

Israeli Legal History: Past and Present

ABSTRACT / INTRODUCTION

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Spatial and Temporal Framework

This essay proposes to outline the major themes and works on Israeli legal history. In order to do so, it is important to define our conception of "Israel" and of its "history." Such a categorization is inevitably subjective and complex. How are these terms delimited? The spatial categorization we adopted relies on what has come to be known as Mandatory Palestine: the territorial unit with the Mediterranean Sea on the west, the Jordan river on the east, contemporary Lebanon to the north and the Sinai desert and the present Egyptian border on the south. This is not the only possible spatial demarcation. During the late Ottoman period, the territory described did not constitute a single administrative region, but belonged to different administrative units. Only after the creation of the British Mandate did the territory become a single political unit. After 1948, Palestine was redivided and most of the territory became Israel, while Jordan and Egypt controlled the rest (the West Bank and Gaza). After their conquest by Israel in 1967, the West Bank and Gaza remained under separate legal and administrative control. In spite of all these transformations, we believe that Palestine, or "Eretz Yisrael" as it is called by Jews, was, and still is, a useful spatial demarcation.

Likewise, the time frame of the book is not self-evident. Because the legal history of this region goes back thousands of years, any periodization is artificial. Indeed, as Peter Novick argues, "the most universal of the 'regulative fictions' which historians employ to make some order out of a chaotic past is 'periodization,' by which we cut the continuous thread of time into manageable lengths, and then do our best to present such division as natural rather than contrived."

¹ We would like to thank Yoram Shachar for his comments on a draft of this chapter.
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And indeed, this book cannot avoid using a periodization scheme. The formal periodization of the book begins in 1917, the date of the conquest of Palestine by the British from the Ottoman Empire, leading to the establishment of the British Mandate in 1922, which remained in force until the creation of Israel in 1948. It ends in 1967, the date of the conquest of the West Bank and Gaza by Israeli forces. Nevertheless, some of the authors, such as Harris, Kedar and Shamir, also address the late Ottoman period, and some, including Harris, Holzman-Gazit, Mautner and Shachar, discuss the period after 1967.