wauchope wrote, “and it is equally my duty to express my views on the future as on the present situation.” He called for a restriction on Jewish immigration and stressed the need for representative government.³³⁹ “It does not seem possible to me that the present hostility and widening breach between the Arabs and the British rulers can remain as they are to-day; either

³³⁶ “‘Dethrone Grand Mufti’ Palestine Moslem Opposition Conference Decides,” *JTA*, Dec. 14, 1931; “Moslem Congress in Jerusalem,” *The Times*, Dec. 9, 1931, at 11.

³³⁷ H.C. 23/31 'Ata 'Abdul Fanah Naser Eddin et al v. The President and Members of the Supreme Moslem Council.

³³⁸ “Nebi Musa Quarrel,” *Palestine Post*, Apr. 7, 1933, at 5.

³³⁹ Proposals were floated in 1932 for a Legislative Council as called for by the White Paper of 1930. However, High Commissioner Sir Arthur Wauchope denied the possibility for such a council at that time, and asked his superiors to delay the idea for at least another year and a half. The Jews would never accept it unless they had equal representation with Arabs, and the Arabs would never accept that. Wauchope believed that he could win their participation with more time. The Cabinet accepted his suggestions, and decided to postpone the Legislative Council idea, preferring instead to continue appointing both Jews and Arabs to administrative positions and gradually negotiating with both sides to create some form of representative government. Cabinet, Palestine: Question of Setting Up a Legislative Council, Apr. 13, 1932, CAB/24/229.

we find means to bring ruler and ruled more in sympathy, or the separation and hostility will grow deeper and more permanent each year.”³⁴⁰

Wauchope’s warning was prescient. Three years later, the Arab revolt began. This revolt started as a labor strike but degenerated into violence when its demands were not met. Its main causes lay in Arab dissatisfaction with Zionism, the continued lack of parliamentary government, increased Jewish immigration, and ongoing Jewish land purchases.³⁴¹ With the rise of Adolf Hitler in Germany, the number of Jewish settlers in Palestine had swollen to unprecedented numbers. The Jewish community had quadrupled since 1922, and now comprised almost half the population of Palestine.³⁴² It is not necessary to repeat the exhaustive details of the revolt here. For our purposes, the most important aspect is the how the Haram ash-Sharif helped exacerbate the chaos.

B. Refuge from the Law

The British response to the Arab revolt has been recognized as a textbook example of vacillation.³⁴³ Yet the British cannot take all the blame for the chaos that arose inside the Haram during the revolt. To begin with, contemporary international law required that the British as an occupying power remain outside religious sites except in the most extreme conditions. The Brussels Convention of 1874 prohibited military action against religious institutions.³⁴⁴ The

³⁴⁰ Letter from High Commissioner for Palestine to the Secretary of State for the Colonies, Dec. 18, 1933, CAB/24/247.

³⁴¹ Palestine: Arab Grievances, Jan. 10, 1936, CAB/24/259.

³⁴² Palestine Government, *A Survey of Palestine*, Vol. 1 (1946), 141.

³⁴³ Townshend, “The Defence of Palestine,” 918.

³⁴⁴ Brussels Declaration of 1874, art. 8.

1880 *Laws of War on Land*, authoritative in British military circles, demanded the same.³⁴⁵ The Hague Conventions of 1899 and 1907 did as well, but permitted incursion if the enemy was using the sites for military purposes.³⁴⁶

Beyond the strictly legal aspects, one must acknowledge the power of sacred spaces on their own right. Roger Stump, who has done significant work on the subject, states that sacred spaces are significant because they lie at the intersection of the physical and the transcendent.³⁴⁷ That is, they demarcate areas where heaven and earth meet. In such a space, mortal sovereigns stand powerless—only God rules there. The effective result is a “divine jurisdiction” where secular power is excluded and religious communities are given authority and autonomy of action. Reasonable minds may differ on whether this *de facto* sovereignty derives from actual divine power, human superstition, or fear of offending public opinion. But the fact is that throughout history kings and emperors have frequently shown deference and respect to holy places and their custodians.

If any place on earth had the power to constrain secular authority, it was the Temple Mount. The aura of inviolability that emanated from the site provided Muslims with an autonomy in which to conduct their internal affairs. When the revolt began, this autonomy took on new

³⁴⁵ *The Laws of War on Land*, art. 24 (Oxford, 1880).

³⁴⁶ Hague Convention II of 1899, arts. 27, 56; Hague Convention IV of 1907, arts. 27, 56.

³⁴⁷ Stump has created a “sacred space taxonomy” that distinguishes sacred spaces by their essential character. Under Stump’s rubric, sacred spaces fall into the following categories: 1) cosmological, or the site of a crucial location, real or imagined, within the cosmos (e.g., Heaven); 2) theocentric, where the presence of the divine or superhuman continually dwells; 3) hierophanic, or the setting for a specific religious apparition, revelation, or miracle; 4) historical, in association with initiating events or historical development of a religion; 5) hierenergetic, where the believer may gain access to manifestations of superhuman power and influence; 6) authoritative, or the center of authority as expressed by major religious leaders or elites; and 7) ritual, significant for repeated usage in relation to atmosphere of sanctity. Stump’s taxonomy reveals that although Jews and Muslims both viewed the Mount as sacred, they did so very differently. For example, Jewish tradition saw the Mount as *theocentric* (the place where God lives) while Muslim tradition saw it more as an *authoritative* space (a center of religious, legal, and social authority). This distinction contributes to an understanding of how the two societies approached the space. Stump, *Geography of Religion*, 302-305.

importance—the Haram provided a zone of lawlessness from which the Mufti and his supporters could direct their campaign of anarchy.³⁴⁸ British police withdrew from their posts near the site sometime between 1935 and 1936, recognizing growing hostility inside.³⁴⁹ Throughout much of 1936, Wauchope urged Whitehall not to deport the Mufti for fear that a more radical leader would take his place and “raise the religious cry.” However, by September 1936 Wauchope noted the strength of the opposition and believed the Mufti’s exile would allow moderate Arab leaders to take his place.³⁵⁰ Secretary of State for the Colonies Ormsby-Gore was reluctant to take such drastic action. As a religious leader, the Mufti commanded the respect not only of Palestinian Muslims but of the Islamic world writ large. Deporting him would likely lead to “serious repercussions” worldwide.³⁵¹ No doubt the presence of a vast number of Muslims in Britain’s other dominions influenced Ormsby-Gore’s risk-benefit analysis.

The British tried to enforce law around the margins, but their efforts continually failed. On October 1, 1936, they cut the phone lines to the Haram in an attempt to isolate the Mufti. Two weeks later, they balked and restored service.³⁵² The revolt strengthened as extremist groups began stirring the countryside to violence through the end of 1936 and into 1937.³⁵³ On July 17, 1937, British police raided the offices of the Arab Higher Committee—an interreligious coalition of Arab clans united against Zionism—to arrest known agitators. The Mufti, the Committee’s

³⁴⁸ Porath, *The Palestinian Arab National Movement: From Riots to Rebellion*, Vol. 2, 194-195; “Allegation of Mufti’s Anti-British Activity,” *Palestine Post*, Aug. 26, 1937, at 3.

³⁴⁹ The British government had extensive experience dealing with indigenous cultures and understood the power of holy sites to limit secular authority. In a secret memo written in 1918, one intelligence officer commented on the King Hussein’s dominion in the Hejaz. “King Hussein’s real independence is guaranteed within certain limits by his possession of a holy city [Mecca] which no European may enter. To this extent he is essentially beyond our political control.” Intelligence Bureau, Memorandum on the Formula of “the Self-Determination of Peoples” and the Moslem World, Oct. 1, 1918, CAB/24/39, at 9.

³⁵⁰ Secret Despatch from the High Commissioner for Palestine of September 12, 1936, CAB/24/264.

³⁵¹ Secret Despatch from Secretary of State for the Colonies for Palestine, Oct. 1, 1936, CAB/24/264.

³⁵² “Appointment of Commission to Control Awkaf,” *Palestine Post*, Oct. 19, 1937, at 1.

³⁵³ See Palestine Situation, CAB/24/263;

leader, had already escaped into the Haram.³⁵⁴ The British Cabinet discussed their options in London. Facing pressure from Arab leaders in Iraq and fearing the same religious cry dreaded by Wauchope, the Cabinet decided not to pursue the Mufti. They recognized a basic inability to penetrate the sovereignty of the Haram:

[I]t would not be practicable on political grounds to send Moslem police to effect the arrest of the Mufti within the Haram area; that Moslem police who could be trusted to carry out such a duty were not available; that considerable loss of life would be involved in an arrest by means of forced entry and that a military plan had been drawn up some months ago to surround the Haram area and to enter the Mufti's house, but that now that the Mufti was suspicious the High Commissioner and the General Officer Commanding considered that he would quickly escape into the Mosque of Aksa where it would be impossible to follow him.³⁵⁵

The Mufti continued to operate with impunity and dispatch hit squads from the Haram to eliminate his enemies. Wauchope eventually ordered that the Mufti be arrested, and ordered police to guard the gates of the Haram to regulate access to the complex. He was conscious of growing outrage among Palestine's non-Muslim communities with the Mufti's immunity from the law. "The failure of Government to arrest the Mufti does not appear to have caused any loss of prestige," Wauchope noted tentatively, "but I fear considerable criticism will be roused if time passes and Government is unable to take any steps against the Mufti."³⁵⁶

Outrage was indeed beginning to grow among non-Muslims.³⁵⁷ A writer for the *Palestine Post* angrily condemned the government for allowing the Haram to become a sanctuary for terrorists. "[W]hat is so devastating about these murders...is the terrorist's assurance that he can

³⁵⁴ "Police Raid on Arab Offices," *The Times*, July 18, 1937, at 14.

³⁵⁵ Cabinet Minutes, July 21, 1937, CAB/23/89, at 20-21.

³⁵⁶ Telegram from the High Commissioner for Palestine to the Secretary of State for the Colonies, July 29, 1937, CAB/23/89, at 131-132.

³⁵⁷ An explosion occurred inside the Haram in October 1939 prompting the *Palestine Post* to point out the irony of events: "So much for the impudent libels which have been spread by these same people that the Moslem shrine was threatened by Jewish designs. It stands in far greater danger from the machinations of those who pretend to be the protectors of Islam." "The Old City of Jerusalem." *Palestine Post*, Oct. 18, 1938, at 6.

always make good his escape.” Asylum from law was the central problem. “When the head of the most populous religious community in this country, had reason several weeks ago to suspect that the law would no longer respect his person, he sought sanctuary on the outskirts of the Haram es Sharif, and the hand of the law recoiled from following its proposed course.”

According to the *Post*, this abdication of government power sent a clear message. “Terrorism made safe, and the safety of the terrorist, are the fruit of a policy of misapplied conciliation. Neither the doer of evil nor his harbourer, far less his inspirer, has been given reason to fear just retribution.”³⁵⁸

The British government recognized that a reign of terror was being orchestrated from the Haram, but remained powerless to stop it. The Cabinet condemned the Mufti from London, called for his arrest, and outlawed the Arab Higher Committee. But so long as he remained inside the Haram, the British were paralyzed. The place remained a veritable fortress.³⁵⁹ When it was suggested in September 1937 that the Mufti be found and arrested, the British Secretary of State for India pleaded with his colleagues to respect the integrity of the Holy Places and to “think very seriously” before attempting to invade the Haram.³⁶⁰

Even British security around the borders of the complex was weak. Sometime during the night of October 1, the Mufti slid down the wall of the Haram, slipped past guards in disguise, and escaped the country into Lebanon. But the reign of terror inside the Haram had taken on a momentum of its own. Haj Ismail Najjar, a wealthy supporter of the Nashashibi faction, was

³⁵⁸ “The Murder of Mr. Andrews,” *Palestine Post*, Sep. 28, 1937, at 4.

³⁵⁹ The complex was highly self-sufficient, and contained a massive cistern with a carrying capacity of 3.5 million gallons of water. *Report of the Experts Submitted to the Joint Palestine Survey Commission* (Boston: Daniels, 1928), 689.

³⁶⁰ Cabinet Minutes, Sept. 29, 1937, CAB/23/89, at 218-222.

shot and killed while walking inside the Haram on August 1, 1937.³⁶¹ In November, Sheikh Mahmoud Jawdat Ansari was shot inside the Haram for the same reason. On November 21, 1937, William Battershill, acting as High Commissioner in Wauchope's absence, wrote a private letter to John Shuckburgh of the Colonial Office describing his frustration at the persistent "Haram influence":

[M]ost of the villages surrounding Jerusalem are very much pro-Mufti and are definitely under the Haram influence. The village Sheikhs and Mukhtars have been accustomed to personal contact with Haj Amin or his minions, from whom they got their orders. And being under his influence more than other villagers they naturally are making more trouble than the villagers with whom the Mufti did not come into personal contact. A further reason is the fact that the Haram still contains a "cell" of organisers of disturbances. These organisers we cannot touch so long as they remain in the Haram.³⁶²

On July 12, 1938, Sheikh Ali Nur al-Khatib, an imam of al-Aqsa, was killed in the Muristan Quarter of the Old City. He had been part of a minority group inside the Haram that disapproved of the Mufti's methods and had refused to preach violence.³⁶³ A few days later, Sheikh Aref Yunis al-Husseini, chief curator of the Haram and a member of the Mufti's own family, narrowly escaped an assassination attempt when hitmen hiding in a cemetery jumped out from behind a tombstone and sprayed his taxi with bullets. This was a second attempt on the sheikh's life, the first being only months prior.³⁶⁴

Continued frustration at their inability to stop the assassins based in the Haram led the British to take alternative measures. In mid-March 1938, the government took the unprecedented step of opening a police post in the Haram and staffing it with a British corporal and four Arab

³⁶¹ "Nashashibi Party Member Shot in Mosque Area," *Palestine Post*, Aug. 1, 1937, at 1.

³⁶² Letter from Battershill to Shuckburgh, Nov. 21, 1937, CAB/24/273, at 2.

³⁶³ "Fresh Outburst of Mob Violence in Haifa," *Palestine Post*, July 13, 1938, at 1.

³⁶⁴ "Sheikh Escapes Death for Second Time," *Palestine Post*, July 20, 1938.

constables.³⁶⁵ Ten new gatekeepers were appointed over the entrances to the complex, and other personnel were replaced.³⁶⁶ Shortly thereafter, Chaim Weizmann wrote a letter to Balfour's niece Blanche Dugdale remarking on the effectiveness of this new policy and how easy it was for the British to control the Haram when they had the will to do so:

You remember that during your stay here Jerusalem was particularly bad. Almost every day there was some murder perpetrated. The reason being, that in the Haram area a band of regular assassins (including some particularly obnoxious negro) have taken sanctuary and from there conducted their murderous campaign. [Colonial police advisor Charles Tegart] suggested to clear the Haram area and the pundits trembled at the mere mention of such an idea. The Mosque is the second holy place of importance in Islam, the Islamic world will rise, etc. etc. Telegrams galore were being dispatched to the Colonial Office and there an impression must have been produced that the world is tumbling over their ears. At good last the area has been cleared, the holy assassins arrested, their papers confiscated and inter alia they have found vouchers, showing that the holy sheikhs were paying £.5.- a piece for every Jew assassinated.... They have dismissed all the *Kadis* in the villages who were merely the agents of the Mufti and on his payroll, they have cleared the *Wakf* administration which was a centre of bribery and corruption, and—what is most interesting—it has all passed off with the greatest possible quietness; nobody has said a word of protest or uttered a complaint; everybody, on the contrary, seems to be rather relieved as witnessed by the numberless applications from villages for the posts of the dismissed *Kadis*.³⁶⁷

It did not take long, however, before chaos returned to the Old City. In late 1938, upon the advice of renowned colonial police officer Charles Tegart, the British government decided that force was the only way to restore order. Just before dawn on October 19, 1938, soldiers executed a full military assault on the Old City. The operation was unparalleled in its size. “Not since that day in December 1917 when General Allenby marched at the head of his Forces into the Old City...was there such an entry of British troops as was seen early yesterday morning,” reported the *Times*. As the British soldiers advanced, however, Muslim guerillas retreated into

³⁶⁵ “Police Post in Mosque Area.” *Palestine Post*, Mar. 14, 1938, at 2.

³⁶⁶ “New Gatekeepers for Mosque of Omar.” *Palestine Post*, Aug. 9, 1938, at 2.

³⁶⁷ Letter no. 317, Apr. 4, 1938, *Letters and Papers of Chaim Weizmann*, Vol. 18.

the Haram.³⁶⁸ Soldiers could only cordon off the complex while airplanes dropped pamphlets over the city warning residents to stay inside their homes.

Muslim snipers inside the Haram soon began firing on the soldiers, but British commanders forbid them from shooting back.³⁶⁹ Two members of the Supreme Muslim Council secretly sent out a letter condemning the snipers, and offered to place guards at the entrances to the Haram's minarets. "We do not object," they wrote, "to the Government employing troops and putting them on houses overlooking the Haram area directly outside the Walls which the Government sees fit to occupy to preserve public security." The next day, in response to this show of good faith, British officers permitted thirty Muslims to enter for prayers. They later opened the complex completely for Ramadan.³⁷⁰

Yet Jerusalem remained the scene of Arab gang warfare. Said al-Khatib, a sheikh of al-Aqsa, was shot and killed on December 18, 1938. He had been one of the two members of the Council who had condemned the snipers in the Haram.³⁷¹ At his funeral, a sheikh from a nearby village accused the Mufti of ruthlessly assassinating more than two hundred of his opponents.³⁷² On February 22 and March 4, respectively, Zuhdi and Adnan Nashashibi were killed in Husseini-directed hits.³⁷³ In January, 1939, the *Times* came into possession of secret documents captured from Muslim assassins that described the lawless atmosphere inside the Haram. The documents, belonging to a cousin of the Mufti, told of *ad hoc* court proceedings and summary executions led

³⁶⁸ "Troops Occupy Old City of Jerusalem." *Palestine Post*, Oct. 20, 1938, at 1.

³⁶⁹ "Damascus and Jaffa Gates Opened." *Palestine Post*, Oct. 23, 1938, at 1.

³⁷⁰ "Old City Gates Opened." *Palestine Post*, Oct. 23, 1938, at 2.

³⁷¹ "Sheikh Said el Khatib Shot in Jerusalem." *Palestine Post*, Dec. 19, 1938, at 1.

³⁷² "Loyal Arabs in Palestine," *The Times*, Dec. 19, 1938, at 11.

³⁷³ Nashashibi Relative Dies in Continuing Disorders, *JTA*, Mar. 6, 1939.

by the Mufti's enforcers.³⁷⁴ The *Post* claimed that these documents proved "how far removed this campaign is from anything resembling a national revolt."³⁷⁵

The British realized the need for a British police officer to be stationed permanently inside the Haram by early 1939. Muslims around the world were outraged. The Official Wireless Press released a statement to calm their nerves, explaining that, "[T]he Haram esh Sharif differs from certain other structures in that it constitutes an extensive area honeycombed with hiding-places of which malefactors sometimes take advantage." For the maintenance of order, it was imperative for the government to maintain a presence there. The statement assured Muslims that the British police officer and his Arab subordinates would work from a small room in the Haram and respect the sanctity of the place.³⁷⁶ The Press Office released a second reassurance a few weeks later.³⁷⁷

The revolt continued until September 1939 and was only suppressed by severe military force.³⁷⁸ With World War II on the horizon, the British had no desire to be mired in Palestine.³⁷⁹ One supposes that the assertion of a British police presence inside the Haram also had something to do with the end of violence. In the end, the three-year revolt claimed approximately 5,000 lives and forever doomed the chance of a unified Palestine. The British proposal for partitioning the country between Jews and Arabs, put forward by the Peel Commission of 1937, marked a major shift in British policy. The subsequent proposal in 1939 for a unified, independent state of

³⁷⁴ "Arab against Arab." *The Times*, Jan. 18, 1939, at 13.

³⁷⁵ "The Terror from Inside." *Palestine Post*, Jan. 26, 1939, at 6.

³⁷⁶ "Government's Reply to Misrepresentation." *Palestine Post*, Feb. 26, 1939, at 2.

³⁷⁷ "Protecting Moslem Holy Places." *Palestine Post*, Mar. 13, 1939, at 1.

³⁷⁸ See Matthew Hughes, "The Banality of Brutality: British Armed Forces and the Repression of the Arab Revolt in Palestine, 1936-39," *Past & Present*, Vol. 124, Issue 507 (2009), 313-354; Jacob Norris, "Repression and Rebellion: Britain's Response to the Arab Revolt in Palestine of 1936-39," *Journal of Imperial and Commonwealth History*, Vol. 36, No. 1 (2008), 25-45.

³⁷⁹ Moshe Shtainer, *Inside Pan-Arabia* (Chicago: Packard, 1947), 121.

Palestine—governed by Jews and Arabs in proportion to their populations—marked an even bigger shift. However, it would be another decade before the British would finally retreat from Palestine and leave it to Jews and Arabs to sort out peace for themselves.

Muslim authority inside the Haram continued during World War II, albeit in far more muted tones after the crushing of the Arab revolt. Kupferschmidt argues that after the Mufti escaped from Palestine, the Supreme Muslim Council settled down to do the job it had originally been created to do: quietly manage Islamic affairs in Palestine.³⁸⁰ However, violence in and around the Haram continued during the war and afterward. In 1947, two Jewish refugees were sightseeing during Passover. Not comprehending the danger, twenty-five year old Asher Itzkowitz and thirty-six year old Itzhak Itzkowitz visited the Western Wall on a Friday. The two inadvertently walked into the Haram where they were immediately attacked by an Arab mob. Asher was killed in the melee. Itzhak survived, but only because an Arab policeman dragged him into the Dome of the Rock and slammed the gate closed. Ironically, Asher had survived Auschwitz only to be killed in Jerusalem.³⁸¹ Around the same time, the Jewish Agency accused Muslims of hiding thirty tons of explosives in the Haram.³⁸² Muslim leaders denied the accusation.³⁸³

Jewish assertions of authority over the Western Wall also continued. News of Hitler's genocide became more real with the arrival of each new refugee from Nazi Europe. It was clear that the Jews needed a state of their own now more than ever, and that the British were the main

³⁸⁰ Kupferschmidt, *The Supreme Muslim Council*, 255-257. The British government intentionally tried to transition the Council into a non-political, administrative function. See Talks in Jerusalem: Memorandum by Secretary of State for the Colonies, Aug. 24, 1938, CAB/24/278, at 1.

³⁸¹ "Funeral Held after the Sabbath," *Palestine Post*, Apr. 13, 1947, at 3. The city went into lockdown mode, and Jews were forbidden from making their Passover pilgrimage to the Wall. The British government made no arrests in the case.

³⁸² "Arab Legion to Stay until May 15." *Palestine Post*, Feb. 20, 1948, at 3.

³⁸³ "The Proof." *Palestine Post*, Feb. 26, 1948, at 3.

obstacle in their way. Young men continued to smuggle *shofars* into the Western Wall courtyard and blow them in defiance of the British. Blowing the *shofar* became an expression of Jewish sovereignty in Palestine.³⁸⁴ In 1942, approximately 50,000 Jews from around the country came to the Western Wall to lament the destruction of the Temple. Male and female soldiers joined in singing the Zionist national anthem.³⁸⁵ Toward the end of the war, even Jewish Communists were gathering at the Wall to pray for the victory of Stalin and the Red Army.³⁸⁶

Assertions of Jewish authority in Palestine became more violent. One Jewish sniper shot an Arab gang-leader through the head as he was walking inside the Haram.³⁸⁷ In 1940—not long after the British published their famous White Paper of 1939 restricting Jewish immigration and land purchases—a paramilitary group called *Lehi* or the “Stern Gang” split from another Jewish military force with the goal of casting off British rule and establishing a Jewish state by any means necessary. Although numbering only a few hundred men, the Stern Gang succeeded in assassinating several high profile figures and sending shockwaves through the country.³⁸⁸

Avraham Stern, the founder of the group, laid out his “18 Principles of Rebirth” that included Jewish sovereignty, redemption of the land, and a population transfer of Arabs. The eighteenth

³⁸⁴ For video interviews with several of the young men who participated, see *Defiance at the Western Wall: Echoes of a Shofar*, http://www.chabad.org/multimedia/media_cdo/aid/1301992/jewish/Defiance-at-the-Western-Wall.htm.

³⁸⁵ “50,000 Palestine Jews Visit Wailing Wall on Tisha B’ab,” *JTA*, July 26, 1942. This event came on the heels of the Biltmore Conference in New York City (May 1942), at which Zionist leaders openly declared their desire to establish a Jewish Commonwealth in Palestine.

³⁸⁶ “Communists in Palestine Pray at Wailing Wall for Victory of Russian Army,” *JTA*, Apr. 12, 1945.

³⁸⁷ “Bodies Found Near Old City Gate,” *Palestine Post*, Feb. 8, 1948, at 3.

³⁸⁸ The British administration viewed these militants as completely depraved and uninhibited. “The young Jewish extremists... know neither toleration nor compromise; they regard themselves as morally justified in violence directed against any individual or institution that impedes the complete fulfilment of their demands. In a similar spirit their ancestors in the second century B.C. laid waste Palestine until a ravaged countryside and ruined cities marked the zenith of Hasmonaean power. The prototypes of the Stern Group and National Military Organisation are the Zealots and Assassins according to whose creed even Jews married to Gentiles were worthy of death in Roman times. These Zealots of to-day, from Poland, Russia and the Balkans have yet to learn toleration and recognition of the rights of others.” Letter from J.V.W. Shaw to the Secretary of State for the Colonies, Aug. 24, 1945, CAB/129/2, at 3.

principle called for rebuilding the Third Temple as a fulfillment of national rebirth. This proposal was not based on a desire to reinstitute ancient Judaism, but on an awareness of the power of Hebrew history and culture.³⁸⁹

Of course, neither the Stern Gang nor anyone else succeeded in rebuilding the Jewish temple. With the outbreak of war in 1948, the Jews found themselves completely excluded from both the Temple Mount and the Western Wall. King Hussein of Jordan captured Jerusalem and the West Bank after making a deal made with the Israelis, but proceeded to bar Jewish entry to the site for the next two decades. Hussein's policy stood in contravention to the recommendations of the Anglo-American Commission of 1946 and the United Nations' decision to partition Palestine and make Jerusalem an enclave under the UN Trusteeship Council.³⁹⁰ For Jews, Hussein's behavior brought back memories of Titus and Hadrian.³⁹¹ Their abrupt separation from the Western Wall left a deep psychological scar whose ramifications only became known after Israel's capture of Jerusalem in 1967.³⁹²

³⁸⁹ Inbari, *Fundamentalism and the Temple Mount*, 5.

³⁹⁰ See Report of the Anglo-American Committee of Inquiry, Apr.20, 1946, CAB/129/9; Memorandum by the Secretary of State for Foreign Affairs and the Secretary of State for the Colonies, Dec. 3, 1947, CAB/129/22.

³⁹¹ Azariel Karlebach, "Ve-Anachnu mechutz la-Choma," *Ma'ariv*, July 9, 1948, at 5.

³⁹² Bar, "Wars and Sacred Space," 67. When the Israeli military leaders took control of Jerusalem in the Six Day War, they demolished the neighborhood around the Western Wall and built a large plaza for Jewish worshippers. This unilateral decision was undoubtedly driven by Jewish anger at their exclusion from the site for almost twenty years.

VI. CONCLUSION

The arrival of the British in 1917 shocked the communities living in Palestine. Donna Robinson Divine notes the particularly disorienting effect it had on the Arab Muslim community. This disorientation stemmed from a single difficult question: What did Muslim society look like under non-Muslim rule?

Political life in Muslim societies must be conceived as not only serving immediate economic and political needs but also as demonstrating how an authentic Muslim life could be imagined and lived. Once the Ottoman Empire was destroyed in World War I and its parts severally divided among European mandatory powers, Palestinian [Arab] men and women found themselves in such a dramatically changed political environment that they could not easily or quickly understand which material ingredient in British rule might be used as the basis from which to construct their own independent community.³⁹³

I would argue that the material ingredient for Muslim independence in Palestine was the autonomous space inside the Haram ash-Sharif. In the Haram, Arab Muslims could hide from the power of law and foster their resistance to British governance. The Mandate's policy of affirmative deference and complete Muslim sovereignty over the site created an ideal sanctuary for indigenous authority. Throughout the Mandate Arabs vigorously defended the autonomy of the site against foreign encroachment as they had for almost a century, only now with a far greater sense of urgency and fervor.

Palestine's Jews harbored their own hopes for the Temple Mount. While prepared to accept Muslim sovereignty on the Temple platform, Jews planned to build a synagogue in the Western Wall courtyard and make it the cornerstone of the Jewish national home. The Temple Mount-centered theology that would emerge after 1967 was not yet fully formed, but some Jews even anticipated the reconstruction of the Temple and the resumption of sacrifices in the near future.

³⁹³ Divine, "Islamic Culture and Political Practice in British Mandated Palestine," 93.

What is clear is that both secular and religious Zionists saw possession of the Western Wall as fundamental to the success of their program. For this reason, attempts by Arabs to exclude them prompted a counter-reaction for affirmative expression of Jewish authority at the site.

Managing this divine jurisdiction presented innumerable difficulties for the British. They believed that they had neither religious nor cultural legitimacy to make change at the site, and passed their legal authority on to an international commission that never materialized. In the interim, they withdrew the Temple Mount from civil jurisdiction and assigned decision-making to executive officers. This effective non-policy—defined through the status quo—together with a formal grant of Muslim sovereignty allowed the continuance of organic authority in the center of Palestine that helped destabilize the regime and stimulate Jewish rebellion.

Current historiography of the Mandate pays virtually no attention to this unique dynamic at the center of the Jewish-Arab conflict. This paper fills this gap by drawing attention to the legal, social, and spatial contours of the Temple Mount, and taking a fresh look at the period through the lens of sacred space. The ability of such spaces to undermine secular governance has not been studied sufficiently, and this paper hopes to provide a useful case study for later analysis. Substantively, future research could focus on contemporary Arabic sources and the influence, or lack thereof, of Islamic law on the activity of the Muslim community in Palestine. Conceptually, future research should seek to integrate this case into a larger theoretical framework that explains how secular governments have historically confronted sacred space and how their various approaches have succeeded or failed.

BIBLIOGRAPHY

Primary Sources

- Government Records

British government documents (Cabinet, War Office, Foreign Office, Colonial Office).

League of Nations documents.

United Nations documents.

Palestine Government. *A Survey of Palestine* (1946).

United States Department of State, *Papers Relating to the Foreign Relations of the United States, 1922*, Vol. 2 (1938).

Collection of Judgments of the Courts of Palestine, 1919-1933 (1934).

The Civil Law of Palestine and Trans-Jordan (1933-1936).

Report of the Commission on the Palestine Disturbances of August, 1929: Evidence Heard during the 1st-47th Sittings (1930).

Report of the International Commission on the Wailing Wall (1930).

Report of the Experts Submitted to the Joint Palestine Survey Commission. Boston: Daniels, 1928.

Legislation of Palestine, 1918-1925. Alexandria: W. Morris, 1926.

Report of the High Commissioner on the Administration of Palestine, 1920-1925 (Colonial No. 15, 1925).

Correspondence with the Palestine Arab Delegation and the Zionist Organisation. London: HMS Stationery Office, 1922.

Interim Report on the Civil Administration of Palestine, July 1, 1920-June 30, 1921 (Cmd. 1499).

Paris Peace Conference, 1919, Vol. XII. Washington, D.C.: GPO, 1919.

British Military. *The Laws of War on Land*. Oxford, 1880.

- Personal Accounts/Memoirs

Fannie Fern Andrews. *The Holy Land under Mandate*. Boston: Houghton Mifflin, 1931.

C.R. Ashbee (ed.). *Jerusalem 1920-1922, Being the Records of the Pro-Jerusalem Council during the First Two Years of the Civil Administration*. London: Murray, 1924.

---. *Jerusalem: 1918-1920, Being the Records of the Pro-Jerusalem Council during the Period of the British Military Administration*. London: Murray, 1921.

C.R. Ashbee. *Palestine Notebook, 1918-1923*. Garden City: Doubleday, 1923.

Omar Effendi el-Barghuthi. "Judicial Courts among the Bedouin of Palestine," *Journal of the Palestine Oriental Society*, Vol. 2 (1922), pp. 35-65.

Norman Bentwich. "The Legal System of Palestine under the Mandate," *Middle East Journal*, Vol. 2, No. 1 (Jan. 1948), pp. 33-46.

---. *Fulfillment in the Promised Land, 1917-1937*. Westport: Hyperion, 1938.

---. *A Wanderer in the Promised Land*. New York: Scribner's Sons, 1933.

---. "Palestine," *Journal of Comparative Legislation and International Law*, Vol. 10, No. 3 (1928), pp. 172-177.

---. "Palestine," *Journal of Comparative Legislation and International Law*, Vol. 8, No. 1 (1926), pp. 228-233.

---. "The Law and Courts of Palestine," *Cambridge Law Journal*, Vol. 2, No. 1 (1924), pp. 47-50.

---. "Palestine," *Journal of Comparative Legislation & International Law*, Vol. 4, No. 3 (1922), pp. 173-183.

---. *Palestine of the Jews, Past, Present and Future*. London: K. Paul Trench Trubner & Co., 1919.

Norman & Helen Bentwich. *Mandate Memories, 1918-1948*. London: Hogarth Press, 1965).

Diary of Sir Henry Gurney. New York: Palgrave Macmillan, 2009.

Antony Bluett, *With Our Army in Palestine*. London: Andrew Melrose Ltd., 1919.

Israel Cohen. *The Journal of a Jewish Traveler*. New York: Dodd, Mead & Co., 1925.

Rena L. Crosby. *The Geography of Bible Lands*. New York: Abingdon Press, 1921.

Bartley C. Crum. *Behind the Silken Curtain: A Personal Account of Anglo-American Diplomacy in Palestine and the Middle East*. New York, Simon & Schuster, 1947.

L.G.A. Cust. *The Status Quo in the Holy Places*. Jerusalem: 1929.

Zvi Elpeleg (ed.). *Through the Eyes of the Mufti: The Essays of Haj Amin Translated and Annotated*. Portland: Vallentine Mitchell, 2009.

Archibald Forder. *In and About Palestine with Notebook and Camera*. London: Religious Tract Society, 1919.

Harry A. Franck. *The Fringe of the Moslem World, Being the Tale of a Random Journey by Land from Cairo to Constantinople, with Enough of Present Conditions to Suggest the Growingly Antagonistic Attitude of the Followers of Mohammed Toward Those Who Profess Christianity*. New York: Century, 1928.

Elihu Grant. *The People of Palestine*. Philadelphia: J.B . Lippincott Co., 1921.

Maude M. Holbach, *Bible Ways in Bible Lands*. London: Kegan Paul, 1912.

George Jeffrey. *A Brief Description of the Holy Sepulchre, Jerusalem, and Other Christian Churches in the Holy City, with Some Account of the Mediaeval Copies of the Holy Sepulchre Surviving in Europe*. Cambridge: Cambridge University Press, 1919.

Edward Keith-Roach. *Pasha of Jerusalem: Memoirs of a District Commissioner under the British Mandate*. Paul Eedle (ed.). New York: Radcliffe Press, 1994.

John Gilbert Lockhardt. *Palestine Days and Nights: Sketches of the Campaign in the Holy Land*. London: Robert Scott Roxburghe House, 1920.

Harry Luke & Edward Keith-Roach (eds.). *The Handbook of Palestine*. London: Macmillan & Co., 1922.

W.T. Massey. *How Jerusalem Was Won*. London: Constable & Co., 1919.

William D. McCracken. *The New Palestine: An Authoritative Account of Palestine since the Great War*. Boston: Page, 1922.

Richard Martin Preston. *The Desert Mounted Corps: An Account of the Calvary Operations in Palestine and Syria, 1917-1918*. London: Constable, 1921.

Moshe Segol. "The Shofar and the Wall," Chabad.org,
http://www.chabad.org/library/article_cdo/aid/2246/jewish/The-Shofar-and-the-Wall.htm.

Ronald Storrs. *The Memoirs of Sir Ronald Storrs*. New York: G.P. Putnam's Son, 1937.

Mark Twain. *The Innocents Abroad, or The New Pilgrim's Progress*. New York: Book League of America, 1929.

Henry Van Dyke. *Out-of-Doors in the Holy Land: Impressions of Travel in Body and Spirit*. New York: Scribner's, 1921.

The Letters and Papers of Chaim Weizmann, 1874-1952. London: Oxford, 1968.

George Napier Whittingham. *The Home of Fadeless Splendour: or, Palestine of Today*. London: Hutchinson & Co., 1921.

- Religious Texts

The Tanakh (Hebrew Bible).

The Quran.

The Babylonian Talmud.
Genesis Rabbah.
Tanchuma Hakadum Exodus.
Midrash Song of Songs.
Midrash Tanchuma.
 Maimonides, *Mishneh Torah.*

Tzvi Hirsch Kaslischer, *Sefer Drishat Tziyon*. Jerusalem, 1919.

Avraham Yitzhak ha-Cohen Kook. *Zikhron Ra'yah*. Jerusalem: Mossad ha-Rav Kook, 1986.

---. *Chazon ha-Ge'ula*. Jerusalem, 1941.

- Other Contemporary Sources

Frederick Jones Bliss. *The Religions of Modern Syria and Palestine*. New York: Scribner's Sons, 1917.

A Brief Record of the Advance of the Egyptian Expeditionary Force under the Command of General Sir Edmund H.H. Allenby. Palestine News, 1918.

Ladislav Farago. *Palestine at the Crossroads*. New York: Putnam, 1937.

T.R. Fyvel. *No Case in Zion*. New York: A.A. Knopf, 1939.

Benjamin L. Gordon. *New Judea: Jewish Life in Modern Palestine and Egypt*. Philadelphia: J.H. Greenstone, 1919.

Pinchas Ben Tzvi Grayevsky. *Sippurei Kotel Ha-Ma'aravi*. Jerusalem: Zuckerman, 1936.

Paul L. Hanna. *British Policy in Palestine*. Washington: American Council on Foreign Affairs, 1942.

Charles F. Horne (ed.). *Source Records of the Great War*, Vol. V. Stuart-Copley Press, 1923.

Frank G. Jannaway. *Palestine and the World*. London: Maranatha Press, 1922).

Khwaja Kamal-ud-Din. *India in the Balance: British Rule and the Caliphate*. Woking: The Islamic Review, 1922.

H.I. Katibah. *The Case against Zionism*. New York: Palestine National League, 1921.

A. Berriedale Keith. "Mandates," *Journal of Comparative Legislation and International Law*, Vol. 4, No. 1 (1922), pp. 71-83.

Mushir Hosain Kidwai. *The Future of the Muslim Empire*. London: Central Islamic Society, 1919.

Memorandum on the Western Wall. Jerusalem: The Jewish Agency for Palestine, 1930.

David Hunter Miller. "The Origin of the Mandates System," *Foreign Affairs*, Vol. 6, No. 2 (Jan. 1928), pp. 277-289.

Mogannam A. Mogannam. "Palestine Legislation under the British," *Annals of the American Academy of Political and Social Science*, Vol. 164 (Nov., 1932), pp. 47-54.

Palestine: A Study of Jewish, Arab, and British Policies. ESCO Foundation. New Haven: Yale University Press, 1947.

H. St. J. B. Philby. "The Arabs and the Future of Palestine," *Foreign Affairs*, Vol. 16, No. 1 (Oct., 1937), pp. 156-166.

Bernard G. Richards. *The Zionist Movement*. New York: Zionist Organization of America, 1946.

Giovanni T. Rivoira. *Moslem Architecture: Its Origins and Development*. London: Oxford University Press, 1918.

W.A. Shelton. *Dust and Ashes of Empires*. Nashville: M.E. Church, 1922.

Moshe Shtainer. *Inside Pan-Arabia*. Chicago: Packard, 1947.

Secondary Sources

B. Abu-Manneh. "Jerusalem in the Tanzimat Period: The New Ottoman Administration and the Notables," *Die Welt des Islams*, Vol. 30, No. 1 (1990), pp. 1-44.

Munir Akash & Fouad Moughrabi (eds.). *The Open Veins of Jerusalem*. Arlington: Jusoor Books, 2005.

Karen Armstrong. "The Holiness of Jerusalem: Asset or Burden?" *Journal of Palestine Studies*, Vol. 27, No. 3 (Spring, 1998), pp. 5-19.

Jerold S. Auerbach. *Hebron Jews: Memory and Conflict in the Land of Israel*. Lanham: Rowman & Littlefield, 2009.

Karen Barkey. "Islam and Toleration: Studying the Ottoman Imperial Model," *International Journal of Politics, Culture, and Society*, Vol. 19, No. 1/2 (Dec. 2005), pp. 5-19.

Meron Benvenisti. *City of Stone: The Hidden History of Jerusalem*. Trans. by Maxine Kaufman Nunn. Berkley: University of California Press, 1996.

---. *Intimate Enemies: Jews and Arabs in a Shared Land*. Berkley: University of California Press, 1995.

---. *Conflicts and Contradictions*. New York: Villard Books, 1986.

Efrat Ben-Ze'ev. *Remembering Palestine in 1948: Beyond National Narratives*. New York: Cambridge University Press, 2011.

Shmuel Berkovitz. *Ma Nora ha-Makom ha-Zeh: Kedusha, Politika, ve-Mishpat bi-Yerushalyim u-va-Makomot ha-Kedoshim bi-Yisrael*. Jerusalem: Karta, 2006.

Nicholas Blomley. *Law, Space, and Geographies of Resistance*. New York: Guilford Press, 1994.

H. Eugene Bovis. *The Jerusalem Question 1917-1968*. Stanford: Hoover Institution Press, 1971.

Marshall Breger et al (eds). *Holy Places in the Israeli-Palestinian Conflict: Confrontation and Coexistence*. New York: Routledge, 2010.

Marshall Breger & Ora Ahimeir (eds.). *Jerusalem: A City and Its Future*. Syracuse: Syracuse University Press, 2002.

Michael Brenner. *Zionism: A Brief History*. Transl. by Shelley L. Frisch. Princeton: Markus Weiner, 2003.

Martin Bunton. "Inventing the Status Quo: Ottoman Law-Law during the Palestine Mandate, 1917-1936," *International History Review*, Vol. 21, No. 1 (Mar., 1999), pp. 28-56.

Douglas W. Campbell. "Sovereignty and Social Dynamics," *The American Political Science Review*, Vol. 28, No. 5 (Oct., 1934), pp. 825-837.

Hilary M. Carey. *God's Empire: Religion and Colonialism in the British World, 1801-1908*. Cambridge: Cambridge University Press, 2011.

Henry Cattan. *Jerusalem*. New York: St. Martin's Press, 1981.

William T. Cavanaugh. *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict*. Oxford: Oxford University Press, 2009.

Michael J. Cohen. *Palestine, Retreat from the Mandate: The Making of British Policy, 1936-45*. New York: Holmes & Meier, 1978.

Bernard S. Cohn. *Colonialism and Its Forms of Knowledge: The British in India*. Princeton: Princeton University Press, 1996.

Alice L. Conklin. *A Mission to Civilize: the Republican Idea of Empire in France and West Africa, 1895-1930*. Stanford: Stanford University Press, 1997.

Donna Robinson Divine. "Islamic Culture and Political Practice in British Mandated Palestine, 1918-1948," *Review of Politics*, Vol. 45, No. 1 (Jan., 1983), pp. 71-93.

Michael Dumper. *The Politics of Sacred Space: The Old City of Jerusalem in the Middle East Conflict*. Boulder: Lynne Rienner, 2002.

---. *Islam and Israel: Muslim Religious Endowments and the Jewish State*.
Washington, D.C.: Institute for Palestine Studies, 1994.

A. L. Eckardt. *Jerusalem: City of the Ages*. Lanham: University Press of America, 1987.

Yaron Z. Eliav. *God's Mountain: The Temple Mount in Time, Place, and Memory*. Baltimore: Johns Hopkins University Press, 2005.

Laura Etheredge. *Historic Palestine, Israel, and the Emerging Palestinian Autonomous Areas*. New York: Britannica Educational Publications, 2011.

Harold Fischer-Tine & Michael Mann (eds.). *Colonialism as Civilizing Mission: Cultural Ideology in British India*. London: Wimbledon, 2004.

Louis Fishman. "The 1911 Haram al-Sharif Incident: Palestinian Notables versus the Ottoman Administration," *Journal of Palestine Studies*, Vol. 34, No. 3 (Spring, 2005), pp. 6-22.

Peter Fitzpatrick. *Law as Resistance: Modernism, Imperialism, Legalism*. Burlington: Ashgate, 2009.

Richard T. Ford. "Law's Territory (A History of Jurisdiction)," *Michigan Law Review*, Vol. 97 (1999), pp. 843-930.

Dov Gavish. *A Survey of Palestine under the British Mandate, 1920-1948*. New York: Routledge, 2005.

Zeina Ghandour. "Religious Law in a Secular State: The Jurisdiction of the Sharī'a Courts of Palestine and Israel," *Arab Law Quarterly*, Vol. 5, No. 1 (Feb., 1990), pp. 25-48.

Martin Gilbert. *Jerusalem in the Twentieth Century*. New York: John Wiley & Sons, Inc., 1996.

Rivka Gonen. *Contested Holiness: Jewish, Muslim and Christian Perspectives on the Temple Mount in Jerusalem*. Jersey City: KTAV Publishing House, 2003.

Marc Gopin. *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*. Oxford: Oxford University Press, 2002.

Gershon Gorenberg. *The End of Days: Fundamentalism and the Struggle for the Temple Mount*. Oxford: Oxford University Press, 2002.

Oleg Grabar & Benjamin Z. Kedar (eds.). *Where Heaven and Earth Meet: Jerusalem's Sacred Esplanade*. Jerusalem: Yed Ben-Zvi, 2009.

Ron E. Hassner. *War on Sacred Grounds*. Ithaca: Cornell University Press, 2009.

Matthew Hughes. "The Banality of Brutality: British Armed Forces and the Repression of the Arab Revolt in Palestine, 1936-39," *Past & Present*, Vol. 124, Issue 507 (2009), pp. 313-354.

David Hulme. *Identity, Ideology, and the Future of Jerusalem*. New York: Palgrave Macmillan, 2006.

Nasser Hussein. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press, 2003.

Motti Inbari. *Jewish Fundamentalism and the Temple Mount*. Albany: State University of New York Press, 2009.

Robert H. Jackson. "The Challenge of International Lawlessness," Address before the American Bar Association, Indianapolis, Oct. 2, 1941, reprinted in *American Bar Association Journal*, Vol. 27 (Nov. 1941).

Abigail Jacobson. *From Empire to Empire: Jerusalem between Ottoman and British Rule*. Syracuse: Syracuse University Press, 2011.

"My Last Days as an Ottoman Subject: Selections from Wasif Jawhariyyeh's Memoirs" (trans. by Amal Amireh), *Jerusalem Quarterly*, Vol. 3, No. 1 (Summer 2000), pp. 28-34.

Efraim & Inari Karsh. *Empires of Sand: The Struggle for Mastery in the Middle East, 1789-1923*. Cambridge: Harvard University Press, 2001.

Salma Khadra Jayyusi & Zafar Ishaq Ansari (eds.). *My Jerusalem: Essays, Reminiscences, and Poems*. Northampton: Olive Branch Press, 2005.

Douglas Johnston (ed.). *Faith-Based Diplomacy: Trumping Realpolitik*. Oxford: Oxford University Press, 2003.

Benjamin Z. Kedar. *The Changing Land between the Jordan and the Sea: Aerial Photographs from 1917 to the Present*. Jerusalem: Yad Ben Tzvi, 1999.

Benjamin Z. Kedar & R. Werblowsky (eds.). *Sacred Space: Shrine, City, Land*. New York: New York University Press, 1998.

Abbas Kelidar. "States without Formation: The Political Evolution of State and Society in the Arab East," *Journal of Contemporary History*, Vol. 28, No. 2 (Apr., 1993), pp. 315-359.

Hugh Kennedy. *The Great Arab Conquests: How the Spread of Islam Changed the World We Live In*. Philadelphia: Da Capo Press, 2007.

Rashid Khalidi. *Palestinian Identity: The Construction of a Modern National Consciousness*. New York: Columbia University Press, 1997.

Diane Kirby & Catharine Coleborne (eds.). *Law, History, Colonialism: The Reach of Empire*. Manchester: Manchester University Press, 2001.

August C. Krey. *The First Crusade: The Accounts of Eyewitnesses and Participants*. Princeton: Princeton University Press, 1921.

Zalman Koren. "The Temple Mount," in Ezra Rosenfeld & Binyamin Tabory (eds.), *Crossroads: Halacha and the Modern World* (Jerusalem: Zomet, 1987), pp. 233-243.

S. D. Kunin. *God's Place in the World: Sacred Space and Sacred Place in Judaism*. New York: Cassell, 1998.

Uri M. Kupferschmidt. *The Supreme Muslim Council: Islam under the British Mandate for Palestine*. Leiden: E.J. Brill, 1987.

David Kushner. "The District of Jerusalem in the Eyes of Three Ottoman Governors at the End of the Hamidian Period." *Middle Eastern Studies*, Vol. 35, No. 2 (Apr., 1999), pp. 83-102.

---. "Ali Ekrem Bey, Governor of Jerusalem, 1906-1908," *International Journal of Middle East Studies*, Vol. 28, No. 3 (Aug., 1996), pp. 349-362.

Walter Laquer & Barry Rubin (eds.). *The Israel-Arab Reader: A Documentary History of the Middle East Conflict*. New York: Penguin Books, 2001.

Henri Lefebvre. *The Production of Space*. Trans. by Donald Nicholson-Smith. Oxford: Basil Blackwell, 1974.

Bernard Lewis. "Palestine: On the History and Geography of a Name," *The International History Review*, Vol. 2, No. 1 (1980), pp. 1-12.

Assaf Likhovski. "Post-Post Zionist Historiography." *Israel Studies*, Vol. 15, No. 2 (2010), pp. 1-23.

- . *Law and Identity in Mandate Palestine*. Chapel Hill: University of North Carolina Press, 2006.
- . *The History of Law in a Multicultural Society*. Dartmouth: Ashgate, 2002.
- . "Between Mandate and State: On the Periodization of Israeli Legal History." *Journal of Israeli History*, Vol. 19, No. 2 (1998): pp. 39-68.
- . "In Our Image: Colonial Discourse and the Anglicization of the Law of Mandatory Palestine." Harvard Law School L.L.M. Thesis, 1995.
- John M. Lundquist. *The Temple of Jerusalem: Past, Present, and Future*. Westport: Greenwood Publishing Group, 2008.
- Mary Ellen Lundsten. "Wall Politics: Zionist and Palestinian Strategies in Jerusalem, 1928," *Journal of Palestine Studies*, Vol. 8, No. 1 (Autumn, 1978), pp. 3-27.
- Ian S. Lustick. "Yerushalayim and al-Quds: Political Catechism and Political Realities." *Journal of Palestine Studies*, Vol. 30, No. 1 (Autumn, 2000), pp. 5-21.
- Moshe Ma'oz. *Palestinian Leadership on the West Bank: The Changing Role of the Mayors under Jordan and Israel*. New York: Routledge, 1988.
- Joseph A. Massad. *Colonial Effects: The Making of National Identity in Jordan*. New York: Columbia University Press, 2001.
- Philip Mattar. *The Mufti of Jerusalem: Al-Hajj Amin al-Husayni and the Palestinian National Movement*. New York: Columbia University Press, 1988.
- . "The Role of the Mufti of Jerusalem in the Political Struggle over the Western Wall," *Middle Eastern Studies*, Vol. 19, No. 1 (Jan., 1983), pp. 104-118.
- Nele Matz. "Civilization and the Mandate System under the League of Nations as Origin of Trusteeship," in A. von Bogdany & R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), pp. 47-95.
- Tamar Mayer & Suleiman Ali Mourad. *Jerusalem: Idea and Reality*. New York: Routledge, 2008.

John J. McTague, Jr.. "The British Military Administration in Palestine 1917-1920." *Journal of Palestine Studies*, Vol. 7, No. 3 (Spring, 1978), pp. 55-76.

Julie A. Mertus. "Ecclesiastical Sanctuary: Worshippers' Legitimate Expectation of Privacy," *Yale Law & Poicy. Review*, Vol. 5, No. 2 (Spring-Summer, 1987), pp. 493-513.

Gedalia Meyer & Henoah Messner. "Entering the Temple Mount—in Halacha and Jewish History." *Hakirah*, Vol. 10 (Winter 2010), pp. 29-72.

Joel S. Migdal. *Palestinian Society and Politics*. Princeton: Princeton University Press, 1980.

Muhammad Muslih. *The Origins of Palestinian Nationalism*. New York: Columbia University Press, 1988.

Judah Nadich, *Jewish Legends of the Second Commonwealth*. Philadelphia: Jewish Publication Society, 1983.

Jacob Neusner, "Map without Territory: Mishnah's System of Sacrifice and Sanctuary," *History of Religions*, Vol. 19, No. 2 (Nov., 1979), pp. 103-127.

Jacob Norris. "Repression and Rebellion: Britain's Response to the Arab Revolt in Palestine of 1936-39," *Journal of Imperial and Commonwealth History*, Vol. 36, No. 1 (2008), pp. 25-45.

Ismail Adam Patel. *40 Ahadith Concerning Masjid al-Aqsa*. Leicester: Al-Aqsa Publishers, 2008.

Carla Gardina Pestana. *Protestant Empire: Religion and the Making of the British Atlantic World*. Philadelphia: University of Pennsylvania Press, 2009.

Elie Podeh. *The Arab-Israeli Conflict in Israeli History Textbooks 1948-2000*. Westport: Greenwood, 2002.

Yehoshua Porath. *The Palestinian Arab National Movement*. London: Frank Cass, 1974.

Mazin B. Qumsiyeh. *Popular Resistance in Palestine: A History of Hope and Empowerment*. London: Pluto Press, 2011.

N. Rakover (ed.). *Jerusalem: City of Law and Justice*. Jerusalem: Library of Jewish Law, 1998.

- B. Reich (ed). *Arab-Israeli Conflict and Conciliation: A Documentary History*. Westport: Praeger, 1995.
- Yitzhak Reiter. *Jerusalem and Its Role in Islamic Solidarity*. New York: Palgrave Macmillan, 2008.
- (ed.). *Ribonut ha-El ve-ha-Adam: Kedusha u-Merkaziyut Politit be-Har ha-Bayit*. Jerusalem: Jerusalem Institute for Israel Studies, 2001.
- . *Islamic Endowments in Jerusalem under the British Mandate*. New York: Frank Cass, 1996.
- Nicholas E. Roberts. *Rethinking the Status Quo: The British and Islam in Palestine, 1917-1929*. New York University Ph.D. Dissertation, 2010.
- Ronald Sanders. *The High Walls of Jerusalem: A History of the Balfour Declaration and the Birth of the British Mandate for Palestine*. New York: Holt, Rhinehart, & Winston, 1983.
- Jonathan Schneer. *The Balfour Declaration: The Origins of the Arab-Israeli Conflict*. New York: Random House, 2010.
- J. Scott & P. Simpson-Housley (eds). *Sacred Places and Profane Spaces: Essays in the Geographics of Judaism, Christianity, and Islam*. New York: Greenwood Press, 1991.
- Elitzur Segel. "Da'at Meren ha-Ra'ya Kook al Binyan Beit ha-Mikdash be-Yameinu," *Tehumin*, Vol. 11, 532.
- Tom Segev. *One Palestine, Complete: Jews and Arabs under the British Mandate*. Trans. by Haim Watzman. New York: Metropolitan Books, 2000.
- Avraham Sela. "The 'Wailing Wall' Riots (1929) as a Watershed in the Palestine Conflict," *The Muslim World*, Vol. 84, No. 1-2 (April 1994), pp. 60-94.
- Usamah Shahwan. *Public Administration in Palestine Past and Present*. Lanham: University Press of America, 2003.
- Ronen Shamir. *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine*. Cambridge: Cambridge University Press, 2000.
- Anita Shapira. *Land and Power: The Zionist Resort to Force, 1881-1948*. Oxford: Oxford University Press, 1992.

Yaakov Shavit. *Jabotinsky and the Revisionist Movement, 1925-1948*. New York: Frank Cass & Co., 1988.

Nadav G. Shelef. *Evolving Nationalism: Homeland, Identity, and Religion in Israel, 1925-2005*. Ithaca: Cornell University Press, 2010.

Naomi Shepherd. *Ploughing Sand: British Rule in Palestine 1917-1948*. New Brunswick: Rutgers University Press, 1999.

A.J. Sherman. *Mandate Lives: British Lives in Palestine, 1918-1948*. London: Thames & Hudson, 1997.

Avi Shlaim. *The Iron Wall: Israel and the Arab World*. New York: W.W. Norton & Co., 2000.

---. *The Politics of Partition: King Abdullah, the Zionists, and Palestine, 1921-1951*. New York: Columbia University Press, 1990.

Y. Shaviv & Y. Rozen. *Kumu ve-Na'aleh: Asupat Ma'amarim u-Keriot be-Inyan Har ha-Bayit bi-Zmanenu*. Gush Etzion: Intersection Institute, 2003.

Nadav Shragai. *Har ha-Merivah: Ha-Ma'avak al Har ha-Bayit: Yehudim ve-Muslemim, Dat u-Politika Me'az 1967*. Jerusalem: Keter, 1995.

Neil Asher Silberman. *Digging for God and Country: Exploration, Archaeology and the Secret Struggle for the Holy Land, 1799-1917*. New York: Alfred A. Knopf, 1982.

Charles D. Smith. *Palestine and the Arab-Israeli Conflict*. Boston: St. Martin's Press, 2007.

Ehud Sprinzak. *The Ascendance of Israel's Radical Right*. New York: Oxford University Press, 1991.

Kenneth W. Stein. *The Land Question in Palestine, 1917-1939*. Chapel Hill: University of North Carolina Press, 1984.

Roger W. Stump. *The Geography of Religion: Faith, Place, and Space*. New York: Rowan & Littlefield, 2008.

Ted Swedenburg. *Memories of Revolt: The 1936-39 Rebellion and the Palestinian National Past*. Minneapolis: University of Minnesota Press, 1995.

---. "Palestinian Peasantry in the Great Revolt," in Edmund Burke et al (eds.), *Islam, Politics, and Social Movements* (Berkeley: University of California Press, 1990), pp. 169-203.

Clayton Swisher. *The Palestine Papers: The End of the Road?* Chatham: Hesperus Press, 2011.

William Taylor (ed). *The Geography of Law: Landscape, Identity and Regulation*. Portland: Hart Publishing, 2006.

Charles Townshend. "The Defence of Palestine: Insurrection and Public Security, 1936-1939," *English Historical Review*, Vol. 103, No. 409 (Oct., 1988), pp. 917-942.

Alison Twells. *The Civilising Mission and the English Middle Class, 1792-1850*. New York: Palgrave, 2009.

F. Von Benda-Beckmann et al (eds). *Spatializing Law: An Anthropological Geography of Law in Society*. Burlington: Ashgate Publishing, 2009.

Bernard Wasserstein. *Divided Jerusalem: The Struggle for the Holy City* (3rd ed.). New Haven: Yale University Press, 2008.

---. "'Clipping the Claws of the Colonisers': Arab Officials in the Government of Palestine, 1917-48," *Middle Eastern Studies*, Vol. 13, No. 2 (May, 1977), pp. 171-194.

Thongchai Winchikaul. *Siam Mapped: The History of the Geo-Body of a Nation*. Honolulu: University of Hawaii Press, 1994.

Yildirim Yavuz. "The Restoration Project of the Masjid al-Aqsa by Mimar Kemalettin (1922-1926)," *Muqarnas*, Vol. 13 (1996), pp. 149-164.

VITA

Robert W. Nicholson was born in Los Angeles and raised in upstate New York, where he currently lives with his wife Lyndsey and daughter Brooke. Robert is a former U.S. Marine who recently graduated from Syracuse University with his J.D.. He completed his undergraduate work at SUNY Binghamton, where he double-majored in history and Hebrew studies. Robert has held a variety of legal and academic positions and has published articles for the *Syracuse Journal of International Law & Commerce*, the New York State Bar Association, and the *Journal of Jewish Identities*. His research focuses primarily on the history of law in Israel and the wider Middle East.