

Is Tax Law Culturally Specific? Lessons from the History of Income Tax Law in Mandatory Palestine

*Assaf Likhovski**

Tax law is a technical area of law which does not seem to be culturally specific. It is thus seen as easily transferable between different societies and cultures. However, tax law is also based on definitions and notions which are not universal (the private sphere, the family, the gift etc.). So, is tax law universal or particular? Is it indeed easily transferable between different societies? And in what ways does tax law reflect ethnic or cultural rather than economic differences?

This Article seeks to answer these questions by analyzing one specific example — the history of income tax legislation in Mandatory Palestine. This history reveals the dual nature of income taxation. On the one hand, the Income Tax Ordinance which was enacted by the British in Palestine in 1941 was based on a one-size-fits-all colonial model, and the lawyers involved in its enactment, in Palestine and in the Colonial Office in London, made relatively little effort to adapt it to local conditions. On the other hand, other actors — the officials, politicians and businessmen involved in the initial debate about the imposition of income taxation in Palestine in the 1930s, and the

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administrators involved in the application of the specific rules of the Ordinance after it was enacted in the 1940s — were aware of the need to adapt the law to the specific conditions of Palestine.

Thus, while on a formal level the Ordinance seems to represent a process in which the tax law of Palestine converged with that of other British colonies (and ultimately, with English income tax law), once we expand our framework and examine not just law in the books, but also law in action, and actors such as politicians and administrators, we discover that particular local conditions were an important factor in the enactment and application of the Palestine Income Tax Ordinance. The study of the process of transplantation, the Article concludes, should therefore focus not only on the formal norms being transplanted, but also on the role of the different non-legal actors involved in the process.

I. INTRODUCTION: BEGGARS AND BORDELLOS

In the early 1930s, British officials in Palestine and the Colonial Office in London began to seriously contemplate the introduction of income taxation in British-ruled Palestine. In 1934 the Colonial Office sent a tax expert, J.F. Huntington, to the country. Following his visit, Huntington came to the conclusion that Palestine was not ready for such a tax. One of the reasons he gave had to do with a cultural difference between Britain and Palestine in outward manifestations of wealth: "In Palestine," Huntington observed,

the style of life of quite wealthy persons bears, to Western ideas, little relation to their income . . . I was told on good authority that the richest Arab in Haifa lives in a style of penury and that a Jew of the same city, reputed to be a millionaire, lives in a third-rate hotel.

Huntington then quoted a novel by Arnold Zweig in which it was said that

men who own whole districts of Jerusalem live unobtrusively among ancient gardens, whose existence behind high walls is more surmised than seen. And sheikhs, who may be observed buying costly carpets . . . look as though they did not possess five pounds . . . but in the end they produce thick bundles of notes from their pockets or from their broad girdles.¹

¹ J.F. Huntington, Report on the Introduction of Income Tax in British-Ruled Palestine 12 (May 1934) (CO 733/261, TNA: PRO) [hereinafter Huntington Report].

Income taxation finally reached Palestine at the beginning of the Second World War. The first reports of British officials administering the tax read like the reports of tropical explorers venturing into dark, uncharted territory. In the District of Jerusalem, collection was entrusted to a team headed by a British cadet officer whose training was in theology and classics. This officer found, as Huntington had warned in 1934, that his commonsense notions of wealth and its outward manifestations, brought from Britain, could not be relied upon in assessing the income of his unfamiliar subjects: "Some of the wealthiest men in Jerusalem," he reported,

seem to be obscure ultra-orthodox Oriental or Ashkenazi Jews . . . [T]wo ultra-orthodox Ashkenazis made LP6,299 [Palestine Pounds] and 7,179 out of houses and money lending; both of them prefer to walk rather than bear the expense of a bus fare, and the richer lives in a house worth LP46 a year. Their returns, though prepared by a "reliable" auditor, were increased by LP1,600 and LP1,900 respectively.²

The cafés of Jerusalem presented similar challenges: "The highest income of all [in this sector]," the report continued,

was from a café not at all fashionable, frequented mainly by [noncommissioned officers] and belonging to an Armenian, [whose income was] LP3,377. One small café, which according to all appearances would not have yielded a chargeable income at all, brought LP869 to each of two partners; we have a suspicion that there, we may be living on certain illicit profits!

The report then added, as if this proved the point, that "this café is frequented by Australians."³

The wealthy beggars of Haifa, the café owners of Jerusalem, and the challenges that both the former and latter posed to the British officials who

2 Annual Progress Reports 1942-1945, Jerusalem District: Revenue Report for the Financial Year Ended March 31, 1942, at 4-5 (Record Group 16, M-1379/24, ISA) [hereinafter Jerusalem District March 1942 Report].

3 *Id.* at 5. Australian soldiers were stationed in Palestine during both the First and Second World Wars, and they earned a certain notoriety among the local population. See ASSAF LIKHOVSKI, *LAW AND IDENTITY IN MANDATE PALESTINE* 207-09 (2006). What exactly the Australians were doing in the café is difficult to know. However, cafés were certainly one of the major sites linked to prostitution in Mandatory Palestine. See generally DEBORAH BERNSTEIN, *NASHIM BA-SHULAYIM: MIGDAR VE-LEUMIYUT BE-TEL AVIV HA-MANDATORIT* [WOMEN ON THE MARGINS: GENDER AND NATIONALISM IN MANDATE TEL AVIV] (2008) (Hebrew).

were supposed to tax them, illustrate an obvious point. Law does not operate in a vacuum — it is related to society. This is true even of tax law, which is often perceived by laymen and lawyers alike as a relatively universal area of law. The study of the history of the transplantation of *colonial* tax law may prove especially interesting in this respect, because the disjunction between foreign law and local society in colonial settings has the potential of exposing more clearly the ways in which tax law and society are related.

In recent years there has been growing interest in the study of the history of British colonial tax legislation.⁴ Despite this interest, many aspects of the process by which English income tax law spread around the globe are still unexplored.⁵ The British Empire no longer exists, and many of the more practical reasons for such a study may no longer be relevant, but the passage of time also means that the subject has become ripe for a historical examination, which focuses on more general and theoretical questions about the nature of tax law and also uses tax law as an interesting case study for asking more general, comparative questions about the relationship of law and society.

The question I analyze in this Article is the extent to which British colonial income tax law was adapted to local conditions in British colonies. I would like to examine this question by looking at one specific case — Mandatory Palestine.⁶ By examining this case, I hope to contribute to one of

4 See, e.g., Michael Littlewood, *Taxation Without Representation: The History of Hong Kong's Troublingly Successful Tax System*, 2002 BRIT. TAX REV. 212; PETER HARRIS, *INCOME TAX IN COMMON LAW JURISDICTIONS: FROM ORIGINS TO 1820* (2006); Martin Daunton, *Tax Transfers: Britain and Its Empire, 1848-1914*, in *GLOBAL DEBATES ABOUT TAXATION* 137 (Holger Nehring & Florian Schui eds., 2007); J.F. Avery Jones, *Introduction to the Special Issue on the Legacy of UK Taxation*, 2008 BRIT. TAX REV. 201.

5 Harris' recent book is a comparative survey of the development of tax legislation, mostly focused on the specific details of legislation rather than on the relationship between law and society. See HARRIS, *supra* note 4, at 2-3. Daunton's article explores tax policy rather than tax law. Daunton, *supra* note 4. On the study of the sociological and historical rather than the legal aspects of tax law see generally *THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE* (Issac William Martin, Ajay K. Mehrotra & Monica Prasad eds., 2009).

6 For studies dealing with the transplantation of other types of English legislation to Palestine, see, for example, Norman Abrams, *Interpreting the Criminal Code Ordinance, 1936: The Untapped Well*, 7 ISR. L. REV. 25 (1972); Yoram Shachar, *Mekoroteha shel Pkudat ha-Hok ha-Plili 1936 [The Origins of the Penal Code 1936]*, 7 TEL AVIV U. L. REV. 75 (1979) (Hebrew); LIKHOVSKI, *supra* note 3; Ron Harris & Michael Crystal, *Some Reflections on the Transplantation of British Company Law in Post-Ottoman Palestine*, 10 THEORETICAL INQUIRIES L. 49 (2009).

the major contemporary debates in comparative law scholarship, the debate about legal transplantation.⁷

Understanding the process of legal transplantation is critical for both practical and theoretical reasons: On the practical level, understanding the process of transplantations is critical for assessing the feasibility of law and development projects based on the transfer of Western norms to the nonwestern world.⁸ On the theoretical level, it is critical for understanding the relationship between law and society.

Much of the literature on legal transplants has focused on a debate between, on the one hand, scholars who are convinced that transplantations prove the autonomy of law and, on the other hand, scholars who argue that law is embedded in society and that therefore legal institutions and norms transferred from one system to another can only survive if there is a fit between them and the social and economic conditions in the society into which they are transplanted.⁹

The debate over the autonomy of law is, of course, not the only one concerned with the phenomenon of transplantation. Other discussions of the subject use the social scientific literature on the diffusion of technological, cultural and administrative ideas to gain a better understanding of the process of legal transplantation;¹⁰ argue that the phenomenon of legal transplants might be understood as a result of a competition in which both local and

7 The debate about legal transplantation is part of a bigger topic — the convergence or divergence of law. While there is now a large body of literature discussing, for example, comparative *corporate* law, the comparative study of *tax* law has not received similar attention. For a discussion of the reasons for this lack of interest, see, for example, Carlo Garbarino, *An Evolutionary Approach to Comparative Taxation: Theory, Methods and Agenda for Research*, 57 AM. J. COMP. L. 677 (2009); Omri Y. Marian, *The Discursive Failure in Comparative Tax Law*, 58 AM. J. COMP. L. (forthcoming 2010).

8 See generally D.M. Trubek, *Law and Development*, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 8443 (Neil J. Smelser & Paul B. Baltes eds., 2001). On contemporary tax transplants see Miranda Stewart, *Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transitional Countries*, 44 HARV. INT'L. L.J. 139 (2003).

9 See generally ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (2d ed. 1993); David Nelken, *Toward a Sociology of Legal Adaptation*, in ADAPTING LEGAL CULTURES 7 (David Nelken ed., 2001); Michele Graziadei, *Transplants and Receptions*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 441 (Mathias Reimann & Reinhard Zimmerman eds., 2006).

10 See William Twining, *Diffusion of Law: A Global Perspective*, 49 J. LEGAL PLURALISM 1 (2004); William Twining, *Social Science and Diffusion of Law*, 32 J.L. & SOC'Y 203 (2005).

foreign legal solutions battle each other, and those which are most efficient are adopted by the legal system;¹¹ tie the discussion of transplantation to a broader debate about the convergence or divergence of law;¹² or discuss the relationship between transplantation and economic growth.¹³

One possible way of resolving the debate about transplants and the autonomy of law is to distinguish between different areas of law. Some areas of law (for example, family law) are seen as deeply embedded in particular societies and cultures and therefore as less amenable to transplantation. Other areas, such as commercial law, are seen as culturally neutral, and therefore more easily transferable.

Tax law occupies an ambiguous position between the more easily transferable areas of law and those areas which are culturally specific, between the universal and the particular. On the one hand, tax law, like other areas of commercial law, is often perceived as technical and, therefore, less culturally specific than other areas. It should therefore prove to be easily transferable.

On the other hand, tax law is ultimately based on definitions and notions which are culturally specific. This culturally embedded aspect of tax law appears not just in differences in outward manifestations of wealth of the sort mentioned at the beginning of this Article, but also in the way in which tax law (like other fields of law) implicitly relies on assumptions about culturally specific institutions ("the family") or culturally specific distinctions (the private/public distinction).¹⁴ For example, a major distinction is made in

11 See Ugo Mattei, *Efficiency in Legal Transplants: An Essay in Comparative Law and Economics*, 14 INT'L REV. L. & ECON. 3 (1994).

12 See, e.g., JEFFERY N. GORDON & MARK J. ROE, CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE (2004).

13 See, e.g., Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Law and Finance*, 106 J. POL. ECON. 1113 (1998); Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003); Inga Markowitz, *Exporting Law Reform: But Will It Travel?*, 37 CORNELL INT'L L.J. 95 (2004).

14 See, e.g., Marjorie E. Kornhauser, *The Morality of Money: American Attitudes Toward Wealth and the Income Tax*, 70 IND. L.J. 119 (1994); see also Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, 6 LAW & HIST. REV. 259 (1988); Assaf Likhovski, *A Map of Society: Defining Income in British, British-Colonial and American Tax Legislation*, 2005 BRIT. TAX REV. 158. Distinguishing between deep-seated cultural differences and the "shallower" political and economic interests of specific groups is, of course, not an easy task. See, e.g., Michael Livingston, *From Mumbai to Shanghai, with a Side Trip to Washington: China, India, and the Future of Progressive Taxation in an Asian-Led World*, 11 THEORETICAL INQUIRIES L. 539 (2010).

English income tax law between ordinary income (which is taxed) and gifts (which are not), but what exactly constitutes a "gift" is a culturally specific matter.¹⁵

So, is tax law universal or particular? Is it indeed easily transferable between different societies and cultures or not? And in what ways does it reflect ethnic or cultural rather than economic differences? This Article analyzes these questions by focusing on the history of income tax legislation in Mandatory Palestine. This history reveals the dual nature of income taxation. On the one hand, the Income Tax Ordinance which was enacted by the British in Palestine in 1941 (ITO) was based on a one-size-fits-all colonial model, and the lawyers involved in its enactment, in Palestine and in the Colonial Office in London, made relatively little effort to adapt it to local conditions. On the other hand, other actors — the officials, politicians and businessmen involved in the initial debate about the imposition of income taxation in Palestine in the 1930s, and the administrators involved in the application of the specific rules of the Ordinance after it was enacted in the 1940s — were aware of the need to adapt the legislation to the specific economic, political, social and cultural conditions of Palestine. Thus, while on a formal level the Ordinance seemed to represent a process in which the law of Palestine converged with the tax law of other British colonies and (ultimately) with English income tax law, once we expand our framework and examine not just legal texts and legal actors, but also law in action, and actors such as politicians and administrators, we discover that particular local conditions were an important factor in the enactment and application of the Ordinance.¹⁶

15 A recent Israeli example is a case in which money was given to an ultra-orthodox rabbi in exchange for his blessing. The state saw this as a market transaction involving income to the rabbi, while the rabbi argued that the money was a gift, given as part of a private, non-market transaction, and as such should not be taxed. *See* HCJ 3516/04 Israel Religious Action Center v. Ministry of Finance (unreported case, May 18, 2004) (on file with author); *see also* CA 254/87 Salfawati v. Assessing Officer Nazareth [1990] IsrSC 44(1) 714 (discussing whether money given by a Bedouin father to his son, who was working for him, should be classified as "income" or "gift"); Income Tax Appeal (TA) 8019/04 Finehandler v. Assessing Officer Nazareth, 21 MISSIM E-156 (May 21, 2007) (involving voluntary payments made to a Rabbi in exchange for his books).

16 In some sense, this argument follows the one already made by Michael Livingston who, in his comparative examination of attitudes to progressive taxation, showed that a superficially similar process of convergence of tax rates in a number of countries in fact hides, on a deeper level, substantial local differences. *See* Livingston, *supra* note 14.

Thus, I argue, the debate about legal transplantation between those who view law as autonomous and those who believe that law and society are deeply connected is misguided in the sense that the two approaches are based on two different frames of reference. A narrower frame, which only focuses on law in the books, and which sees the act of transplantation as a one-time event, leads to the view that income tax law is universal and easily transferable. However, widening the frame to include other actors, as well as other phases in the life of the law (pre-enactment as well as post-enactment phases), reveals that even a seemingly universal law is bound to be particularized and localized.¹⁷

A related argument concerns the role of different actors in the process of legal transplantation. In that process, some of the actors involved work toward the convergence of local and metropolitan law, while others work toward their divergence.¹⁸ Once we expand our temporal framework, looking at both the pre-enactment and post-enactment phases of legislation, we see that lawyers who were involved in the process were agents of convergence, seeking to create similarity between the income tax law of Mandatory Palestine and English and British colonial law, while non-lawyers involved in the process of enacting and implementing income taxation were often agents of divergence.¹⁹

The Article is organized chronologically. Part I describes the failed British attempts to introduce income taxation in Palestine in the 1920s and 1930s, and analyzes the political factors that led to this failure. Part II discusses the enactment of the Income Tax Ordinance in 1940-1941. Part III examines the application of the Ordinance during the 1940s, and the way in which specific income tax rules were adapted to local conditions. The Conclusion offers some general lessons that can be learnt from the specific case study analyzed in this Article.

17 For a similar approach looking at the convergence and divergence of law in its post-enactment phase, see for example Mark D. West, *The Puzzling Divergence of Corporate Law: Evidence and Explanations from Japan and the United States*, 150 U. PA. L. REV. 527 (2001). Unlike West, however, I study not merely how a transplanted law is transformed after it is enacted, but also the local conditions that determine the very process of transplantation.

18 See, e.g., GORDON & ROE, *supra* note 12; Katarina Pistor, *Evolution of Corporate Law and the Transplant Effect: Lessons from Six Countries*, 18 WORLD BANK RES. OBSERVER 89 (2003) (discussing corporate law transplants).

19 See also Michael Livingston, *From Milan to Mumbai, Stopping in Tel Aviv: Progressive Taxation and "Progressive" Politics in a Globalized but Still Local World*, 54 AM. J. COMP. L. 585 (2006).

II. 1917-1939: REJECTING TRANSPLANTATION

The tax system of Palestine during the late Ottoman period was mainly based on direct taxation of the rural population of the country. It included a "tithe" (called *usher*) that was levied on gross farm output, an animal tax (*aghnam*), and a land and building tax (*werko*). In addition to these taxes, the system included excise taxes, customs, and various registration and license fees. The British occupied the southern part of Palestine in 1917 and its northern part in 1918. During the first years of British rule in Palestine they retained and slightly modified some parts of the Ottoman tax system, turning customs, a favorite colonial revenue-raising tool, into a major source of revenue.²⁰

The British had relatively little leeway in changing the tax system, not merely because they were foreign rulers, to whom the local population owed weaker allegiance, but also because they ruled a society which was composed of two distinct communities, the Arabs and Jews, whose social structures, economic interests and political aspirations diverged widely, and any new fiscal measure would automatically have been seen as serving the interests of one community to the detriment of the other.²¹

In 1923 the first British High Commissioner of Palestine, Herbert Samuel, appointed a commission to consider the desirability of reintroducing an Ottoman vocational tax on merchants and artisans (called *temettu*).²²

20 On the late Ottoman and early Mandatory tax system see ABRAHAM GRANOVSKY, *THE FISCAL SYSTEM OF PALESTINE* (1935); ARYE LAPIDOTH, *EVASION AND AVOIDANCE OF INCOME TAX: A COMPARATIVE STUDY OF ENGLISH LAW AND ISRAELI LAW* 16-25 (1966); Arye Lapidoth, *Trends in the Income Tax Legislation of Israel*, in *SCRIPTA HIEROSOLYMITANA: VOL. 26 — STUDIES IN ISRAEL LEGISLATIVE PROBLEMS* 325 (1966); AMOTZ MORAG, *MIMUN HA-MEMSHALA BE-YISRAEL: HITPATHUT U-VEAYOT [PUBLIC FINANCE IN ISRAEL: DEVELOPMENT AND PROBLEMS]* 1-28 (1967) (Hebrew); *HITPATHUT HA-MISIM BE-ERETZ YISRAEL: SKIRA HISTORIT [THE HISTORY OF TAXATION IN PALESTINE AND ISRAEL]* (A. Mandel ed., 1968) (Hebrew); H.C. WILKENFELD, *TAXES AND PEOPLE IN ISRAEL* 16-42 (1973); BARBARA J. SMITH, *THE ROOTS OF SEPARATISM IN PALESTINE: BRITISH ECONOMIC POLICY 1920-1929*, at 40-46 (1993); J. METZER, *THE DIVIDED ECONOMY OF MANDATORY PALESTINE* (1998); A. Yoran, *Forty Years of Tax Law*, 24 *ISR. L. REV.* 738 (1990); MARTIN BUNTON, *COLONIAL LAND POLICIES IN PALESTINE, 1917-1936*, at 132-70 (2007).

21 MORAG, *supra* note 20, at 2-3. An interesting discussion of the way ethnic fissures are reflected in attitudes to progressivity in contemporary Israel can be found in Livingston, *supra* note 19, at 570-76.

22 Taxation Inquiry Appointees (June 15, 1923) (CO 765/1, TNA); *see also Mas Hachnasa be-Eretz Yisrael [Income Tax in Palestine]*, *DAVAR*, Nov. 6, 1939, at 2 (Hebrew).

This tax had been abolished in 1920 following the British conquest of the country, and its re-imposition in 1923 was contemplated because the British believed that the rural population was paying more than its fair share of taxes, while urban merchants and professionals were lightly taxed. The High Commissioner consulted the Colonial Office in London, seeking information about similar taxes in the British Empire. In response, the Colonial Office informed Samuel of the existence of a 1922 report by the Imperial Inter-Departmental Committee on Income Taxation, which had created a Model Income Tax Ordinance for British colonies (a copy of which, apparently, was not sent to Palestine), adding a word of caution about income taxation. Because of difficulties of assessment, said the Colonial Office, income tax in colonies "tends to resolve itself into little more than a tax on Government officials, as being the only class whose income is readily ascertainable."²³ Following this advice, the whole matter was dropped.

While sporadic mention of the income tax can be found in documents from the late 1920s, the idea of introducing income taxation in Palestine was only revived following the Arab riots of 1929.²⁴ The riots led to the establishment of a committee composed of William Johnson, the Deputy Treasurer of Palestine, and Robert Crosbie, the Assistant Southern District Commissioner, who suggested that income tax be introduced in Palestine, again as a way of alleviating the burden of taxation on Arab peasants who, it was claimed, were relatively heavily taxed.²⁵

In June 1932, the Government's Standing Committee on Trade and Industry was instructed to examine the problem of introducing income taxation in Palestine.²⁶ The renewed interest was again motivated by the desire to distribute the tax burden more equitably between the rural and urban sectors, and implicitly between Arabs (most of whom were peasants) and Jews

23 Letter from Thomas to Herbert Samuel, (Jan. 28, 1924) (CO 733/51, TNA: PRO); Minutes (July 21, 1932) (CO 733/225, TNA: PRO); *Income Tax*, PALESTINE POST, Apr. 3, 1941, at 4; see also GRANOVSKY, *supra* note 20, at 119, 209, 302-03; REPORT OF THE INTER-DEPARTMENTAL COMMITTEE ON INCOME TAX IN COLONIES NOT POSSESSING RESPONSIBLE GOVERNMENT (1922) [hereinafter 1922 REPORT].

24 See, e.g., Minutes of the Executive Council of the Government of Palestine, 183rd Meeting (June 27, 1927) (CO 814/23, TNA).

25 GOV'T OF PALESTINE, REPORT OF A COMMITTEE ON THE ECONOMIC CONDITIONS OF AGRICULTURALISTS IN PALESTINE AND THE FISCAL MEASURES OF GOVERNMENT IN RELATION THERETO 49, 56 (1930); GRANOVSKY, *supra* note 20, at 305.

26 *Income Tax*, *supra* note 23; *Sir Arthur Wauchope's Policy*, PALESTINE POST, Dec. 14, 1932, at 5; Extract from Daily News Bulletin No. 36 (Feb. 10, 1934) (CO 733/260, TNA: PRO); *Income Tax Scheme: No Change in Jewish Attitude*, PALESTINE POST, Feb. 16, 1934, at 8.

(most of whom were urban), but also by the concern, raised perhaps by the economic crisis of the early 1930s, that custom revenues might decrease in the future and that a machinery for taxing income should therefore be put in place while Palestine enjoyed a period of relative prosperity, so that it could be used in the future to replace other sources of revenue.²⁷

Palestine was not the first British territory in the Middle East to have an income tax. Income taxation was introduced in Iraq in 1927. However, in Iraq, most taxpayers were British officials and firms.²⁸ Income taxation was also introduced in Trans-Jordan in 1933.²⁹ There too the tax was actually imposed only on a small group of salaried employees, with exemptions provided for many occupations (including workers in religious and charitable organizations, servants, agricultural workers and midwives).³⁰

Unlike Iraq and Trans-Jordan, where the tax encountered little opposition from the local population, in Palestine the introduction of income taxation met with fierce resistance among some sectors of the population. While initially there was some Arab opposition to the tax, most Arab politicians and businessmen ultimately came to support it, provided it would be used to replace other taxes, such as the tithe and customs, which were seen as pro-Jewish.³¹

Initial Jewish reaction, at least in the politically dominant Jewish labor movement, was quite favorable, despite the perceived adverse impact income taxation would have on the Jewish sector.³² However, middle-class Jews

27 Letter from Wauchope to Colonial Office (Dec. 22, 1932) (CO 733/225, TNA: PRO); Letter from Wauchope to Cunliffe-Lister (June 14, 1934) (CO 733/261, TNA: PRO).

28 One Colonial Office official who served in Iraq before moving to London noted that the general Iraqi view was that the income tax "should be a tax payable by British officials and British firms and companies, and as far as possible by no one else." See Minutes, Vernon (Apr. 30, 1934) (CO 733/260, TNA: PRO).

29 *Income Tax in Trans-Jordan*, PALESTINE POST, Mar. 21, 1933, at 2; GRANOVSKY, *supra* note 20, at 324.

30 *Old Story Across the Jordan*, PALESTINE POST, Apr. 29, 1941, at 3.

31 The tithe was seen as pro-Jewish because it was mainly paid by Arab peasants. High customs rates were also seen as pro-Jewish because they were seen as a way of protecting young Jewish industries from foreign competition. On Arab support for the income tax, see for example, *Haifa Arabs Favour Low Income Tax*, PALESTINE POST, Feb. 25, 1934. On the argument that income tax should replace customs, see *Syrian Transport to Palestine Growing*, PALESTINE POST, June 12, 1938, at 12. On Arab opponents of the income tax, see for example, *More About Income Tax: View of Arab Opponents*, PALESTINE POST, Dec. 5, 1932, at 5; *Merchants and Proposed Income Tax*, PALESTINE POST, Feb. 15, 1934, at 5; *Proposed Election Boycott*, PALESTINE POST, Feb. 16, 1934, at 8.

32 See, e.g., Haim Arlosoroff, *Mi-Reshimot ha-Hodesh [Notes of the Month]*, 1 AHDUT HA-'AVODA 461, 471 (1930) (Hebrew); *Ha-Vicuah al Mas Hachnasa ba-Vaad*

opposed income taxation vehemently.³³ An article by Arthur Ruppin, a leading Zionist sociologist and economist, summarized the main arguments of the Jewish opponents of the tax. First, Ruppin said, using familiar orientalist images, the tax morale and "economic maturity" of the native (i.e., Arab) inhabitants of Palestine would not allow the introduction of the income tax. Second, racial animosity meant that taxpayers of one nation would suspect the impartiality of officials of the other nation. Third, historically, income taxation had been introduced at times of budgetary deficit, while Palestine enjoyed a budget surplus. Fourth, the main reason given for the introduction of the tax — the supposedly heavy tax burden of Arab peasants (who were paying the tithe and the land tax) — was simply erroneous. The tax burden on peasants was minimal (averaging, according to Ruppin, two pounds annually per family). Fifth, administratively, the income tax was expensive to administer, and experience in Iraq (the only other post-Ottoman country in which it was introduced when Ruppin was writing) had shown that its yield was small (1.4 percent of the Iraqi revenue, even with a relatively low rate of exemption). Sixth, the Jews, who numbered only 17 percent of the population at the time, already paid 40 percent of all taxes, and the income tax, which was mainly a tax on urban incomes, would further increase their share (since 75 percent of the Jews were urban compared to only 30 percent of the Arabs). Finally, Ruppin said, the tax would deter foreign Jews from investing in Palestine. Ruppin therefore concluded that "the income tax, a product of long evolutionary process in Western countries, if mechanically transplanted into the backward conditions of Palestine, can do little good to state finance but may inflict serious harm on the country's economic fabric."³⁴

ha-Leumi [The Argument Regarding Income Tax in the National Committee], DAVAR, Nov. 16, 1932, at 1 (Hebrew); *Lediyun be-Inyan Mas Hachnasa* [Discussion Regarding Income Tax], DAVAR, Nov. 18, 1932, at 2 (speech by Berl Katznelson) (Hebrew). For an earlier declaration of support for progressive income taxation by the Jewish labor movement, see *Hahlatot ha-Veida ha-Shlishit shel Histadrut ha-Ovdim ha-Clalit be-Eretz Yisrael* [Decisions of the Third Conference of the National Workers Alliance in Israel], DAVAR, Aug. 26, 1927, at 9 (Hebrew). On the Jewish labor movement, socialist policies and taxation see also ZEEV STERNHELL, *THE FOUNDING MYTHS OF ISRAEL: NATIONALISM, SOCIALISM, AND THE MAKING OF THE JEWISH STATE* 6 (1999).

33 On settler resistance to income taxation in other parts of the British Empire, see Barbara Bush & Josephine Maltby, *Taxation in West Africa: Transforming the Colonial Subject into the "Governable Person,"* 15 *CRITICAL PERSP. ON ACCT.* 5, 12 (2004); Littlewood, *supra* note 4. According to a *Palestine Post* article, the opposition to the tax in the Jewish community was universal. *Income Tax Opposed*, *PALESTINE POST*, Feb. 14, 1934, at 4; *Income Tax: Impractical, Unjust, Harmful*, *PALESTINE POST*, Mar. 5, 1934, at 4.

34 Arthur Ruppin, *Income Tax in Palestine: A Premature and Ill-Advised Project* —

In December 1932 the National Council of Palestinian Jews (*Vaad Leumi*), one of the major political organizations of the Jewish community in Palestine, adopted an official resolution opposing taxation of income, focusing in the resolution on Ruppin's first argument, that

the cultural level and economic situation of large sections of the country's inhabitants prevent a fair registration of their income, giving rise to the danger that instead of a fair distribution of taxes, an income tax will lead to an additional burden on those sections which either do not desire or are unable to conceal their income.³⁵

This argument was repeated by many other opponents of the tax. Income tax, it was claimed, was only appropriate in highly developed countries such as England. In underdeveloped countries such as Palestine, it would be as unnatural as a tax on "goats and camels" would be in England.³⁶

Serious Menace to Development, 18-19 PALESTINE NEAR E. ECON. MAG. 443, 443-46 (1932). Similar arguments were made by other Jewish opponents of the plan. See, e.g., Letter from Dizengoff to Chancellor (Nov. 20, 1932) (CO 733/225, TNA: PRO); Note on Discussion on the Introduction of Income Tax in Palestine Between the Acting Treasurer and the Jewish Agency (July 4, 1932) (CO 733/255, TNA: PRO); GRANOVSKY, *supra* note 20, at 283-300, 305-16. It should be noted that the ethnic incidence of taxation was hotly disputed. In a memorandum submitted to the Palestine Royal Commission in 1937, the Government of Palestine argued that it was impossible to give an accurate figure of the relative incidence of taxation along ethnic lines. See *Memorandum No. 4C: Relative Contributions of Arabs and Jews to Revenue and Benefits Derived by Each Race from Expenditure*, in 2 MEMORANDA PREPARED BY THE GOVERNMENT OF PALESTINE FOR THE USE OF THE PALESTINE ROYAL COMMISSION 20-24 (1937); see also MICHEL FRED ABCARIUS, PALESTINE THROUGH THE FOG OF PROPAGANDA 173-85 (1946); SMITH, *supra* note 20, at 57; Mahmoud Yazbak, *From Poverty to Revolt: Economic Factors in the Outbreak of the 1936 Rebellion in Palestine*, 36 MIDDLE E. STUD. 93, 97-100 (2000). An additional argument made by other Jewish speakers was that the tax would subject capital flowing to Palestine from foreign countries to double taxation. See Note of Discussion with Dr. Brodetsky (Nov. 30, 1932) (CO 733/225, TNA: PRO). The issue of double taxation was often a cause of concern in the colonial context. For previous examples, see for example *The Colonies and the Income Tax*, TIMES, June 6, 1896, at 18; *Association to Protest Against the Duplication of Income Tax Within the Empire*, TIMES, Feb. 10, 1917, at 12; *Double Income Tax Within the Empire*, TIMES, Apr. 10, 1919, at 17. Some opponents of income taxation in Palestine also noted the fact that Egypt and Syria, which neighbored Palestine to the south and the north, respectively, did not have an income tax at the time. Arie L. Shenkar, *Why Income Tax in Palestine?*, PALESTINE POST, Apr. 4, 1934, at 2.

³⁵ Extract from Daily News Bulletin No. 36, *supra* note 26.

³⁶ *Income Tax — Why It Not Be Introduced*, PALESTINE POST, Apr. 26, 1934, at 19.

While the debate on the taxation of income raged, the lawyers of the Colonial Office and the Government of Palestine were busy creating a draft Income Tax Ordinance for Palestine. This draft was based on the Model Colonial Income Tax Ordinance of 1922. Little attempt was made, either in London or Jerusalem, to adapt the Model Ordinance to local conditions. This obliviousness to local conditions was perhaps a result of the recommendation of the Interdepartmental Committee, which said in its report that the "uniformity of legislation should be aimed at as far as possible."³⁷

The various legal actors involved in the drafting of the Ordinance (in the Colonial Office, the Board of Inland Revenue and the Government of Palestine) proposed very few deviations from the Model Ordinance. Major issues with which the drafters were concerned were the double-taxation relief provisions found in the Model Ordinance; the enactment of a provision granting the High Commissioner the power to exempt the income of "any person or company," or to exempt the income of "newly-established companies"; a provision allowing the deduction of payments of the urban property tax, the house and land tax and the tithe; a provision exempting the profits of nonresident ship owners; and, finally, the taxation of debenture interest.³⁸ In drafting these provisions, the lawyers of the Colonial Office and the Government of Palestine made use of a number of colonial enactments (the income tax ordinances of Northern Rhodesia and Nyasaland, Kenya, Uganda and Tanganyika), as well as the 1921 United States Revenue Act.³⁹

In the drafting process, even the minor changes suggested by the Government of Palestine often encountered opposition from London based on the desire to create uniform colonial income tax legislation. One example of this is a provision which granted the High Commissioner the power to exempt newly-established businesses from taxation (an exemption demanded by the Zionist organizations in Palestine). Huntington, the Inland Revenue

37 1922 REPORT, *supra* note 23, at 5; *see also* G. EICHELGRÜN, PALESTINE INCOME TAX GUIDE 2 (1945).

38 Letter from Wauchope to Cunliffe-Lister (Aug. 14, 1933) (CO 733/241, TNA: PRO); Minutes (Aug. 22, 1933) (CO 733/241, TNA: PRO); Minutes (Nov. 7, 1933) (CO 733/241, TNA: PRO) [hereinafter Minutes of Nov. 7, 1933]; Letter from J.F. Huntington to Downie (Dec. 21, 1934) (CO 733/241, TNA: PRO). There were some additional minor changes. *See* Letter from Downie to High Comm'r of Palestine (Aug. 24, 1933) (CO 733/241, TNA: PRO).

39 Minutes of Nov. 7, 1933, *supra* note 38; Draft Letter from Plymouth to High Comm'r of Palestine (Dec. 6, 1934); Letter from J.F. Huntington to Downie (Dec. 21, 1934) (CO 733/241, TNA: PRO); Letter from Cunliffe-Lister to High Comm'r of Palestine (Nov. 21, 1934) (CO 733/241, TNA: PRO).

expert who was assigned to advise the Colonial Office on the Palestine legislation, suggested that such an exemption was contrary to universal fiscal and economic principles (and could also give rise to tax avoidance if companies were liquidated and later reestablished as "new businesses"). "I write" said Huntington in one memo, "in ignorance of local conditions and the considerations of general policy that presumably underlie the proposal, but that very ignorance perhaps makes this the right time for expounding general principles of taxation."⁴⁰

The only major issue that Colonial Office officials were concerned about was the question of relief from double taxation.⁴¹ In the original draft of the Ordinance submitted by the Attorney General of Palestine to the Colonial Office in August 1933, sections 46-47 of the Model Income Tax Ordinance dealing with relief from double taxation were omitted because such relief, the Attorney General believed, was contrary to the nondiscrimination provisions of the Mandate for Palestine.⁴² However, the position of the Colonial Office was that this would not be a problem. The issue, it was said, had already been encountered in the case of Tanganyika, which was also a Mandate territory granted to Britain by the League of Nations, and the conclusion reached in the Tanganyikan case was that an imperial relief provision would not constitute discrimination against non-British taxpayers, because foreign nationals would receive the same relief as British subjects did in respect to any income which was subject to U.K. or Empire taxation.⁴³

The position of the Colonial Office in this matter did not satisfy Jewish officials in Palestine. Maurice Hexter, an official of the Jewish Agency, argued that imperial double-tax relief would be prejudicial to Jewish-American investments.⁴⁴ Hexter said that the relief would induce capital to move from other countries to the U.K. for purposes of trading with Palestine, and that Palestinians would be induced to invest in the U.K. instead

40 Letter from J.F. Huntington to Johnston (Jan. 10, 1934) (CO 733/241, TNA: PRO). On Zionist calls for tax exemptions for new settlers (in the 1920s), see SMITH, *supra* note 20, at 42.

41 The problem was that these relief provisions were seen to be in conflict with the anti-discrimination clause of Article 18 of the Mandate for Palestine, which stated that "The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning taxation" See *The Palestine Mandate* (July 24, 1922), available at http://avalon.law.yale.edu/20th_century/palmanda.asp.

42 Letter from Wauchope to Cunliffe-Lister, *supra* note 38 (memorandum §§ 46-47).

43 Letter from Cunliffe-Lister to Wauchope (Nov. 21, 1933) (CO 733/124, TNA: PRO).

44 Minutes, Downie (Apr. 21, 1934) (CO 733/260, TNA: PRO).

of in non-British territories in order to enjoy the relief. That would constitute discrimination of the type forbidden by Article 18 of the Mandate. One British official voiced the fear that the Jews would petition the League of Nations and even appeal to the Permanent Court of International Justice in The Hague, while another official said that "I do not think we need to take Dr. Hexter too seriously. He is apparently an American Jew and it puzzles me to know why he is interested to take up this attitude. There is evidently something crooked behind it."⁴⁵ However, as the Foreign Office also believed that the double-taxation relief provisions were contrary to the nondiscrimination provisions of the Mandate,⁴⁶ a solution was proposed: "[I]f protests were received from any country, for example, the US or the Union of South Africa, the Palestine government would be willing, without admitting any obligation in the matter, to grant relief on a reciprocal basis."⁴⁷

During the initial drafting of the Ordinance, little attention was devoted to local conditions. At the second stage of the enactment process, an expert was sent to Palestine to examine local attitudes, interests and circumstances. The official who was sent to Palestine was the previously mentioned Board of Inland Revenue expert, J.F. Huntington. Huntington arrived in Palestine in February 1934 to head a committee which also included two local officials, the Treasurer and the Director of Customs, Excise and Trade. Huntington's committee heard evidence in March and April of 1934. Witnesses included members of local chambers of commerce, as well as representatives of major industries and the professions. Perhaps unsurprisingly, workers and peasants, who were an indirect although important interest group, were not invited to give evidence.⁴⁸

Huntington submitted his report in May 1934. His general conclusion was

⁴⁵ *Id.*; Minutes, Bushe (Apr. 24, 1934) (CO 733/260, TNA: PRO).

⁴⁶ Letter from Under-Secretary of State, Foreign Office to Under-Secretary of State, Colonial Office (June 13, 1934) (CO 733/260, TNA: PRO).

⁴⁷ Letter from Cunliffe-Lister to High Comm'r of Palestine (May 25, 1934) (CO 733/260, TNA: PRO). The same kind of debate arose after the Ordinance was finally enacted in 1941. There was a proposal by the Board of Inland Revenue to grant personal allowances to nonresident British subjects, and the Government of Palestine thought that this would be contrary to Article 18, and again, reference was made to the Tanganyika Income Tax Ordinance. *See* Minutes (June 17, 1942) (CO 733/444, TNA: PRO); *see also* MAX BREIT, PALESTINE MANDATE VERSUS PALESTINE INCOME TAX AND REFUND OF FOREIGN INCOME TAX (1944).

⁴⁸ *Visiting Expert to Hear Local Evidence*, PALESTINE POST, Feb. 11, 1934, at 1. In total, the committee heard eighty-one witnesses, thirty-one of whom were Jews, and the rest coming from the local Muslim, Christian Arab and Christian European communities in roughly equal numbers. *See* Huntington Report, *supra* note 1, at 35.

that income taxation should not be imposed in Palestine. Huntington began his report by noting that while Muslim Arabs favored the imposition of an income tax, everyone else (Christian Arabs, Jews and Christian Europeans) opposed it. The argument made by the Muslims was that peasants and rural and urban landowners were unduly burdened by the existing system of taxation, while banks, corporations, merchants and professionals contributed less than their fair share.⁴⁹ Huntington did not take this argument seriously, however, and in his report he suggested that the reasons for Muslim support of the income tax were different. One reason, he said, was that the opposition of the Jews to the tax was in itself a sufficient reason for the Muslims to support it, but it was also due to the fact that "Arab standards . . . both of truthfulness and of bookkeeping" ensured that they would be able to evade the tax.⁵⁰

Huntington's rejection of income taxation was based on two major arguments: one having to do with the non-homogenous nature of society in Mandatory Palestine, the other with local opposition to the tax. Taxation of income, Huntington said, should target the taxpayer's "ability" by reference to the taxpayer's monetary income. Palestine, said Huntington, was a country of "strangely assorted standards of life," and monetary income could not "furnish a fair test of 'real' ability in a country in which the most widely different cultures and standards of life are found side by side." In Palestine, an income of £500 per annum provided a high standard of living for Arabs, but "for a European . . . and for many Jews" such an income meant "bare livelihood," both because much of the income would be spent on rent and because "many of the more numerous things which [the European's and Jew's] culture and standard of living have made necessary to him are heavily taxed already." Living costs, Huntington concluded, "vary according to race and creed, of necessity and not of choice, in a way inconceivable in occidental countries."⁵¹

Huntington also added that

there were such vast differences in the standard of living and morality of various sections of the community, that an identical rate of tax on a given income would be burdensome on some classes and comparatively light for other sections assessed at that rate e.g. a Government official earning £1000 a year is a comparatively poor

⁴⁹ Huntington Report, *supra* note 1, at 36.

⁵⁰ *Id.* at 8.

⁵¹ *Id.* at 18, 23.

man and a merchant in the Souk earning £1000 a year is definitely a rich man.⁵²

The second type of argument mentioned in the report was of a more practical nature. Huntington emphasized that taxing income was dependent upon what the taxpayer chose to tell the authorities about himself. The remedy for tax evasion in Britain was estimated assessments, but such assessments could be used effectively only on a small scale, and were suitable only when relatively few taxpayers evaded taxation. In addition, he added, ninety percent of the population of Palestine (Arabs, but also Jews and "Europeans") did not keep books.⁵³ Again, in Britain the Inland Revenue could turn to accountants to prepare reasonably accurate statements when a taxpayer's books were inaccurate. But in Palestine, Huntington said, an accountant "will put his name to anything." Accountants were of poor standing and low quality, he complained, unregulated by any professional body, and lacked a spirit of independence toward their clients. Furthermore, the strong opposition to the tax among the Jews ("the most important section of the people to be taxed"), many of them "of high intelligence and all of them of a different race," convinced Huntington that an income tax could not be introduced, since direct taxation without the consent and cooperation of those being taxed was not feasible.⁵⁴

Another practical argument made in the report had to do with "the engrained habits of bribery in an oriental country."⁵⁵ In support of his argument, Huntington also referred to the British experience in Iraq and Nyasaland, which showed that the imposition of an income tax by a foreign government yielded little revenue, and that over time this revenue declined rather than increased.⁵⁶

Based on the Huntington report, the High Commissioner for Palestine reached the conclusion that introducing an income tax in Palestine would be impractical. Two principal reasons were given for this decision. First, both Jews and Arabs regarded the government as foreign and would therefore "feel no sense of moral obligation" to pay the tax. Second, as a direct result of the first argument, collection of the tax would be disproportionately costly.⁵⁷

52 *Id.* at 40.

53 *Id.* at 13.

54 *Id.* at 14.

55 *Id.* at 20, 42.

56 *Id.* at 17-18.

57 Letter from Wauchope to Cunliffe-Lister, *supra* note 27.

The report and the High Commissioner's decision received a mixed official reception. There were those at the Colonial Office who greeted the report with approval. The relative importance of direct and indirect taxation, said one official, "is a kind of rough index as to the general soundness of the system of taxation in any advanced community." However, "it is not the slightest use attempting to force up the index, as it were, corresponding to an advanced position, if the facts are that the country is still very primitive."⁵⁸

However, other Colonial Office officials were unconvinced by Huntington's major arguments against the introduction of the tax.⁵⁹ One official, R.V. Vernon, who had previously served in Iraq, noted that the opposition to the tax was not something uniquely Palestinian. "I believe," he said

that the Baghdadi Jew is the greatest living expert in the production of fictitious accounts and that he has a high reputation for this in Manchester. No doubt the Palestine Jew will have some similar qualifications and I should be surprised if the Palestine Arabs and Christians are behind him in this respect,

(to which another official responded that "the Indian in Africa is not bad at it [too]"), but the fact that the Jews and Arabs will cheat, added Vernon, could not serve as a real objection to the introduction of the tax, because, "if you are ever going to introduce income tax in Palestine you will have to face this difficulty," and the sooner it was done the better.⁶⁰ Another official noted that the arguments against the tax were the same ones that had always been advanced "whenever and wherever" income tax had been first proposed, and that as long as the tax is introduced "upon scientific principles," it "will not be a failure."⁶¹

Ultimately, however, the Colonial Office had to approve the decision of the Government of Palestine, and a statement was issued to the effect that an income tax would not be introduced until a change in local circumstances "suggests that a more favourable time has arrived."⁶² This decision was seen by Arab observers to be the result of Jewish influence in England.⁶³

Following the Arab Rebellion of 1936, a Royal Commission, the Peel Commission, was established to examine conditions in Palestine. One of

58 Minutes (July 13, 1934) (CO 733/260, TNA: PRO).

59 Minutes (July 16, 1934) (CO 733/261, TNA: PRO).

60 Minutes (July 17, 1934) (CO 733/261, TNA: PRO).

61 Minutes, Bushe (July 18, 1934) (CO 733/261, TNA: PRO).

62 Draft Communiqué (Sept. 20, 1934) (CO 733/261, TNA: PRO).

63 *Jamal Bey's Evidence*, PALESTINE POST, Jan. 15, 1937, at 16.

the issues raised in the evidence given before the Commission was the incidence of taxation. Again, Arab witnesses before the Commission called for the introduction of the income tax.⁶⁴ In its report, the Commission briefly summarized the history of the 1934 attempt to introduce the tax, concluding that "almost everyone except the Moslem Arabs" was opposed to the tax, and that because of this opposition the cost of collecting the tax would be disproportionately high.⁶⁵

Following the report of the Peel Commission, the Acting Treasurer of the Government of Palestine prepared a document on the incidence of taxation in Palestine. He noted that the government had considered the imposition of an income tax, but the suggestion was abandoned because while employees "would be forced to pay the tax on their salaries or wages," professionals and traders would be assessed less accurately based on the rent of the premises occupied by them or the number of their employees. This was due to the fact that only about ten percent of shopkeepers kept accounts. Thus, the Treasurer concluded that the arguments made by Huntington were as valid in 1937 as they had been in 1934.⁶⁶

To sum up the pre-1940s phase of the story, despite the fact that the British ruled Palestine without the formal participation of the local population in the legislative process, the British Government was responsive to local pressures, and, sensing its own weakness, did not impose an income tax, using (among other things) arguments about cultural difference to justify its decision.⁶⁷ The legislative process was not a process in which law emanating from the center of the Empire was imposed on the local population, but one in which a weak government carefully gauged local conditions and decided, based on an analysis of these conditions, not to legislate.⁶⁸

III. 1939-1941: ENACTMENT

As a result of the Arab revolt of 1936-1939 and the beginning of the Second World War in 1939, the revenues of the Government of Palestine declined sharply from £5.6 million in 1935-36 to £4.6 million in 1939-40, with an

64 PALESTINE ROYAL COMMISSION: MINUTES OF EVIDENCE HEARD AT PUBLIC SESSIONS 4978, 5006-12, 5083-112 (1937).

65 PALESTINE ROYAL COMM'N, REPORT 208 (1937).

66 Note by Acting Treasurer of the Government of Palestine 8 (CO 733/346, TNA: PRO).

67 See generally LIKHOVSKI, *supra* note 3, at 24.

68 *Id.* at 25.

additional decline of £0.5 million in 1940-41. The British attempted to deal with declining revenues by increasing import and excise duties, stamp duties, and rates on postage, telephone and transportation.⁶⁹ However, the decline in revenue also served as an excellent excuse for introducing income taxation.⁷⁰

Several developments created a more favorable climate for the introduction of taxation of income in Palestine. Income tax had been introduced in Egypt in 1938,⁷¹ and in a number of other British colonies such as Hong Kong and Cyprus at the beginning of the Second World War.⁷² Palestine thus became one of the last British possessions in the Middle East — and, indeed, around the world — where income tax had not yet been introduced by 1940, at a time when the explicit policy of the Colonial Office was to introduce it to all parts of the Empire.⁷³

In addition, the Jewish community in Palestine was already in the process of introducing such a tax internally. In early October 1940, the Jewish National Council, the governing body of the Jewish community in Palestine,

⁶⁹ *Increased Taxation in Palestine*, TIMES, May 2, 1940, at 5.

⁷⁰ In 1941, the Executive Council of the Government of Palestine discussed the proposals of the Income Tax Adviser sent to Palestine. In this discussion, one official noted that

it was not the basic intention of Government to introduce income tax as a war emergency measure and that the yield is not regarded at this stage as being of essential importance: It might indeed be contended that the war provided a reason for reconsidering the decision to defer the introduction of income tax. The tax was in fact being introduced as a desirable adjustment of the permanent fiscal structure of the country and in order to ensure that companies and wealthy persons who escape direct contribution to revenue under the existing law should make an adequate contribution.

Minutes of the 854th Meeting of the Executive Council of the Government of Palestine 1 (Mar. 8, 1941) (CO 814/37, TNA).

⁷¹ *New Tax Law in Egypt*, PALESTINE POST, July 26, 1938, at 5; *Egypt's Double Peace-War*, PALESTINE POST, Nov. 20, 1938, at 1. Syria and Lebanon introduced income taxation only after it was introduced in Palestine. *See Income Tax Announced in Syria*, PALESTINE POST, June 18, 1942, at 3; *Income Tax in Lebanon*, PALESTINE POST, Nov. 24, 1944, at 3; *Income Tax in Lebanon*, PALESTINE POST, Mar. 14, 1945, at 2.

⁷² *News in Brief*, PALESTINE POST, Oct. 13, 1939, at 7; *Economic Position of Cyprus*, Jan. 24, 1941, at 5; *Cyprus Income Tax and Commerce*, PALESTINE POST, Apr. 19, 1941, at 5. On the introduction of income taxation in Hong Kong (in April 1940) see generally Littlewood, *supra* note 4; Michael Littlewood, *The Legacy of UK Tax Law in Hong Kong*, 2008 BRIT. TAX REV. 253.

⁷³ *Income Tax Levy for Palestine*, PALESTINE POST, May 26, 1941, at 1; *H.M. Government's Colonial Policy During and After the War*, PALESTINE POST, Aug. 20, 1941, at 4.

decided to impose a voluntary progressive Jewish income tax whose revenues were to be used for relief work.⁷⁴ The revenue collected was substantial.⁷⁵ Taxation of income on a voluntary basis was quite common during the Second World War. For example, at the beginning of the war, British citizens in Argentina initiated a self-imposed income tax to contribute to the British war effort. British civil servants in colonial territories, such as Nigeria, also voluntarily contributed part of their salaries to the British war effort. As the war progressed, calls for similar contributions by British residents of Palestine were also made.⁷⁶

Six days after the decision of the Jewish National Council to create a voluntary Jewish income tax system, the Government of Palestine announced that it was reconsidering the imposition of income taxation due to the expected decline in the revenues from customs, the increase in income tax rates in Britain, and the fact that the burden of taxation in Palestine fell heaviest on the poor and middle classes.⁷⁷ An income tax

74 *Income Tax*, PALESTINE POST, Oct. 3, 1939, at 6; *Jewish "Income Tax" Announced*, PALESTINE POST, Oct. 3, 1939, at 1; *The Week in Comment*, 4 PALESTINE REV. 341, 342 (1939). The rates ranged between 1 percent on a monthly income of 10LP and more than 20 percent on monthly incomes of more than 100LP. Even before the introduction of Jewish income tax on a national level, there were repeated attempts to introduce a municipal income tax in Tel Aviv. For example, in 1938 Labor councilors in Tel Aviv were joined by some homeowners who suggested that such a tax be imposed because they felt that they were shouldering too much of the municipal tax burden and because foreign companies with huge profits paid only an insignificant amount of the municipal rates. *See Councilors in Conference*, PALESTINE POST, Mar. 13, 1938, at 8. *But see Councilors in Conference*, PALESTINE POST, Mar. 20, 1938 (suggesting that such taxation should wait for the establishment of a Jewish state, since taxation of income could not be successfully introduced in a single city); *see also Debate Concluded*, PALESTINE POST, Feb. 12, 1941, at 3. These demands were not met, and no municipal income tax was created. *See T[el] A[viv]Adopts LP704,500 Revenue Budget*, PALESTINE POST, Mar. 14, 1944, at 3; *Municipal Elections Demanded*, PALESTINE POST, Dec. 20, 1944, at 3.

75 In 1942/43 the government collected about LP1,000,000 in income tax, while the three main voluntary Jewish funds collected about LP1,200,000. *See Public Works for Tel Aviv Progress*, PALESTINE POST, Apr. 23, 1945, at 3.

76 *Men and Things*, PALESTINE POST, May 7, 1940, at 3; *In Lieu of Income Tax*, PALESTINE POST, Jan. 8, 1940, at 6.

77 *Income Tax Again Being Considered*, PALESTINE POST, Oct. 8, 1939, at 1. The decision to introduce the tax (as an experimental measure) was actually made by the Executive Council of the Government of Palestine in early 1940. *See Minutes of the 723rd Meeting of the Executive Council of the Government of Palestine 2* (Feb. 2, 1940) (CO 814/36, TNA); *see also Minutes of the 746th Meeting of the Executive Council of the Government of Palestine 3* (Sept. 14, 1940) (CO 814/36, TNA).

adviser, D.N. Strathie, seconded to Palestine from Madras, arrived in Palestine in February 1941 and held consultations with merchants associations. A preliminary communiqué about the intention to introduce an income tax was published in March 1941. A draft bill was published in May, and comments were solicited from the Jewish Agency, which in turn solicited comments from Jewish merchants and manufacturers.⁷⁸ In late May, it was announced that the tax would be introduced as of September 1, 1941.⁷⁹ The Ordinance itself was enacted in August 1941 and came into force in September 1941.⁸⁰

This time around, the idea of a tax on income was received far more favorably than in the mid-1930s. Jewish chambers of commerce in major towns and Jewish homeowners were still opposed to the tax, but the general tone in the Jewish community now shifted in a more favorable direction, most likely because the Jews and the British were now on the same side of a world conflict that threatened the very existence of the Jewish community in Palestine.⁸¹ The tax, said a *Palestine Post* article "cannot be regarded as an unjustifiable burden on the population since it is modest in its demands and apparently equitable in incidence."⁸² Another newspaper, *Ha-Boker*, said that the new income tax commissioner was not to be seen as an enemy of the people, and noted enthusiastically that the new income tax ordinance was in "the latest European fashion."⁸³

Perhaps another reason for the more positive attitude towards the tax was that some Jewish professionals saw it as an opportunity rather than

78 Letter from MacMichael to Moyne (May 30, 1941) (CO 733/444, TNA: PRO); *Jewish Agency Proposals on Income Tax*, PALESTINE POST, June 16, 1941, at 3.

79 *Government Adviser's Broadcast*, PALESTINE POST, May 26, 1941, at 4.

80 *In Force*, PALESTINE POST, Aug. 24, 1941, at 1.

81 *Notes of the Week*, PALESTINE POST, Oct. 13, 1939, at 6; *Me-Inyanei ha-Shaa* [Current Events], DAVAR, Feb. 13, 1940, at 8 (Hebrew); *Readers' Letters: The Urban Property Tax*, PALESTINE POST, Mar. 26, 1941, at 4; *Income Tax as Substitute*, PALESTINE POST, Apr. 2, 1941, at 2; *Arab Chambers Consider Income Tax*, PALESTINE POST, Apr. 7, 1941, at 2; *Our Treasury*, PALESTINE POST, Apr. 22, 1941, at 4; *Income Tax Favoured*, PALESTINE POST, Apr. 22, 1941, at 3; *Reflections*, PALESTINE POST, Apr. 26, 1941, at 4 (supporting the tax). *But see Mas Hachnasa be-Eretz Yisrael* [Income-Tax in Israel], *supra* note 22; *Opposition to Income Tax in Palestine*, PALESTINE POST, Jan. 26, 1940, at 5; *Objections to Income Tax*, PALESTINE POST, Apr. 21, 1940, at 2; *Hebrew Daily Says Move Is Premature*, PALESTINE POST, Mar. 17, 1941, at 3; *Home-Owners Protest Against Income Tax*, PALESTINE POST, Apr. 2, 1941, at 2; *Jewish Merchants in Conference*, PALESTINE POST, Apr. 16, 1941, at 3.

82 *The New Income Tax*, PALESTINE POST, June 2, 1941, at 4.

83 *Mutzag ba-Muzeon le-Misim: 50 Shana le-Hanhagato shel Mas Hachnasa be-Eretz Yisrael 1941-1991* [Tax Museum Exhibit: 50 Years to the Enactment of Income Tax in Israel 1941-1991], 19 RIV'ON YISRAELI LE-MISIM 292 (1991) (Hebrew).

a threat. Immediately after the official announcement in March 1941, ads began to appear in the newspapers for bookkeeping services.⁸⁴ One such ad, published by the British Institute of Commerce and Accountancy in April 1941, announced that "Income Tax [is a] Chance for All," and stated that in view of the intention to introduce an income tax "there are now excellent opportunities for ambitious men and women with modern knowledge" in bookkeeping and accounting.⁸⁵ An article published in April 1941 noted that "whatever other results may follow from its introduction, income tax legislation is going to bring much work to accountants and probably lawyers."⁸⁶

The new income tax bill was based on a draft prepared during the 1930s, but it also included many additions borrowed from the recently enacted income tax laws of Kenya and Cyprus, as well as some additional provisions taken from India (from which the Palestine Income Tax adviser, Strathie, had been transferred).⁸⁷ An example of the type of clause that was borrowed from other jurisdictions is section 11(g) of the draft bill, taken from Kenya, which granted a deduction for the cost of measures for the prevention of soil erosion (and which survives to this day as section 17(6) of the Israeli Income Tax Act). The Board of Inland Revenue commented on this clause, saying that "the Department is not familiar with the local conditions which led the Kenya authorities to grant specific relief for the cost of measures for the prevention of soil erosion, but presumably the same conditions are present in Palestine."⁸⁸

There were some other additions to the draft Income Tax Ordinance, which were clearly meant to adapt the Ordinance to local conditions. For example, the Palestinian drafters added the term "cooperative society" to the definition of "company" and "local authority" in the first section of the Ordinance, to reflect the fact that cooperative societies played a major role

84 *Cheap Prepaids*, PALESTINE POST, Apr. 11, 1941, at 2.

85 *Income Tax: A Chance for All*, PALESTINE POST, Apr. 13, 1941, at 6.

86 *Reflections*, PALESTINE POST, Apr. 25, 1941, at 6.

87 Letter from MacMichael to Moyne, *supra* note 78; *see also* Income Tax Adviser Memo (Mar. 25, 1941) (M 724/15, (3.0.1.643), ISA); Income Tax Adviser Memo (May 15, 1941) (M 724/15, (3.0.1.643), ISA) [hereinafter Adviser Memo of May 15, 1941]; EICHELGRÜN, *supra* note 37, at 2-3; ABRAHAM FELLMAN, *THE PALESTINE INCOME TAX LAW AND PRACTICE* 27-28 (1946).

88 Letter from Inland Revenue to Under-Secretary of State, Colonial Office (Aug. 15, 1941) (CO 733/444, TNA: PRO). In 1941, the Government of Palestine enacted the Flooding and Soil Erosion (Prevention) Ordinance, 1941. *See* S. MOSES, *THE INCOME TAX ORDINANCE OF PALESTINE* 112 (1942).

in the economic life of the Jewish community in Palestine.⁸⁹ In the section exempting nonprofit organizations from the tax, the word "religious" replaced the word "ecclesiastical" to reflect the fact that most religious institutions in Palestine were either Jewish or Muslim.⁹⁰ A section dealing with family deductions, which originally allowed a deduction only for the maintenance of old or infirm family members, was redrafted to allow a deduction in any case in which the taxpayer proved that they maintained a "person incapable of maintaining himself." The alteration, it was explained, was made to meet a request from Muslims who claimed that "they are bound by custom to maintain relatives whether or not they are old or infirm."⁹¹ Finally, another section of the Ordinance provided a deduction for other Palestinian property taxes.⁹²

While the British were willing to grant a deduction for other types of government taxes, they consistently refused to recognize the voluntary Jewish tax system, or to grant deductions to Jews paying taxes to that system. The issue of deductions of voluntary Jewish taxes became a major grievance for many Jewish taxpayers and commentators, who pointed out that the government did not fund healthcare, education and social services in the Jewish sector, and that charitable contributions were deductible in the U.K.⁹³

89 Income Tax Ordinance, 1941, Comparative Table, § 1 (CO 733/444, TNA: PRO). These cooperatives were exempted from the tax. *See Tax Law Published*, PALESTINE POST, Aug. 24, 1941, at 1; Untitled, PALESTINE POST, May 21, 1942, at 3. This exemption was criticized by certain taxpayers. *See Letters to the Editor: Income Tax and Cooperatives*, PALESTINE POST, Mar. 5, 1943, at 4. The exemption of some cooperatives was later abolished. *See Income Tax Exemptions Order (Cooperative Societies) (Amendment)*, 1944, 2 Iton Rishmi: Pkudot, Takanot, Tzavim ve-Modaot (Official Gazette of the Government of Palestine: Commands, Regulations, Orders and Notices) 209; *No Change in Income Tax*, PALESTINE POST, Mar. 17, 1944, at 1; S. MOSES, *THE INCOME TAX ORDINANCE OF PALESTINE* 19 (1944).

90 Income Tax Ordinance, Comparative Table, § 8 (CO 733/444, TNA: PRO).

91 Untitled Table, at 38 (CO 733/444, TNA: PRO) (Section 16 of the Ordinance); Adviser Memo of May 15, 1941, *supra* note 87. For a similar argument in the case of Hong Kong, see Littlewood, *supra* note 4, at 256; *see also Government Adviser's Broadcast*, *supra* note 79 (comparing the use of allowances in European countries and Palestine); *In Force*, *supra* note 80; *Income Tax*, PALESTINE POST, Aug. 27, 1941, at 4 (summaries of alterations in the Ordinance following comments received from the public after the publication of the bill and also a list of major requests for changes in the Income Tax Ordinance which were not accepted); FELLMAN, *supra* note 87, at 27.

92 Income Tax Ordinance, § 12; *see also* FELLMAN, *supra* note 87, at 27. The section was repealed in 1945.

93 *See, e.g., Reflections*, PALESTINE POST, Mar. 3, 1947, at 2.

The Income Tax Adviser recommended at first that no allowances be given for wife and children because of the difficulties involved in ascertaining the actual state of the taxpayer's family. However, in its discussion of this recommendation, the Executive Council of the Government of Palestine came to the conclusion that giving a family allowance is "a common-sense principle which has been widely embodied in income tax law elsewhere" and that a reasonable solution would be to give a lump sum family allowance to married men (irrespective of whether or not they had children).⁹⁴ When explaining this solution to the public, Strathie said that this was done because in Palestine, unlike European countries, most people have relatives to support and a more accurate differentiation between numbers and types of dependents would have required vast amounts of clerical work.⁹⁵ This provision was criticized by some taxpayers, because, it was claimed, "the State is interested in larger families, especially in the upper levels of society," and therefore should allow family deductions which vary with the number of children.⁹⁶ The first amendment of the Ordinance, published in March 1942, lowered the level of exemptions, but (perhaps to prevent too much criticism) amended the family allowance by replacing the lump sum allowance with one which took account of the number of the taxpayer's children.⁹⁷

Some of the attempts to redraft the Income Tax Ordinance to reflect (what the British perceived to be) local conditions were not incorporated in the final draft. For example, as Strathie was preparing to leave for Palestine, he wrote a letter to the Colonial Office suggesting that the Palestine Income Tax Bill should be amended in line with the provision of Indian tax law (which was in effect until 1939), which did not grant a right of appeal to taxpayers who either did not file a return or failed to produce accounts and whose tax assessments were made independently by a tax officer. This, said Strathie, was "our chief weapon in forcing the production of accounts." Such a provision "may appear retrograde," but "Orientals will

94 Minutes of the 854th Meeting of the Executive Council of the Government of Palestine 2 (Mar. 18, 1941) (CO 814/37, TNA).

95 *Government Adviser's Broadcast*, *supra* note 79; *Tax Law Published*, *supra* note 89.

96 *Reflections*, PALESTINE POST, May 28, 1941, at 4; *see also Reflections*, PALESTINE POST, Aug. 25, 1941, at 4.

97 *Income Tax Exemption Lowered*, PALESTINE POST, Mar. 19, 1942, at 3. According to Avraham Fellman, a leading accountant during the 1940s, the provision was misinterpreted by some taxpayers who interpreted the word "children" as encompassing only boys and not girls. *See* Avraham Fellman, *Zichronot me-Hanhagat Mas-Hachnasa be-Eretz Yisrael* [*Memories from the Enactment of Income Taxation in Mandatory Palestine*], 31 ROEH HA-HESHBON [THE ACCOUNTANT] 143, 144 (1981) (Hebrew).

certainly avoid giving returns and producing accounts (I am sure they all have them)." In addition, said Strathie, the Palestinian Ordinance was faulty because it was based "too much on English practice." For example, he thought that the deductions for a wife and children were ill-advised "in an Eastern Country." Finally, he doubted whether the income tax would yield much revenue, and he therefore suggested that it be replaced by a sales tax to be modeled on the sales tax which he introduced when he was serving in Madras.⁹⁸ It is interesting to note that in his public speeches, Strathie was more optimistic about the possibility of preventing evasion. Thus, in a radio talk (on the Government-run broadcasting service in Palestine) he gave in May 1941, he noted that one of the fears he had heard was that salary earners would be taxed, but merchants and moneylenders would be able to evade taxation. These fears, he assured his listeners, were unfounded. In India, where he had served for 29 years, the British were able to tax the merchants of the Banya caste, despite the fact that they surpassed "all other races" in their subtlety and nimbleness in trade.⁹⁹

In conclusion, while some changes were made in the Ordinance to adapt it to local conditions, as a general statement it is reasonable to say that the Ordinance was drafted based on the assumption of universality of income tax law. This is also true of later amendments. The Ordinance was amended several times during the 1940s, and it was also accompanied by additional wartime tax measures.¹⁰⁰ However, none of these amendments or new taxes reflected the specific conditions of Palestine. The impact of these local conditions is to be observed not so much in the law in the books, but in the law in action, in the administrative aspects of the history of income taxation in mandatory Palestine.

98 Letter from Strathie to Downie (Jan. 5, 1941) (CO 733/444, TNA: PRO).

99 *Government Adviser's Broadcast*, *supra* note 79.

100 The first amendment was passed in March 1942. There were additional amendments every year until 1948. A list is found in FELLMAN, *supra* note 87, at 28-34; *see also* S. MOSES, THE INCOME TAX (AMENDMENT) ORDINANCE, 1942 (1942) [hereinafter MOSES, 1942 AMENDMENT]. In addition, there were related wartime measures, such as the War Revenue (Income Tax) (Amendment) Ordinance, 1944, and the War Revenue (Company Profits Tax) Ordinance, 1945. These expired in 1947 and 1946, respectively. *See* MOSES, *supra* note 89, at 71; S. MOSES, COMPANY PROFITS TAX (1945); S. MOSES, THE 1947 INCOME TAX AMENDMENTS (1947) [hereinafter MOSES, 1947 AMENDMENTS].

IV. 1941-1948: APPLICATION

Collection of the new income tax proved to be easier than expected, and initial revenues exceeded expectations. Thus, in its first year, it was estimated that the income tax would yield £50,000, but the actual yield was almost four times as much, reaching £193,000.¹⁰¹ However, it turned out that Jewish fears about the burden of taxation were also justified. Out of the total £193,000 that were collected, £120,000 (or 60 percent) came from Jews, £30,000 (or 15.5 percent) from Arabs, and the rest from others (i.e., British, Greeks, Armenians, etc.).¹⁰² Despite having accurate data on the ethnic incidence of the tax, which, as expected, fell heavily on the Jews, the Government of Palestine was anxious not to reveal this information, and therefore took active measures to conceal it by publishing the data broken down by districts (which were ethnically mixed) instead of municipalities (which often were not).¹⁰³ Nonetheless, Jews claimed that they were paying 70-80 percent of the tax.¹⁰⁴ When the government was asked to provide information about the ethnic incidence of the income tax, it argued publicly that it was not "usual to break down the revenue on a geographic, regional or racial basis," to which the Jews responded that this might be the case in Britain, "where the population was homogenous," but not in Palestine, where many major issues (including education, immigration, land purchases) were based on racial distinctions, and it was necessary to do so in order to dispel the feeling that the Jews were paying a disproportionate share of the tax.¹⁰⁵ In response, the government provided an ethnically based analysis of income tax revenues, revealing that despite

101 Annual Progress Reports 1942-1945: Supplement to Annual Report (Apr. 15, 1942) (Record Group 16, M-1379/24, ISA) [hereinafter Supplement to Reports 1942-45]. The actual number of taxpayers, however, was lower than expected (5000 instead of 7000). Cf. *6000 out of 7000 Taxpayers in Towns*, PALESTINE POST, June 5, 1941, at 3; *Income Tax Receipts Satisfactory*, PALESTINE POST, Apr. 26, 1942, at 3.

102 Minutes (June 11, 1942) (CO 733/444, TNA: PRO); Supplement to Reports 1942-45, *supra* note 101. There is a slight discrepancy between the Colonial Office minutes and the report of the Commissioner regarding the amount collected from Arab taxpayers.

103 Supplement to Reports 1942-45, *supra* note 101.

104 *Needs and Means*, PALESTINE POST, June 13, 1944, at 4; *Maximum Tax for Minimum Service*, PALESTINE POST, Aug. 17, 1944, at 4; see also MORAG, *supra* note 20, at 6 (on the incidence of income taxation and other taxes on the Jewish community).

105 *Over Two Million Pounds*, PALESTINE POST, Sept. 7, 1944, at 3; *Income Tax Evasion*, PALESTINE POST, Sept. 8, 1944, at 4; *Reflections*, PALESTINE POST, Sept. 23, 1946, at 4.

the fact that the Jews comprised only 30 percent of the population, there were 17,500 Jewish taxpayers in 1942/43 compared to 5,000 Arabs, and that Jewish income taxpayers paid five times as much per capita as Arab taxpayers.¹⁰⁶

Not surprisingly, one prominent characteristic of the tax debates in Palestine was that many tax issues were viewed through an ethnic prism. Jewish opposition to the tax, as well as Arab support for it, were based on the fact that taxation of income was seen as an anti-Jewish measure. As a *Palestine Post* editorial published in March 1934 argued, Arab leaders turned the question of the introduction of the tax into a "racial question," and supported the tax because they believed in "the depressing notion that what is disliked by Jews must be good for Arabs."¹⁰⁷ It was only when wealthy (and perhaps less nationalist) Arabs realized in early 1943 that taxation of income did not necessarily ease the burden of other taxes that they joined forces with the Jews to oppose it. In January 1943, when it was learned that the Government intended to raise income tax rates and introduce a new property tax, Jewish and Arab landlords joined ranks in opposition to the plan, discussing the formation of a joint conference of Arab and Jewish property owners.¹⁰⁸

The opposition of wealthy Arabs to taxation was also manifested when the British attempted to introduce an estate duty in early 1943.¹⁰⁹ When this became known, a conference of Arab landlords and delegates attacked the tax as "contrary to the laws of Islam" and as intended to "displace the Arabs from the land," and claimed that it would be shouldered by the Arab community alone since Jewish property was "usually owned by holding cooperatives."¹¹⁰ The opposition proved successful and the idea was abandoned, although there

¹⁰⁶ *Income Tax Statistics in February*, PALESTINE POST, Feb. 8, 1945, at 3; *Reflections*, PALESTINE POST, Feb. 15, 1945, at 4; *1942-3 Income Tax Details Revealed*, PALESTINE POST, Mar. 8, 1945, at 3; *Taxation and Evasion*, PALESTINE POST, May 4, 1945, at 4. The figures for subsequent years were similar. For the 1944/45 tax year, 62 percent of the taxpayers were Jewish, 14 percent were Arabs, and the rest were defined as "others." *Income Tax in 1944/45*, PALESTINE POST, June 23, 1946, at 2; see also EICHELGRÜN, *supra* note 37, at 204-05. In 1945/46, out of 62,000 taxpayers there were 51,000 Jews, 10,000 Arabs and 4,000 "others," with the Jewish taxpayers contributing 70 percent of the total taxes collected. *How Jewish Taxpayers Outnumber Arab*, PALESTINE POST, Mar. 23, 1948, at 3.

¹⁰⁷ Huntington Report, *supra* note 1, at 8 (citing *Editorial*, PALESTINE POST, Mar. 1934).

¹⁰⁸ *Landlords Meet*, PALESTINE POST, Jan. 25, 1943, at 3.

¹⁰⁹ *Palestine Pays Its Way*, PALESTINE POST, Feb. 18, 1943, at 4; *New Taxes on Incomes and Profits*, PALESTINE POST, Feb. 18, 1943, at 1.

¹¹⁰ *All-Palestine Arab Conference Rejects Tax Proposals*, PALESTINE POST, Mar. 12, 1943, at 3.

was another, equally unsuccessful, attempt to introduce an inheritance tax in 1945.¹¹¹

The perceived unfairness of the income tax led some Jewish lawyers to propose the imposition of additional taxes aimed at achieving a fairer balance in direct taxation. Thus, in a letter written in 1946, a Jewish lawyer, G. Eichelgrün, proposed that the British impose a poll tax modeled after section 25 of the West African Income Tax Ordinance (Nigeria and the Gold Coast) in order to tax the Arab peasant and nomadic population of Palestine.¹¹²

Collection of the income tax proved to be quite successful, despite the fact that, as one early report noted, "in Palestine where almost none of the merchants keep correct books it is obvious that we lay ourselves open to cheating right and left,"¹¹³ and despite the fact that the ordinance proved to be "unsophisticated" and thus unsuited to the "extraordinary complications of business life" in Palestine. The Palestine Income Tax Commissioner, who noted this fact, also said that while he did not propose radical changes because "in dealing with the Colonial Office departures from the Model Ordinance should be avoided if possible," one day the Ordinance would have to be redrafted completely to make it more suitable to the conditions of Palestine. The Colonial Office responded to this suggestion, saying that they would certainly not object to a revised legislation which would be suitable to the "more complex" conditions of Palestine.¹¹⁴

By 1945/46, there were 62,000 income taxpayers in Palestine, and revenues from the tax comprised about 20 percent of total government revenues.¹¹⁵ However, government officials, while reporting an impressive increase in the number of taxpayers, also reported that certain social groups generally evaded taxation, especially Arabs and "Old Yishuv" (i.e., non-Zionist) Jews.¹¹⁶ At least in the case of Arab taxpayers, the disappointing

111 *New Income Tax in Force Tomorrow*, PALESTINE POST, Mar. 31, 1943; *Landlords' Opposition*, PALESTINE POST, Mar. 11, 1945, at 2; *War Tax on Companies Enacted*, PALESTINE POST, July 29, 1945, at 3.

112 *Income Tax and Poll Tax*, PALESTINE POST, Sept. 3, 1946, at 4.

113 Jerusalem District March 1942 Report, *supra* note 2, at 6.

114 Supplement to Reports 1942-45, *supra* note 101, at 3; Letter from Colonial Office to MacMichael (June 30, 1942) (Record Group 16, M-1379/21, ISA); Minutes (June 20, 1942) (CO 733/444, TNA: PRO).

115 *How Jewish Taxpayers Outnumber Arab*, *supra* note 106; MORAG, *supra* note 20, at 10.

116 Annual Progress Reports 1942-1945: Income Tax — General Report for 1942-43, at 2 (Record Group 16, M-1379/24, ISA) [hereinafter *Income Tax General Report 1942-43*].

revenues may also have been the result of social structures. The Income Tax Commissioner observed in 1942 that "in early discussions the District Commissioners had anticipated large sums from rich Arab property owners. There has been no such case. Certain Arab families do own large extents of agricultural land but the income is divided up between various members of the family and has rarely proved taxable."¹¹⁷

While most Jewish taxpayers, so it seems, became resigned to having their income taxed, the collection machinery became an important symbolic target for the Jewish terrorist organizations, just as tax protests had formed a part of the Arab revolt in the 1930s.¹¹⁸ Thus, in February 1944 there were attacks on income tax offices in the three major cities of Palestine, leading the Commissioner of Income Tax to comment later that year that

the public continues to respond to our demands in a manner which in the circumstances is satisfactory. The attempt of the Stern Gang to blow up the offices in Jerusalem, Tel Aviv and Haifa in February 1944 was not typical, although doubtless certain large tax payers belonging to other communities would have derived a certain satisfaction had the attempt been more successful.¹¹⁹

Perhaps out of a desire to placate Jewish public opinion, which continued to complain that the Jews were paying more than their fair share in taxes and receiving less than their fair share in services, the British decided to channel a portion of the revenue raised by the income tax back to the Jewish municipality of Tel Aviv in the form of a grant-in-aid.¹²⁰ In subsequent years, resistance to the income tax sometimes took the milder form of business strikes.¹²¹ But there were additional terrorist attacks on income tax offices in 1946 and 1947.¹²² In September 1947, half a year before the end of the British Mandate, members of the Stern Gang visited Jewish income

117 Supplement to Reports 1942-45, *supra* note 101, at 2.

118 *Arabs' Tax Strike in Palestine*, TIMES, May 16, 1936, at 13.

119 *4 Explosions in Tel Aviv*, PALESTINE POST, Feb. 27, 1944, at 4; *Bombs in Income Tax Offices in Three Cities*, PALESTINE POST, Feb. 28, 1944, at 1; Annual Progress Reports 1942-1945: Annual Report 1943-1944, at 3 (Record Group 16, M-1379/24, ISA) [hereinafter Annual Report 1943-44].

120 *Grant-in-Aid and Income Tax*, PALESTINE POST, Mar. 28, 1944, at 3.

121 *From Dan to Beersheba*, PALESTINE POST, Mar. 13, 1945, at 3.

122 *J'lem Income Tax Office Blown Up*, PALESTINE POST, Nov. 21, 1946, at 1; *Shooting Breaks-Up Tel Aviv Funeral*, PALESTINE POST, Aug. 3, 1947, at 1; *Charge Exploded in Income Tax Office*, PALESTINE POST, Aug. 11, 1947, at 3.

tax officials in their homes, ordering them to resign (none did).¹²³ Once the British government machinery disintegrated in early 1948, the Jews were ready to take it over.¹²⁴

In the process of adapting the Ordinance to local conditions, British officials made use of various mechanisms. One was to relegate discretion to local experts.¹²⁵ For example, one popular method of tax avoidance in Palestine was the formation of companies and the retention of profits by the companies (the maximum initial tax rate on individuals was 30 percent, while the rate of taxation on companies was initially set at 10 percent).¹²⁶ One way to fight the use of companies as a tax avoidance device was by taxing undistributed profits. Section 22(1) of the Income Tax Ordinance, which contained a general anti-avoidance provision, was expanded in April 1943 to include specific provisions taxing undistributed profits. A committee was created, which had a majority of non-official members (two officials and three members of the public with special commercial experience) to advise the Income Tax Commissioner on the exercise of his power under the section. This attempt to "introduce responsible members of the public as advisers," noted the commissioner, has proved "a conspicuous success."¹²⁷

A different way of adapting the Ordinance to local conditions was simply

123 *Officials "Ordered" to Resign*, PALESTINE POST, Sept. 7, 1947, at 3; *Threats Ignored by Officials*, PALESTINE POST, Sept. 8, 1947, at 3.

124 *Income Tax for the Jewish State*, PALESTINE POST, Apr. 19, 1948, at 3; *Income Tax in Jewish State*, May 4, 1948, at 1; *Income Tax in Jewish Jerusalem*, PALESTINE POST, May 7, 1948, at 3; *Income Tax*, PALESTINE POST, May 9, 1948, at 3; *Income Tax to Be Doubled*, PALESTINE POST, Sept. 3, 1948, at 1.

125 The use of lay experts to assess and collect income (thus reducing friction between the state and taxpayers) was a well known device used, for example, in the determination of the profits of unincorporated businesses in England. See MARTIN DAUNTON, *TRUSTING LEVIATHAN: THE POLITICS OF TAXATION IN BRITAIN, 1799-1914*, at 186, 188, 190 (2001); see also Margaret Lamb, *Horrid Appealing: Accounting for Taxable Profits in Mid-Nineteenth Century England*, 26 ACCT. ORGS. & SOC'Y 271, 288 (2001). On the use of local knowledge in rural taxation in Palestine see BUNTON, *supra* note 20, at 162-69.

126 Jerusalem District March 1942 Report, *supra* note 2, at 7; Annual Report 1943-44, *supra* note 119, at 3; *800 New Firms in Six Months*, PALESTINE POST, July 1, 1942, at 2; see also MORAG, *supra* note 20, at 97.

127 Annual Report 1943-44, *supra* note 119, at 3; see also *Income Tax Panel*, PALESTINE POST, Mar. 28, 1944, at 2; S. MOSES, *THE INCOME TAX (AMENDMENT) ORDINANCE 1943*, at 31 (1943) [hereinafter MOSES, 1943 AMENDMENT]; MOSES, *supra* note 89, at 77. In February 1944, the High Commissioner issued a notice naming twelve non-officials to the panel. These included three English, four Jewish and five Arab "members of the public."

to ignore the letter of the law in its application.¹²⁸ For example, requests for relief in respect of Empire income tax were dealt with, despite the fact that there was no formal reciprocal mechanism of the kind envisioned by section 63(3) of the Ordinance. In his 1942 Report, the Commissioner noted that "I gave relief in some cases in which it was not strictly speaking due, as reciprocating arrangements have not yet been made with the colonies," explaining that "in war conditions I considered it undesirable to delay relief till reciprocating arrangements were completed."¹²⁹

Another example of the discretion used was in the treatment of evasion. In the report for 1942-43, the Commissioner noted that evasion was fairly widespread, but "having regard to the fact that income tax has been but recently introduced in Palestine, it was decided, as a matter of policy, not to take any action under sections 66 and 67 of the Ordinance which provide for penalties for the making of incorrect returns and fraudulent acts."¹³⁰

While the officials administering the Income Tax Ordinance tried in various ways to adapt the Ordinance to local conditions, legal actors, both lawyers and judges, were working in the opposite direction, seeking to eliminate the differences between Palestinian and English (and British-colonial) income tax laws. Legal textbooks and case law were both used to achieve this goal. The Income Tax Ordinance spawned an impressive number of textbooks and commentaries during the seven final years of British rule in Palestine.¹³¹ Many of these books contained systematic discussions of

128 The use of extensive discretion also characterized tax administration in England in the nineteenth century. See Margaret Lamb, *Defining "Profits" for British Income Tax Purposes: A Contextual Study of the Depreciation Cases, 1875-1897*, 29 ACCT. HISTORIANS J. 105, 121, 123 (2002).

129 Supplement to Reports 1942-45, *supra* note 101, at 2.

130 Income Tax General Report 1942-43, *supra* note 116, at 2. Deviations from the letter of the law were not always in favor of the taxpayer. For example, it seems that while the Income Tax Ordinance required assessing officers to refund any amount that was deducted at the source in excess of the amount of tax due, the actual practice instead was not to refund these amounts, but to carry them over to future years, in direct contravention of section 61 of the Ordinance. Letter from Berinson to Comm'r of Income Tax (July 21, 1946) (Record Group 16, M-151/38, ISA).

131 See F.H. STRAUSS, *THE A B C OF INCOME TAX IN PALESTINE* (1941); E.W. KLIMOWSKY, *MAS HACHNASA BE-ERETZ YISRAEL [INCOME TAX IN PALESTINE]* (1941) (Hebrew); MOSES, *supra* note 88; MOSES, 1942 AMENDMENT, *supra* note 100; MOSES, 1943 AMENDMENT, *supra* note 127; D. ROSOLIO & E.W. KLIMOWSKY, *MAS HACHNASA BE-YISRAEL [INCOME TAX IN PALESTINE]* (1944) (Hebrew); MOSES, *supra* note 89; A.M. APELBOM & B. BRAUDE, *PALESTINE INCOME TAX CASES* (1945); S. MOSES & WALTER SCHWARZ, *THE INCOME TAX*

the Ordinance based on English law.¹³² Lawyers were also busy comparing the law of Palestine to English and colonial income tax law in newspaper articles.¹³³ Typically, lawyers called for greater similarity between Palestinian and English law. For example, an early attempt by the courts to ignore English tax law because of its complexity was criticized by lawyers who argued that complexity of tax law was due not to reliance on English law, but to the complexity of modern social and commercial life, and to high rates of taxation, which led to tax avoidance and therefore to increasing need for legislation to combat avoidance.¹³⁴ Similarly, in 1945 one of the commentators on the Income Tax Ordinance criticized the courts of Palestine and an earlier commentator (Moses) for the opinion that English law should merely serve as a guide for Palestinian courts, arguing that the application of English law to Palestine's income tax law was obligatory "unless a case can be distinguished from existing English decisions on account of its special circumstances."¹³⁵

However, it should be noted that not all lawyers agreed. Some were willing to criticize local law for not taking into account local conditions, for example by pointing out the anomaly "that a man who uses a motorcar for his business may depreciate it, whereas his colleague who is confined to a donkey or a camel has no such facilities"¹³⁶

Another factor leading to the convergence of Palestinian and English income tax laws was pressure applied from the metropolis. For example, in May 1945 the Colonial Office was asked by a member of the House of Commons to "coordinate as far as possible the provisions of the Income Tax Bill with the financial ordinances of the various colonial governments

ORDINANCE OF PALESTINE (2d ed. 1946); EICHELGRÜN, *supra* note 37; FELLMAN, *supra* note 87; MOSES, 1947 AMENDMENTS, *supra* note 100.

132 *See, e.g.,* Preface to STRAUSS, *supra* note 131; MOSES, *supra* note 88, at 3-8; *Guide to Income Tax*, PALESTINE POST, July 2, 1942, at 4; *Introduction* to EICHELGRÜN, *supra* note 37; FELLMAN, *supra* note 87, at 23-26; ROSOLIO & KLIMOWSKY, *supra* note 131.

133 *See, e.g.,* E.W. Klimowsky, *Cyprus Income Tax and Commerce*, PALESTINE POST, Apr. 19, 1941, at 5; S. Moses, *Tax on Undistributed Profits*, PALESTINE POST, Oct. 27, 1942, at 2; *Readers' Letters: Tax on Bonus Shares*, PALESTINE POST, Mar. 24, 1943, at 4; S. Moses, *The Future of Income Tax*, PALESTINE POST, Jan. 10, 1944, at 4.

134 *Readers' Letters: Income Tax*, PALESTINE POST, Nov. 23, 1944, at 4.

135 EICHELGRÜN, *supra* note 37, at 3.

136 *Income Tax*, PALESTINE POST, Jan. 12, 1945, at 7 (citing the discussion of depreciation in ROSOLIO & KLIMOWSKY, *supra* note 131, at 149 (which actually discussed "horses, mules and camels")).

to ensure equal treatment for industrial concerns" registered in the U.K., but operating in the colonies.¹³⁷

Case law was another method of convergence of laws, and it is here that one can see most clearly how, despite an initial commitment to develop the income tax law in Palestine independently of English tax law, judicial decisions were, in fact, leading to the convergence of Palestinian and English law.

The number of income tax cases decided by the courts of Palestine was relatively high. Thus, in July 1944 the Commissioner reported that 30 income tax appeals had been lodged in 1943-44, and he also noted that he had met his Cypriot counterpart and suggested closer contact between the income tax administrations of all colonial territories. Palestine's contribution in that event, he said, "would probably consist mainly in the interpretation of the provisions of the Model Ordinance given by the Courts," because "the number of appeals to the Courts in Palestine is far greater than that in any other territory" in which the Model Ordinance was in force, and therefore the legal decisions of the courts of Palestine could serve as a guide to the courts of other colonies.¹³⁸

Unlike other Mandatory ordinances, the Palestine Income Tax Ordinance did not contain a specific provision requiring judges to interpret it on the basis of English law. Thus, British judges declared that they were free not to follow English precedents. In one of the early tax cases, Judge David Edwards of the Supreme Court of Palestine said that he would not pay attention to the English cases and literature cited by the parties because "it would be a pity if in Palestine a huge mass of case law on this ordinance is allowed to grow up in the manner and to the extent in which [it did] in England."¹³⁹

In another case, Judge Edwards referred to an English newspaper article which said that "income tax law in England was now a 'tangled morass.'" The obvious conclusion, said Edwards, was that "one should try to interpret the Palestine income tax ordinance as far as possible untrammelled by authority."¹⁴⁰ The same sentiment was expressed by Judge Alan Rose of the Supreme Court of Palestine. It was unlikely, Rose said, that the Palestinian

137 *Readers' Letters: Income Tax Bill*, PALESTINE POST, May 1, 1945, at 4 (quoting from TAXATION, Mar. 24, 1945).

138 Annual Report 1943-44, *supra* note 119, at 4.

139 Income Tax Appeal 18/42 *Ideal Motion Pictures v. Assessing Officer*, Tel Aviv [1942] 9 PLR 481, 482; *see also* Income Tax Appeal 7/42 *Warner Bros. v. Assessing Officer*, Lydda District [1942] 9 PLR 488. For a general discussion see MOSES & SCHWARZ, *supra* note 131, at 16-17.

140 Income Tax Appeal 9/42 *Advocate v. Assessing Officer*, Jerusalem District, *in*

legislator "desired" to introduce into Palestine "[t]he niceties and complexities of the British income tax law, which in itself is a highly specialized and fruitful branch of professional activity in England and the decisions in respect of which are conflicting and in many instances obscure."¹⁴¹

Chief Justice Gordon Smith commented in 1943 that it would be a "Herculean if not impossible task to give a concise and lucid explanation of the principles and system of the law of Income Tax in England, nor would any such attempt . . . be profitable or, in my opinion, serve any useful purpose in being of any local legal value." He then noted that "it is significant that our Ordinance has not adopted [the English] system of schedules, cases and rules" and that "in so many respects the principles and scheme of the English Acts are so different to those contained in our Ordinance." He concluded by stating that

I do not say that decided cases in England cannot be referred to as affording some possible help and guidance in attempting to ascertain what [the] intention is, but I do say that they cannot be regarded as authoritative and binding on this Court, in view of the differences there are in the respective principles and schemes and of the confusion which exists in England.¹⁴²

However, despite their declared unwillingness to turn to English tax law, which reflected a more general feeling about the growing independence of Palestinian law, British judges soon turned to English decisions, even if they were not formally obliged to do so, because it was easy to rely on them.¹⁴³ Thus, Judge Edwards said in a 1943 case that

I realize that too much reliance should not be placed upon cases decided in the United Kingdom; nevertheless no-one can doubt that

APELBOM & BRAUDE, *supra* note 131, at 21, 22; Income Tax Appeal 2/44 *Gesundheit v. Assessing Officer*, Tel Aviv [1944] 11 PLR 265, 269.

141 Income Tax Appeal 18/42 *Halaby v. Assessing Officer*, Lydda District [1943] 10 PLR 342, 346.

142 Income Tax Appeal 9/42 *Horowitz v. Assessing Officer*, Jerusalem District [1943] 10 PLR 255, 259-61; *see also* CA 310/44, *Gesundheit v. Assessing Office*, Tel Aviv [1944] 11 PLR 265, 269, *reprinted in* APELBOM & BRAUDE, *supra* note 131, at 147.

143 *See, e.g.*, Income Tax Appeal 3/44 *Leather Center Ltd. v. Assessing Officer*, Jerusalem [1944] 11 PLR 462; Income Tax Appeal 25/43 *Consolidated Near East Co. v. Assessing Officer*, Haifa [1944] 11 PLR 229. On the growing independence of the law of Palestine *see* LIKHOVSKI, *supra* note 3, at 74-80. On the contrary trend — inadvertent Anglicization of local law — *see for example id.* at 56.

the Income Tax Ordinance, 1941, whether based on an Indian Income Tax Act or Statute or on the statute or ordinance in force in some Crown Colony or whether it is a result of special draftsmanship in another place, is still based on the same principles as English Income Tax Law. Guidance is therefore clearly to be found from cases decided in various courts in the United Kingdom.¹⁴⁴

It is interesting therefore that even if ideologically the judges were committed to departing from English income tax law, the need to decide cases based on (English) precedents provided by the lawyers forced them to turn to English law, and thus move the income tax law of Palestine in the direction of English tax law.

CONCLUSION

Many participants in the debate about legal transplantation and the autonomy of law assume that law is autonomous and independent of the society which it governs or, alternatively, that it reflects that society. But in fact law is both autonomous *and* related to society, depending on the specific phase in the life of the law that we are examining and the actors we are interested in. As shown in this Article, expanding the framework to include not just the enactment phase in the life of a legislative act, but also its pre-enactment and post-enactment phases, may change the way we view the process of legal transplantation. Focusing on different actors may also change the way we view the process of transplantation. Some actors in Mandatory Palestine, such as British judges, were forced, by the nature of the materials they work with (precedents), to work toward the convergence of local law with the law of the metropolis.¹⁴⁵ The work of other actors, primarily local politicians and British administrators, tended to increase the divergence between the two systems of law. Again, this was not so much because of the ideological views of these actors, but rather because of their institutional roles in the system that made and applied the law in Mandatory Palestine. Ultimately what we are left with is a confusing picture, which is the result of opposing forces, each pulling in a different direction. Whether that is also the case in other colonial settings, or indeed, in non-colonial ones, is a question that requires additional research.

144 Income Tax Appeal 19/43 Trachtengoot v. Assessing Officer, Lydda District, Jaffa, *in* APELBOM & BRAUDE, *supra* note 131, at 79, 85.

145 *See also* Avery Jones, *supra* note 4, at 202.

What are the broader lessons for the story told in this Article? One lesson is relevant to the general history of Israel. A major debate in recent Israeli historiography is concerned with the question why the Jews, rather than the Arabs, won the Israeli War of Independence in 1948.¹⁴⁶ Much of this debate focuses on military questions having to do with the respective armaments and operational capabilities of Jews and Arabs in 1948 Palestine, but the existence of an efficient system of income taxation is as important as actual armaments in creating and deciding military conflicts.¹⁴⁷

The role of fiscal issues in deciding the results of the 1948 war has not received enough scholarly attention.¹⁴⁸ However, we do know that in the period immediately before the British left Palestine in May 1948, Jewish employees of the Mandatory government were instructed by the Jewish shadow government to protect British income tax files from destruction. In some towns, tax offices were located in areas which became battlegrounds between Jews and Arabs, and it seems that some Jewish employees risked their lives in order to save the files, so that income tax collection could proceed smoothly after the British left.¹⁴⁹ If income taxation was indeed a contributing factor to Jewish victory in 1948, it may be one of the ironies of history that one of the reasons the Jews won their war of independence was that they were able to efficiently raise large sums of money using a system of taxation to which they had been vehemently opposed only a decade before.

A second lesson that can be learned from the story told in this Article is relevant to the debate in the economic literature on the contribution of legal institutions to economic development. While most of the economic literature dealing with transplanted legal institutions focuses on procedural, property and corporate law, there is no reason to confine it to these fields. A functioning law of income taxation which can efficiently raise large sums of money is, arguably, as important for peacetime economic development (by creating the necessary infrastructure for business), as it is important for victory in

146 See, e.g., Benny Morris, *Israel Confronts Its Past*, in MAKING ISRAEL 11, 18-19 (Benny Morris ed., 2007).

147 See, e.g., THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE, *supra* note 5, at 10-14; see also Niall Ferguson, *Public Finance and National Security: The Domestic Origins of the First World War Revisited*, 142 PAST & PRESENT 141 (1994); NIALL FERGUSON, THE PITY OF WAR: EXPLAINING WORLD WAR I, at 118-25 (1999).

148 But see Moshe Naor, *From Voluntary Funds to National Loans: The Financing of Israel's 1948 War Effort*, 11 ISR. STUD. 62 (2006).

149 WILKENFELD, *supra* note 20, at 72. For a detailed discussion of the history of income taxation in Israel in the 1950s and 1960s, see Assaf Likhovski, *Tax Compliance and Modernity*, 32 L. & SOC. INQUIRY 665 (2007).

war.¹⁵⁰ But instead of supporting the argument for vigorous transplantation of "modern" income tax law into developing countries, the story told in this Article shows that the process of transplantation is a confusing process and that the legal engineers who are involved in modern projects of transplantation (as well as the economic scholars who study them) should pay attention not just to the formal law that they are transferring, but also to the role of various lay and professional actors in accelerating but also inhibiting the successful transplant (and convergence) of law.¹⁵¹

150 Obviously, a counterargument might be that an efficient tax system can impede prosperity by overtaxing business.

151 For a somewhat similar argument about the importance of studying the role of lawyers in fostering but also inhibiting the modern "rule of law" transplantation projects by institutions such as the World Bank, see Robert W. Gordon, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, 11 THEORETICAL INQUIRIES L. 441 (2010).

