

Judicial System of Palestine [Under the British Mandate c. 1938]

By Emanuel Greenberg

Editor's Introduction

My father was born in Jerusalem in 1912, a seventh generation native-born Israeli. His mother taught Hebrew in the school system. At the time, Jerusalem was under the control of the Ottoman Empire. After World War I and the defeat of the Ottomans, Jerusalem and the surrounding region, collectively known as Palestine, the League of Nations granted control of the territory to the British in what was referred to as the British Mandate.

My father came to the United States shortly after he was born, his father being an American citizen. At about his thirteenth birthday, he returned to Jerusalem with his family for about a year, and then returned to the United States.

The family was poor and he worked his way through college and law school. After receiving his LLB degree, he continued his studies and received an LLD degree, Doctor of Law. This is a more advanced degree than the now commonly granted JD (Doctor of Jurisprudence) that has replaced the older LLB degree. It was his plan to go back to Jerusalem and practice law there. However, life happened and he married my mother. She was willing to go with him but my father thought it might be too hard and dangerous for her and they remained here.

He passed away before my mother, and after her death I was rooting through the various things an executor roots through, and I came across a copy of the present paper. I hadn't known about its existence until that time. The copy appears to be a semi-final draft, with some handwritten inserts added to the typed pages and some uncorrected typos. My father was a meticulous writer and would have been very careful to eliminate such typos in a final version of the copy. I suspect that he wrote this pursuant to his LLD studies and reflects his then current intention to return to Jerusalem to practice law.

I thought it presented some fascinating information about the way the Palestine judicial system functioned among the three competing interests, Arab, Jewish and British. I have made no changes to the article. It is a scan of the original. I did, however, modify the title page to reflect the context and time frame described in the article. My addition to the title appears in the bracketed portion.

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February 28th, 2021.

A review of the organization of the Judicial system of Palestine shows, upon analysis, that it has developed into its present form because of a set of conditions peculiar to the country of its origin. While every country has individual needs which determine the set up of its Judicial system, nowhere else in the world were such a multitude of problems and considerations to be taken into account as here. It was impossible to merely copy from some other country an already established legal set-up because Palestine is alone in the character of its difficulties. The country is the mandate of the League of Nations, with Great Britain as the mandatory power. Since Great Britain is responsible to the League for internal conditions, she must be careful that no cause for protest is given either to the minority peoples under her guardianship or to the citizens of other nations.

The inhabitants of Palestine are no subjugated people to be treated with the iron hand of a conqueror. It is made up of Arabs who aided the allies as a nation, and Jews, who were for the most part allies of the winning side and want as their reward, self-government. This leads to two difficulties. First, neither the Jews nor the Arabs wish to be governed by the other. Second England fears to trust the Administration of Justice over her own citizens and those of European Countries to natives. Yet both of these groups must be catered to and their feelings taken into careful consideration, lest trouble develop which would cast aspersions on Great Britain's ability to take charge of the mandate. *Both wish to rule yet Britain can trust neither,*

The next problem of a Judicial nature is the fact that the Jews and Arabs in the country certainly must be given religious freedom whatever else they are denied. Yet these two religions originated not among scattered groups in different sections but in self-governing nations. Their religions contain within themselves, as an integral part, definite rules of substantive law, particularly with reference to domestic relations. No Jew would consider himself legally married or divorced

unless the determination were made in accordance with the rules of his religion. He expects that here in Palestine, the homeland of the Jews, these rules will be applied to his domestic relations and his wills, etc. To the Arab, however, it would be blasphemy to be guided by those same principals, and he demands that the rules of his religion, Mohammedism, be the legal ones. ^{if denied then.} ~~or else he~~ would rebel for lack of religious freedom. The British were thus placed between the two horns of a dilemma in this matter. There were in addition to these extraordinary difficulties, the problem of several self governing communities, ~~as well as~~ the need which presents itself when any judicial system is to be evolved, of a territorial subdivision for the convenience of litigants and appellate tribunals, *that is a judicial problem common to all countries.*

The foregoing difficulties are some examples of what had to be solved in the creation of the Judicial system and they, as well as many others, were successfully resolved by the plan which was eventually adopted, nor was it as complicated as the number and magnitude of the obstacles might seem to suggest.

First let us see how the religious problem was attacked. It was the one most fraught with danger and most important from both a political and a moral standpoint. It was not so much in criminal law that the contending factions were interested, nor in the rules of real property. They wanted the vital problems of marriage and divorce settled in accordance with their religious teachings, nor would they be satisfied here with that dual system of marriage and divorce which they had to accept in other countries. In the United States for example, a Jewish couple may be completely and finally divorced from one another by the Supreme Court, yet, neither may be married again by a minister of their own faith unless they first obtain a divorce in accordance with the Jewish Law. They are at one and the same time, both married and unmarried. No such solution would satisfy them here in their homeland. With the Arabs, living under Mahomedan religious rules, the same principals apply. This was solved by what I classify as the first branch of the Judicial System. The religious

branch. There were organized three separate religious courts. One for Moslems, one for Christians, and one for Jews.(1)

The Moslem religious courts are the most powerful, exercising a jurisdiction which dates back to pre-British times, over not only Palestinian Moslems, but all members of their religion in matters of personal status. They also have jurisdiction over internal administration of the Wakf, or small religious community of the Moslems.(2) There is an appeal permitted to the "Moslem Religious Court of Appeals"(3) whose determination was final. Any Mohammedan in Palestine, no matter what his citizenship is, must submit his litigation with reference to "Domestic Relations", wills, and similar fields to the Moslem Religious Court.

The Rabbinical Courts of the Jewish religious community was given power less broad, but sufficient to satisfy their requirements. They had Exclusive Jurisdiction over matters of marriage, divorce, alimony and wills of Palestinian Jews. Unlike the Moslem Religious Court, they had no exclusive jurisdiction over foreign Jews in Palestine, but where foreign Jews were concerned, all the parties could voluntarily submit their case to the Jewish Rabbinical Court.(4).

The several Christian communities were also given jurisdiction over their own members in the same manner, i.e., exclusively over Palestinians and by consent of all parties over foreigners of their religion. Both Rabbinical and Christian Courts had jurisdiction over the internal administration of the Wakf or religious community of their particular religion.

This left two contingencies unprovided for. First those members of Jewish or Christian communities who were foreigners and did not wish to submit their claims to their religious court. These persons brought their dispute to the District Court, about which more will be said later. In this district court, the substantive law of the place of their citizenship is applied, but they may not grant a divorce to a foreign subject. The British subject may demand trial before a court entirely

British in character while the citizen of other nationalities is tried before the regular District Court with his own consul present.

Second, there often might arise doubt as to which Religious Court has jurisdiction. Where a question of status involves members of different religious communities, for this purpose two British Justices together with the Chief Judge of which ever Religious Court claims exclusive jurisdiction sit as a special tribunal.(6) They do not determine the case but only which court shall have jurisdiction to try it. On this court the position of the Religious Judges is advisory.(7) The decision determining which court is to have jurisdiction over the disputed case is made by the two British Justices.

There must be in every country a Court of General Jurisdiction where most criminal and civil cases are tried. Many countries have this court with no others, but even in Palestine, where several others courts are necessary, it is the backbone of the Judicial System. This, I classify as the Second Branch of the Palestinian Judicial System. At the bottom of this branch are the Magistrates Courts. These courts exercise jurisdiction both civilly and criminally. They take criminal cases in which the maximum penalty does not exceed one year in prison or a fine of one hundred Palestinian pounds.(8). Also certain enumerated criminal acts such as possession of drugs, failure to pay tobacco duties and certain immigration crimes(9) and certain actions for ejectment and partition. Their jurisdiction may be changed by the High Commissioner but in general it is minor cases involving P.£100 or less. ✓ The criminal cases where they impose a fine of £10 or less or fifteen days in jail or less their decision is final. If the punishment is greater or in civil case if the claim is for more than 20 pounds there may be an appeal to the District Court. Those few realty actions permitted the Magistrates Court are appealable to the Land Court(10).

The next subdivision of this Branch is the District Court composed of the Chief or President and at least two others. The Jurisdiction of the District Court is both appellate and original. Appeals from the Magistrates Courts are heard here and also many types of cases in court for the first time. As we have seen foreigners may have their status determined in this court. Civil or criminal actions which cannot be heard in the Magistrates Courts are rendered the jurisdiction of the District Court.

✓ Two judges sit for cases of less than £200 or punishment is less than three years in jail, and the President of the Court and at least two others sit for cases involving more or where punishment exceeds three years in jail. (11) Foreigners are tried before a court of which the majority is British.

Since crimes of any consequence which have been heard originally in the Magistrates Courts may be appealed to the District Court and also the real crimes which we here would classify as felonies are tried in this court in the first instance, the bulk of the criminal cases pass through this court. There is one exception to this as will be shown later. Crimes punishable by death are not litigated in the District Court. Also the bulk of civil cases either by appeal or originally pass through this court. Therefore, it has been strategically divided into Districts corresponding roughly to the geographical subdivisions of the country. Each District Court hears appeals from the Magistrates Courts in its district. So much for the court which is the most active one in Palestine.

There is another Court of approximately equal standing in Palestine fulfilling a different purpose. Because the status of titles in Palestine is very unusual and because of certain political considerations a separate court has been established to try land cases. There was a time in the history of this land (which has been described as flowing with milk and honey) when land was considered a burden. Taxes were high and lack of cultivation led to many people abandoning their land.

Title to land became very confused because of registration

The real reason, in my opinion, for the establishment of a separate Land Court is political. The Jews and Arabs in their rivalry for supremacy consider title to land as a very important weapon. Both feel that if their group owned the land they would be in a better position to oust the other. This possibility of bias led the British to establish a separate Land Court. This court hears appeals from the Magistrate Court with reference to title and has original jurisdiction over all other land cases but not exclusive jurisdiction because the Chief Justice has the power to order a land case to be heard in the District Court(12).

There is still another court in this ^aSecond ^bBranch of the Judicial System. It will be noticed that distinctions are made all through the set-up in the importance of cases. The more important cases are segregated and heard separately. Even where cases of different importance are heard in the same court the rules require that more judges be present than when they are less important. On the same general principle Palestine has set up a Court known as the Court of Criminal Assize. This court has exclusive jurisdiction over offenses punishable by death and consists of a Supreme Court Judge and the President and two other judges from District where case is tried so that there may be as many Courts of Criminal Assize as there are District Courts.(13)

From all these three Courts the District Court, the Land Court, and the Court of Criminal Assize, decisions may be appealed to the Palestine Court of Appeals. This court performs two functions, an Equity function, that is, it hears petitions on various matters necessary for justice, but not otherwise provided for. [It was from a similar definition of Jurisdiction that our early Courts of Equity expanded in Common Law times to much greater importance than they started with, but that is not likely to happen in Palestine because of the already great powers existing in the Supreme Court.] These Equity powers may be administered by a single judge. They also determine questions of charge of venue for the three courts whose appeals they hear as well as orders of injunction mandamus and Habeas Corpus.

For this Branch of their functions and when it sits as a High Court hearing an appeal it must consist of at least two judges, one of whom must be British. When the appeal is by a foreigner from a death sentence there must be three judges sitting at least two of whom must be British (14)

As has been previously pointed out the British are responsible to the League of Nations, and no country or individual is able to be responsible for something over which he has no power. There are various features in the Judicial System which are the result of an attempt on the part of the British to retain this power. First and of greatest importance is the High Commissioner, a British appointee. The statutes of Palestine particularly in dealing with the Judicial System leave a great deal to the discretion of the Commissioner. In addition to that it is he who appoints all the Judges in all the courts we have so far discussed as well as in those to follow. This great power over the personnel of the Judiciary helps greatly. In addition to this, however, the British have tried whenever the situation is dangerous or the case important to have British Judges sitting on it. For example the Court of Criminal Assize is composed of a Supreme Court Judge who is usually British, the President of the Local District Court who is always British, and two others who may or may not be British. But the real danger to the mandate of Great Britain can only come if a foreign nation protests to the League. To forestall this the Judicial System provides many protections for foreigners. Where a foreigner is to be tried even before a Magistrate Court for a comparatively minor offence, he may demand that the Magistrate be British. In some instances the magistrate gets a case and on looking into it finds that he has no jurisdiction over the case. He then commits the prisoner to be tried before the proper court, whether it be the District Court or the Court of Criminal Assize. In such a case if the prisoner is a foreigner, he may demand that the majority of the Court before which he is to be tried be British, and if he appeals as he may from either the District Court or the Court of Criminal Assize to the Palestine Court of Appeals

he may make the same demand there. Even in Civil cases a foreigner who often feels he will get better treatment before a British Judge than from natives of Palestine may demand that there be at least one on the District Court bench and a majority of them on the bench of the Court of Appeals. As a still further precaution, the High Commissioner must confirm all death sentences. Also in Civil matters where the dispute involves more than five hundred English pounds, the case may be appealed further to His Majesty, the King of England. (15) The various precautions prevent to some degree the probability of native justice arousing a protest from some foreign government. It is particularly significant in this era of protests flying back and forth among nations that the League has found little difficulty in renewing the British Mandate of Palestine.

Another attempt on the part of Great Britain to keep prejudice from affecting justice is the omission of the jury idea from the Judicial System of Palestine. Whatever may be said for the merits or demerits of the jury system, in other countries, does not hold in Palestine. The powder keg of religious and racial strife might too easily be touched off by a jury verdict. Prejudice is much ~~more~~ *likely* to influence a jury than a court and the members of a jury lack the judicial sanctity which after the rendition of a verdict protects a judge from charges of unfairness. So unusual as it seems in a judicial System organized by Englishmen there are no juries in Palestine.

We now come to the third Branch of the Judicial System which is not nation wide in scope but local in nature it is divided into two parts. The first part comprises the Municipal Courts. Many communities in Palestine are self governing. They are towns or cities in which the citizens make their own rules and by-laws. These have no effect outside the city yet no city could be properly governed without these ordinances. The Jurisdiction of the Magistrates and District Courts does not cover these instances so a separate court has been provided. These judges like all the others

are appointed by the High Commissioner for Palestine, but he chooses from the leading citizens of the Municipality, whose ordinances they are to enforce. The citizens take instruction as to the law from the Chief Justice of the District Court in which their Municipality is situated. They may impose no penalty greater than \$5 fine or 15 days in jail or both. But the decision of this Court must nevertheless be respected. There is permission to appeal to the District Court from their ruling but there is a provision that if anyone appeals without merit, then the District Court may increase the punishment as a deterrent. This has the effect of preventing frivolous appeals which merely consume the time of the Court, yet it permits honest litigants whose claims have a basis to appeal from apparently unjust decisions. (16) The town of Tel Aviv has such a court. ✓

In spite of these various courts and the different methods by which loopholes have been plugged up, there might still be some natives who were not getting justice. These are taken care of by the Second Court which is local in nature. They are the primitive tribes in the outlying district of Beer Sheva. They have been ruled by their own Sheiks for generations and their principals of law are so different from those of the rest of the country that a special provision had to be made for them. It is an attempt to reconcile the primitive native law with European Rules of Justice. The High Commissioner had power to establish it and has the power to abolish it. It is an experiment in primitive self government. Here barefoot sheiks still mete out justice according to ancient tribal laws. Their decisions may be appealed to a Special District Court which sits only in that District. This court has two assessors (in the nature of advisors to the Court) who are chosen from the elders of the neighborhood to advise the District Court on the local customs. No more than one of these may belong to the tribe of either of the contestants because these people are notoriously clannish. They have no vote in the final decision, but they may have their opinions recorded in the minutes. In general the tribal law is upheld unless it is repugnant

to natural justice and morality. (17)

So to summarize the Judicial System we find, first: a complete religious branch subdivided into the three dominant religions having jurisdiction over marriage, divorce, legitimacy, wills and such matters of personal status. Second: a Branch having general jurisdiction with lower Courts dealing with minor matters, and a central District Court with both civil and criminal jurisdiction and the Land Courts and Courts of Criminal Assize; Also a Court of Appeals, which hears cases originating in any of the three subdivisions of the Systems of the Central Branch. This Court corresponds most closely to the Judicial Systems of the other countries. Third: the two separate pieces of Judiciary stuck on to plug up the holes left by the other Courts, namely, the Municipal Courts and the Unique Tribal Courts of the district of Beer Sheva. Appeals from those Courts may be taken to the District Court so that the whole Judicial System is well tied together. It is, after all, a remarkably simple system for a country with so many conflicting varieties of legal philosophy to consider, and so many political problems both internal and external to be taken into account. The system has worked well and fairly in the past. None of the difficulties it was designed to prevent have occurred and its originators may feel justly proud of their accomplishment.

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