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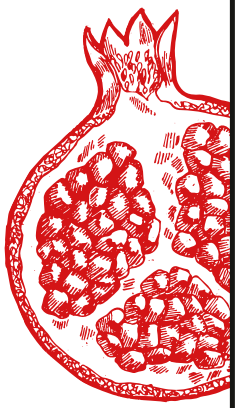

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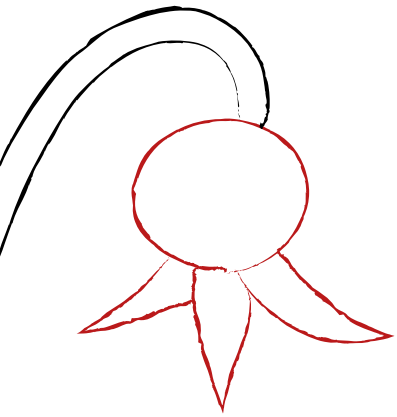
ADVANCES IN ANCIENT BIBLICAL AND NEAR EASTERN RESEARCH



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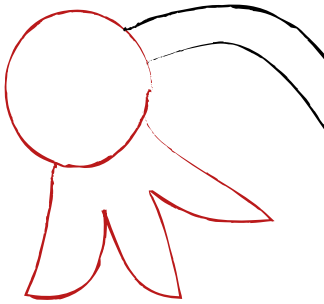

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ADVANCES IN ANCIENT BIBLICAL AND NEAR EASTERN RESEARCH

THE 1920 ANTIQUITIES ORDINANCE OF PALESTINE AND THE YEAR 1700 FOR ANTIQUITIES: NEW DISCOVERIES

Raz Kletter

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Abstract

The Antiquities Ordinance (Law) of 1920 was instrumental for the archaeology of Palestine in the British Mandate period. It was highly successful in having significant influence, for many years, on the antiquities legislation of Jordan and Israel after 1948. This law has hardly been studied so far, except for one detail—the setting of the year 1700 CE for defining antiquities. Based on many as yet unpublished documents from several archives, I discuss in this article the complex origins of the 1920 Antiquities Law. Contrary to the current scholarly consensus, it was created by many agents (historians, archaeologists, legal experts, politicians, military men), working since 1918 in Egypt, Palestine, Britain, and the international peace conferences held after World War I. The law was a compromise between the desire to facilitate the excavation, trade, and export of finds (for the benefit of Western institutions) and the wish to protect sites and keep finds in Palestine (for the benefit of local populations). The year 1700 CE was not a measure taken against protecting the area's (late) Ottoman heritage, but a reasonable choice at a time when the discipline of historical archaeology did not exist yet.

Das Antikengesetz ('Antiquities Ordinance') von 1920 war für die Archäologie in Palästina während der britischen Mandatszeit von großer Bedeutung. Das Gesetz hatte über viele Jahre hinweg großen Einfluss auf die Altertumsgesetzgebung in Jordanien und Israel nach 1948. Dieses Gesetz ist bisher kaum erforscht worden, abgesehen von einem Detail - der Festlegung des Jahres 1700 n. Chr. für die Definition von Antiquitäten. Auf der Grundlage zahlreicher, bisher unveröffentlichter Dokumente aus verschiedenen Archiven erörtet dieser Aufsatz die komplexe Entstehungsgeschichte des Antikengesetzes von 1920. Im Gegensatz zum derzeitigen wissenschaftlichen Konsens wurde es von vielen Akteuren (Historikern, Archäologen, Rechtsexperten, Politikern und Militärs) geschaffen, die seit 1918 in Ägypten, Palästina, Großbritannien und auf den internationalen Friedenskonferenzen nach dem Ersten Weltkrieg tätig waren. Das Gesetz war ein Kompromiss zwischen dem Wunsch, Ausgrabungen, Handel und Export von Ausgrabungsfunden zu ermöglichen (zum Nutzen westlicher Institutionen) und dem Wunsch, Fundstätten zu schützen und Fundstücke in Palästina zu behalten (zum Nutzen der lokalen Bevölkerung). Die Jahreszahl 1700 n. Chr. war keine Maßnahme gegen den Schutz des spätosmanischen Erbes der Region, sondern eine vertretbare Entscheidung zu einer Zeit, als der Fachbereich der historischen Archäologie noch nicht existierte.

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THE 1920 ANTIQUITIES ORDINANCE OF PALESTINE AND THE YEAR 1700 FOR ANTIQUITIES: NEW DISCOVERIES

Raz Kletter

Introduction

In 1920, a new scheme for archaeology was activated in Palestine under the new British civil government headed by Herbert Samuel, the first High Commissioner. It included the creation of the Department of Antiquities of Palestine (henceforward, DAP), the Antiquities Law (AO 1920),[1] and the Archaeological Advisory Board.[2] The first director of the DAP, John Garstang, presented it as a miraculously fast development:

> Within a few days of the establishment of a Civil Government in Jerusalem in July, 1920, His Excellency the High Commissioner called

[1] Officially termed "Antiquities Ordinance" and herein referred to as the "1920 Law."

[2] Garstang 1921, 1922; Albright 1922; Luke and Keith-Roach 1922, 74–75; Ben Arieh 1999; Gibson 1999, 126; Thornton 2015; Yücel 2017.

> for proposals from the Director of the British School of Archaeology [Garstang] with a view to the organization of a Department of Antiquities. In ten days this Department was created; shortly afterwards an Archaeological Advisory Board was constituted, and within a few weeks an Antiquities Ordinance was promulgated. (Garstang 1922, 57)

Scholars have accepted this presentation uncritically.[3] Dotan Halevy (2016; 2018, 93; 2021, 48) even suggested that the 1920 Law was based on former Ottoman laws. Naturally, every new law dialogues with former laws, but in the aftermath of World War I the winners were not inspired by the laws of their beaten enemies. The discourse of the 1920 Law with former Ottoman laws was all about replacement, not continuation. The 1920 Law was a new creation of the winners.

The 1920 Law was instrumental in shaping archaeology in British Mandate Palestine. Many of its stipulations were adopted in the later antiquities laws of Israel and Jordan, and remained valid for many years. Surprisingly, it was hardly studied until now, except for one detail: the definition of antiquities as objects that date prior to 1700 CE. Was this a necessary, even "objective" decision (Braun 1992, 32), or did it lead to the tragic neglect of late Ottoman remains (Lewis and Gibson 2016; Irving 2017, 105)? Or was it a malicious date, intentionally depriving objects of heritage status (Halevy 2018, 94)? For many of us today, it is a loaded, ethical issue: we feel that this date divides arbitrarily between similar things, which are all "heritage." We feel that the 1920 Law defines some heritage objects as worthy of protection and conservation and others as unworthy. But did such an ethic, and such a sentiment, exist in 1920?

In this paper, I study the complex origins of the 1920 Law on the basis of many as yet unpublished documents of the period from several archives in Israel and the United Kingdom.[4] The study leads to a new

[3] Kersel 2010, 88; Halevy 2016; Lewis and Gibson 2016.

[4] Documents published here for the first time are marked with an asterisk (*). Yücel 2017 and Sigalas 2021 referred to three files (FO141/687, FO608/116, and FO608/276), but did not discuss the 1920 Law. I marked documents from these files as "newly published" only when, to the best of my understanding, they were not discussed by them.

understanding not only about the year 1700 CE for defining antiquities, but also about the nature of this law as a compromise between different opinions of the many agents (military men, politicians, archaeologists, historians, legal experts, etc.), who worked on it in various institutions in Egypt, Palestine, and Britain, and the international peace conferences held after World War I.

The Foundations

The transition from Ottoman to British Palestine was complex, but for archaeology it was a sea change. This point should be acknowledged—without justifying colonial ideology.[5] During the war, Britain gave conflicting promises to the Arabs and to the Jews while planning to divide the Levant between itself and France. The underlying problems were evident by 1920, though the Mandate text was only approved in 1922 and peace with Turkey only ratified in 1923.[6]

Palestine suffered heavily in the war, when towns and tells were fortified and bitterly fought over, like Nebi Samuel and Gaza (Figs. 1–2).[7] Until July 1920, it was under the military rule of the British Army (commanded in the region by General Allenby) as the "Occupied Enemy Territory Administration, South" (OETA.S).

The first initiative of the new regime, concerning antiquities, was cleaning and repairing works in the Old City of Jerusalem by the

[5] The Ottomans were colonials and Orientalists too; see Eldem 2010, 2017. I do not accept the suggestion to refer to the Mandate as the "Post-Ottoman" period (Halevy 2021). If we follow this suggestion, we might also refer to the 1950s in Israel as the "Post-Mandate" period, because there were many continuities in legislation, administration, etc. Yet, nobody doubts that 1948 marked a new period in Palestine. Worse, how would we object to calling the Ottoman period the "Pre-Mandate" period? Halevy's suggestion is part of a general trend, which seeks to blame the British for whatever they did, or did not do, in Palestine. Continuities exist between every two consecutive periods in human history, and names of periods must reflect their essence, not what was before or after them.

[6] Lieshout 2016; MacArthur-Seal 2021.

[7] Grainger 2006; Woodward 2006.

Figure 1: Turkish Trenches near Tell Abu Hureireh in the Negev (John D. Whiting, 00122u, Library of Congress)

Pro-Jerusalem Society, which was founded by Ronald Storrs, the Governor of Jerusalem.[8] Storrs also published on April 8, 1918, a notice forbidding changes to and the destruction of buildings in the Old City (Ashbee 1921, 77).

Garstang and others at the time mentioned that the birth of the 1920 Law involved many agents:

> Some of the best brains, English, French, Italian, American are at work on this […] The idea is to take the experience of Egypt based on French regulations, and the collective wisdom of European and American scholarship, and "go one better" for Palestine. (*The Time*, February 5, 1919)[9]

[8] Ashbee 1921, 1924; Storrs 1937, 327; Jacobson 2011; Baram 2012; Mazza 2018, 403–6.

[9] This article was reprinted in *Palestinian Exploration Quarterly* 51, no. 2 (1919): 82.

Figure 2: Nebi Samuel after the Bombardment
(Eric Matson, matpc02237, Library of Congress)

> The Antiquities Ordinance was based not only upon the collective advice of numerous specialists, both archaeological and legal, but embodied the results of experience in neighbouring countries, enabling us to modify, as occasion required, the provisions that have not worked satisfactorily elsewhere. (Garstang 1921, 147)[10]

Garstang (1921, 147; 1922, 58) praised two basic principles of the 1920 Law: (1) Palestine's monuments and antiquities belong to Palestine and its citizens; and (2) the "encouragement offered to scientific workers," namely, the "liberal provisions for division of finds" (cf. Albright 1922, 9). Excavators were given a "fair share," which they could export. However, the second principle contradicted the first, and this contradiction stemmed from the different interests of those who shaped the 1920 Law.

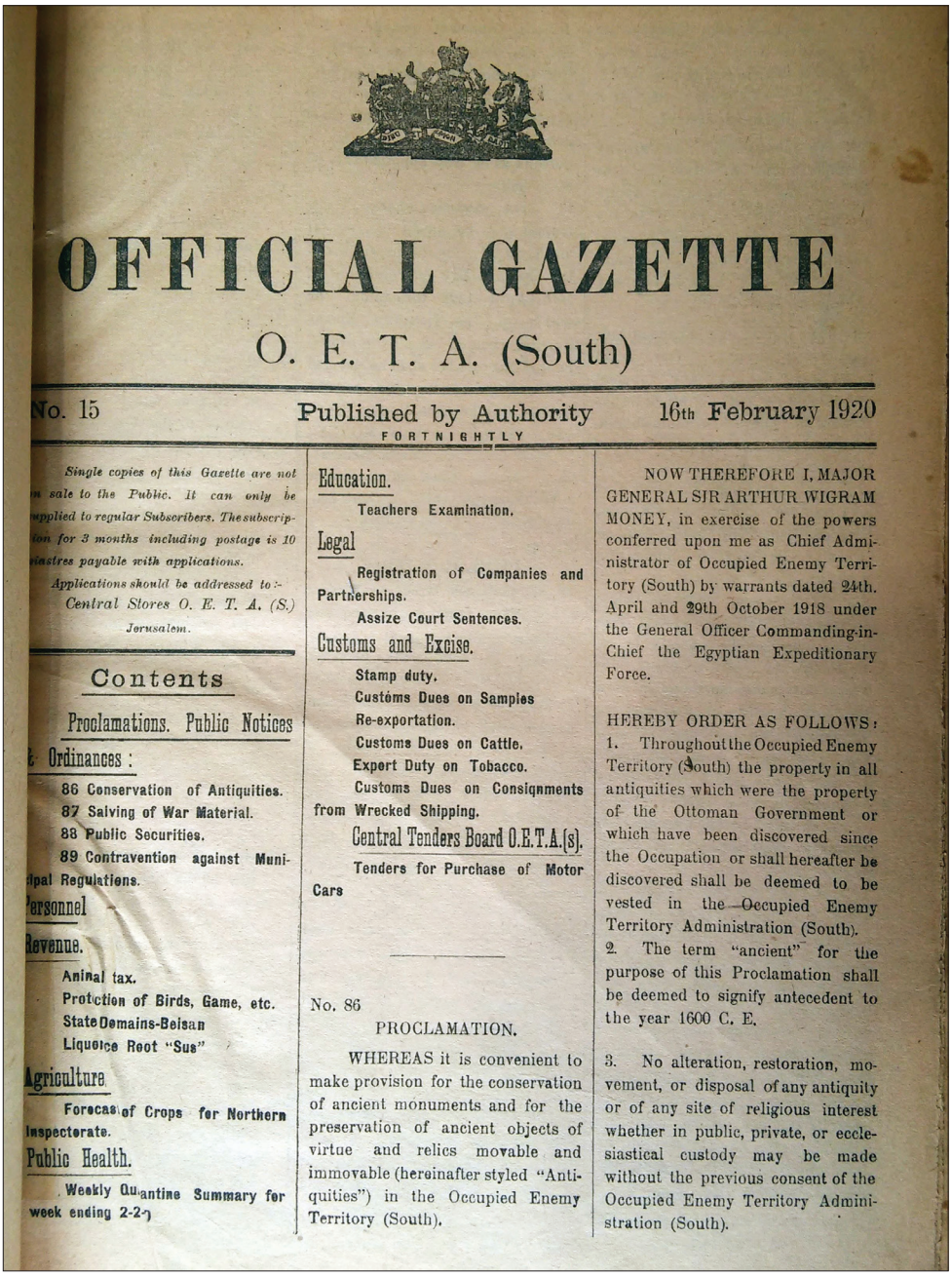
The first initiative came from Commander David Hogarth in Cairo in a "Note on Projects for Antiquity Laws in Occupied Territories."[11] Hogarth warned that future governments should not exploit archaeological excavations. Doing so will make the excavators feel exploited and develop antagonism, which works against the government. Since excavations employ native labour and enrich the country, future antiquities laws should divide equally the costs of expropriating sites for excavations. The government should also pay half the costs of labour and *reises*. Governments should take a share of the finds in direct relation to their participation in the costs.[12]

Just a few days later, General Arthur Money, Chief Administrator of OETA.S, issued a proclamation—No. 86—for the conservation of ancient monuments and the preservation of antiquities. It was the first

[10] See also Garstang 1922, 58; Luke and Keith-Roach 1922, 74.

[11] David G. Hogarth (1862–1927), Keeper of the Ashmolean Museum since 1909, served during the war in the Naval Intelligence Division and the Arab Bureau. From 1919 to 1925, he was President of the Royal Geographic Society.

[12] *TNA FO141/687/6, Hogarth, November 26, 1918. Hogarth knew that Allenby did not want to allow archaeological excavations until the Mandates were settled. Applicants were refused (e.g., *ATQ170, Mackay to District Officer of Nazareth, February 9, 1920).



OFFICIAL GAZETTE

O. E. T. A. (South)

No. 15 Published by Authority 16th February 1920

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No. 86

PROCLAMATION.

WHEREAS it is convenient to make provision for the conservation of ancient monuments and for the preservation of ancient objects of virtue and relics movable and immovable (hereinafter styled "Antiquities") in the Occupied Enemy Territory (South).

NOW THEREFORE I, MAJOR GENERAL SIR ARTHUR WIGRAM MONEY, in exercise of the powers conferred upon me as Chief Administrator of Occupied Enemy Territory (South) by warrants dated 24th. April and 29th October 1918 under the General Officer Commanding-in-Chief the Egyptian Expeditionary Force.

HEREBY ORDER AS FOLLOWS:

1. Throughout the Occupied Enemy Territory (South) the property in all antiquities which were the property of the Ottoman Government or which have been discovered since the Occupation or shall hereafter be discovered shall be deemed to be vested in the Occupied Enemy Territory Administration (South).

2. The term "ancient" for the purpose of this Proclamation shall be deemed to signify antecedent to the year 1600 C. E.

3. No alteration, restoration, movement, or disposal of any antiquity or of any site of religious interest whether in public, private, or ecclesiastical custody may be made without the previous consent of the Occupied Enemy Territory Administration (South).

Figure 3: Proclamation 86 of OETA (South), *Palestine Gazette* 15 (February 16, 1920). Note the date 1600 CE.

British antiquities legislation for Palestine (Fig. 3).[13] Proclamation 86 defined "ancient" as antecedent to 1600 CE and vested all the antiquities in OETA.S (Art. 1–2). It forbade any alteration, disposal, or restoration of antiquities or sites of religious interest, unless by permission (Art. 3).

[13] Proclamations 1920, 4, December 1, 1918; ISA M18/12; Ashbee 1921, 78–79.

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Finders of antiquities had to report them within 30 days. The administration could buy the antiquities, "duly compensating" the finders, or let them keep the antiquities (Art. 4–5, 9). The proclamation forbade causing destruction or damage to ancient monuments and sites (Art. 6), and traffic in antiquities except under licence (Art. 7). Transgressors could face up to one year imprisonment and/or a fine of £500 (Art. 8). The proclamation replaced, so far as it applied, the former Ottoman law (Art. 10–11).

We do not know the origins of Proclamation 86. Various archaeologists wrote to OETA.S with suggestions, but mostly at a later date.[14] Was Proclamation 86 motivated by Hogarth? Did he perhaps attach a draft of it (with his note of November 26, 1918) that did not survive?

In February 2019, Hogarth sent another letter, recommending immediate steps in a memorandum to Gilbert Clayton, the Chief Political Officer of OETA.S:

1. Establish an inspectorate with one trained archaeologist in each of the four OETA areas.
2. Guard sites and monuments by special police.
3. Begin a general survey and declare "public monuments" in order to protect them.
4. Consider the difficult issue of trade and dealers. Prohibiting the export of antiquities completely was impracticable. It is better to declare all antiquities (after definition) as government property. Antiquities that the government does not want can be sold to dealers. Dealers shall be registered and inspected, as in Italy and Greece.
5. Confiscate all the antiquities found, sold, or purchased in contravention of the law, but pay for duly declared discoveries which the government wishes to keep.
6. Establish guarded storehouses for antiquities; ultimately each OETA area will need a museum.
7. Since no law or police force can completely stop clandestine dealing and smuggling, the government should be fair and pay properly.[15]

[14] TNA FO141/687/6, Garstang, April 1, 1919, 18; Ben Arieh 1999, 140, 149.

[15] *TNA FO141/687/6, February 11, 1919.

Was Hogarth unaware, in February 1919, of Proclamation 86 of December 1918, which already defined "antiquities"? He added a "Skeleton Proclamation or Law" with 11 articles, as if Proclamation 86 did not exist (Fig. 4) (App. 1).[16] Some articles were similar to those of Proclamation 86:

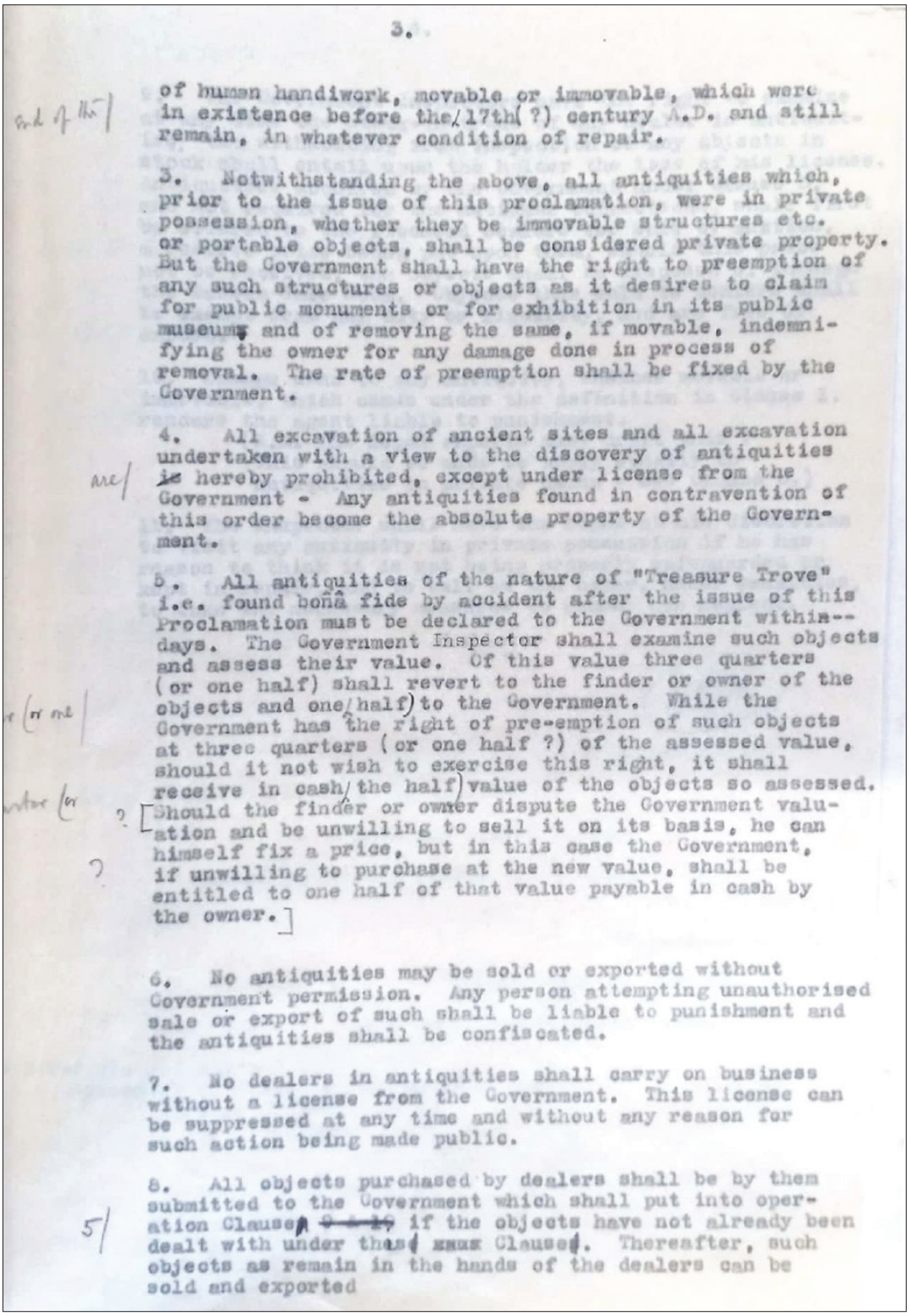
1. Antiquities are property of the government.
2. Antiquities are "structures and products of human handiwork […] which were in existence before the 17th (?) Century AD" (this implied before 1600 CE, with a question mark. But on the margins the words "end of the" were added in pencil, hence, 1700 CE).
5. Finders must declare new finds; the government can acquire them, or let the finders keep them.
6. The sale or export of antiquities without permission are prohibited.
10. Anyone who damages antiquities is liable to punishment.

The "new" articles were as follows:

3. The government could expropriate sites and antiquities, indemnifying the owners.
4. Archaeological excavations were prohibited, except under licence.
5. Rates of payment were stipulated for finders, and a complex mechanism was described in cases of disputes, in order to prevent finders from asking for exorbitant prices.

7–10. Acknowledging dealing, under licence and supervision, the government can buy/sell antiquities from/to dealers and also sell objects to the public through the (future) museum.

[16] The proclamations of OETA.S were not issued strictly chronologically. There was, as yet, no official gazette for OETA.S (it appeared only in July 1919, and this proclamation was printed in Gazette 15 of February 16, 1920). However, the proclamation carries the date December 1, 1918, and we have no evidence to suggest that this date was pasted on a much later proclamation. On the legal system in Palestine in this period see Bentwich 1921.



3.

of human handiwork, movable or immovable, which were in existence before the 17th (?) century A.D. and still remain, in whatever condition of repair.

5. Notwithstanding the above, all antiquities which, prior to the issue of this proclamation, were in private possession, whether they be immovable structures etc. or portable objects, shall be considered private property. But the Government shall have the right to preemption of any such structures or objects as it desires to claim for public monuments or for exhibition in its public museums and of removing the same, if movable, indemnifying the owner for any damage done in process of removal. The rate of preemption shall be fixed by the Government.

4. All excavation of ancient sites and all excavation undertaken with a view to the discovery of antiquities are hereby prohibited, except under license from the Government - Any antiquities found in contravention of this order become the absolute property of the Government.

5. All antiquities of the nature of "Treasure Trove" i.e. found bona fide by accident after the issue of this Proclamation must be declared to the Government within-- days. The Government Inspector shall examine such objects and assess their value. Of this value three quarters (or one half) shall revert to the finder or owner of the objects and one half to the Government. While the Government has the right of pre-emption of such objects at three quarters (or one half ?) of the assessed value, should it not wish to exercise this right, it shall receive in cash the half value of the objects so assessed. [Should the finder or owner dispute the Government valuation and be unwilling to sell it on its basis, he can himself fix a price, but in this case the Government, if unwilling to purchase at the new value, shall be entitled to one half of that value payable in cash by the owner.]

6. No antiquities may be sold or exported without Government permission. Any person attempting unauthorised sale or export of such shall be liable to punishment and the antiquities shall be confiscated.

7. No dealers in antiquities shall carry on business without a license from the Government. This license can be suppressed at any time and without any reason for such action being made public.

8. All objects purchased by dealers shall be by them submitted to the Government which shall put into operation Clause ~~9 - 25~~ if the objects have not already been dealt with under these ~~xxxx~~ Clauses. Thereafter, such objects as remain in the hands of the dealers can be sold and exported

Figure 4: "Skeleton Proclamation or Law" by Hogarth (TNA FO141/687/6). "Before the 17th Century," meaning 1600, was fixed to "end of 17th century," that is, 1700

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11. Government inspectors may inspect private collections and require remedy of instances of neglect.[17]

Following Hogarth, a second proclamation of ten articles was published by General Money on March 18, 1919.[18] It forbade excavations without a licence (Art. 1), gave the administration the right to acquire and remove antiquities under compensation (Art. 2), and set due compensation when acquiring antiquities from finders (Art. 3). Government inspectors were given authority to check collections of private dealers and religious bodies (Art. 4–5). The selling and export of antiquities were forbidden, unless by licence (Art. 6), as was causing damages to antiquities (Art. 7). The licences of dealers could be revoked at any time (Art. 8). This second proclamation supplemented Proclamation 86 and was a direct response to Hogarth's recommendations.

Also following these recommendations, a commission of three archaeologists was established in February 1919 to survey ancient monuments in Syria-Palestine. Lieutenant (later Captain) Ernest J. H. Mackay, Raymond Weill, and Reginald Engelbach performed a partial survey in the Beirut area (in OETA West) and reported on it on February 28, 1919 (Griswold 2018, 126–27).[19] Another result of Hogarth's recommendations was the forming of the Inspectorate of Antiquities. Hogarth exerted a strong influence in this period, but this was about to change with the forming of the Archaeological Joint Committee.

[17] *TNA FO141/687/6, Hogarth, February 11, 1919.

[18] Reich 1995, 184; it did not appear in Proclamations 1920 and did not carry a number, but was mentioned by Garstang in *TNA FO141/687/6, April 1, 1919, 18.

[19] Mackay (1880–1943) is known mainly for his later work in the Indus Valley. He worked with Matthew Flinders Petrie in Egypt and in World War I was a captain in the Medical and Camel Corps. He left Palestine due to disagreements with Clarence Fisher at Beisan (Possehl 2010). Raymond Weill (1874–1950) was a French Jewish Egyptologist who excavated in Jerusalem on behlf of Baron de Rothschild. Reginald Englebach (1888–1946) was an Egyptologist and engineer.

The Archaeological Joint Committee

In December 1918, by the initiative of Lord Curzon at the Foreign Office, the Archaeological Joint Committee (AJC; also referred to as the Joint Archaeological Committee) was established by the British Academy.[20] At the time, the Middle East was divided between the War Office (the Hejaz), the Foreign Office (Palestine, Syria), and the India Office (Mesopotamia). In March 1921, the Middle East Department of the Colonial Office took over.[21] The AJC had 29 representatives from 16 UK institutions.[22] It was to advise about antiquities in areas conquered from Turkey and other matters like reorganizing the Egyptian Service of Antiquities.[23] The chair was the influential Sir Frederic Kenyon, President of the British Academy and Head of the British Museum.

Soon the AJC delivered a memorandum titled "The International Control of Antiquities Existing in Countries under Turkish Rule" in preparation for the Paris Peace Conference.[24] An economic bloom was expected and, hence, increased danger to antiquities. A "properly administered Law of Antiquities" for Turkey was a necessity.

The AJC found defects in current Turkish law: finders had to transfer the finds at their own expense to the nearest *konak* (official residence). Many destroyed the antiquities instead. The rigid prohibition of export led to smuggling. The AJC claimed that its proposal would solve this problem through "an equitable distribution" of finds.[25]

These defects were supposedly "magnified a thousand-fold" by an "inefficient and corrupt" administration. Turkey's defeat was an op-

[20] Lord Curzon, Head of the British Foreign Office (1919–1924), was interested in antiquities (Bennett 1995, 101–21). He passed the 1904 Ancient Monuments Preservation Act in India, saved Tattershall Castle, and supported new laws to protect England's heritage.

[21] McTague 1983, 38; Bennett 1995, 109.

[22] Including the British Academy, the British Museum, the Royal Asiatic Society, and the Palestine Exploration Fund (full list in Hill 1920, 28).

[23] *TNA FO141/687, January 11, 1919; Kenyon 1920, 5; Gibson 1999, 128.

[24] *FO 141/687/6, January 11, 1919; accepted at the Egyptian High Commission on February 19, 1919.

[25] *TNA FO141/687/2, AJC memorandum, #2.

portunity to "remedy this deplorable state of affairs" by not allowing the Turks to handle antiquities! An International Commission for Antiquities would take charge[26] with overbearing powers to:

1. Revise the Turkish Law of Antiquities.
2. Issue permissions for excavation and exploration.
3. Nominate inspectors, surveyors, and (likely native) "caretakers".
4. Control the export of antiquities.
5. Purchase antiquities for Turkish museums or release them for sale abroad.
6. Supervise the division of finds between Turkish museums and excavators.
7. Administer local museums.

The International Commission for Antiquities would include representatives of countries active in Middle Eastern archaeology: France, Britain, Italy, Russia, the United States, and "eventually" Germany and Austria. Greece could "put a claim," and Belgium and Denmark earned a place through the work of distinguished individuals. As for Turkey, the AJC patronizingly stated: "The interests of her antiquities would probably be better served if she were represented either not at all, or by the delegates of other powers in rotation."[27] Turkey could finance the International Commission for Antiquities, though, since Turkey's neglect was its cause and Turkey would benefit: illicit smuggling would be replaced by museums and "civilized travellers."[28]

[26] An alternative was to let the United States serve as a trustee—an option considered then in general, not just for antiquities.

[27] *TNA FO141/687/6, January 11, 1919, #V–VI.

[28] The AJC suggested also to divert, "naturally," the money given to the Imperial Ottoman Museum from seized antiquities and fines to the commission (ibid, #VII) and impose a tax on the export of antiquities. Accordingly, the Foreign Office drafted "archaeological desiderata" for a peace treaty with Turkey, but some voices warned that it went too far (*TNA FO608/116/6, January 2 – February 3, 1919).

While lands such as Mesopotamia, Armenia, Syria, Palestine, and Macedonia must remain "in the hands of civilized powers,"[29] little was said about them at this stage. We see in this proposal the spirit of empire, which was grounded in Orientalism and colonialism. The Turks were made the opposites of science and civilization. The Ottoman Empire would be split between the winners. Native populations would live in "provinces" ruled by civilized powers, furnishing low-level "caretakers." In the area left for Turkey, the Turks would pay for the management of their antiquities by foreigners. Eventually, Germans and Austrians would join this commission of civilized nations—but not any "native" country. We also see how division and the trade in antiquities played a major role in this proposal. The AJC, representing British institutions, wanted to ensure the flow of antiquities to Britain.

In February 1919, the AJC presented a constitution for the proposed "International Commission for Antiquities." It would sit in Istanbul (preferably at the Imperial Museum), report to the League of Nations, and include three members. The expenses will be covered by the future areas concerned: a Neutral Zone (Istanbul/Bosporus), Turkey, and Armenia.[30]

The AJC next drafted a document titled "Main Principles for a Law of Antiquities" for Turkey, which all the future Mandates were to follow (App. 2).[31] The nine principles defined antiquities as human-made objects or constructions earlier than 1700 CE (Art. 1); promised rewards to those who report findings (Art. 2); forbade the sale and export of antiquities, except to the International Commission for Antiquities, while recognizing dealers, that is, legal trade in antiquities (Art. 3); stipulated that those who damage ancient sites would be liable to a penalty (Art. 4); forbade unauthorized digging in antiquities sites under penalty (Art. 5); and encouraged expropriation for excavations under "equitable terms" (Art. 6). Excavations would be made by persons of sufficient

[29] *TNA FO141/687/6, AJC memorandum, #VIII.

[30] *TNA FO608/2/3, Kenyon to Louis Mallet, Folios 141, 144–45. The Foreign Office doubted that such a commission would be possible (*TNA FO608/2/3, Mallet to Kenyon, March 5, 1919).

[31] *TNA FO608/82/3, Folio 201, February 19, 1919.

archaeological experience, or representatives of learned societies (Art. 7). Finds from excavations would be divided between the excavators and the commission; excavators could export their portions (Art. 8). They would have to furnish scientific publications within "a reasonable period" (Art. 9).[32] Most of the articles (5–9) dealt with excavations by scholars, while Proclamation 86 said nothing about that. Hogarth's suggestion only forbade excavations, except under licence (Art. 4).

The AJC had the ear of Britain's politicians in London: its influence was increasing. However, another important player joined the field in March 1919: John Garstang, an archaeology professor at Liverpool University. Garstang was invited by Lord Curzon (Head of the Foreign Office) to advise on the antiquities of Palestine.[33] Garstang produced in April 1919 a scheme "for the control of Archaeology in Palestine," which was approved by Allenby.[34] It called for the "constitution of an official Department of Antiquities," setting the vision as well as the practical structure of the future DAP and Archaeological Advisory Council. Garstang stated that one of the first duties of the Advisory Council "will be to draft a Law of Antiquities."[35] However, Garstang was not involved at this stage with the ongoing work on new legislation.

The Plan of Captain Mackay

In May 1919, the chief administrators of OETA met in Haifa. Antiquities occupied a tiny portion of their discussions. It was agreed that a uniform procedure for antiquities should be applied in all the OETA areas.

[32] *TNA FO608/2/3, Kenyon to Louis Mallet, Folios 141, 144–45, February 19, 1919.

[33] *TNA FO141/687/6, General Money, April 1919, and Garstang, memorandum, April 4,1919; *The Palestine Post*, December 7, 1926; *Palestine Exploration Society* 52–53, 1920, 102. The school was established in 1919 with Frederic Kenyon as President and Garstang as Head (Ben Arieh 1999; Thornton 2015, 77; Yücel 2017). Note that Garstang was not asked to deal with legislation.

[34] TNA FO141/687/6, 1.4.1919; and Clayton to Curzon, April 7, 1919.

[35] TNA FO141/687/6, Garstang, April 4, 1919.

Proclamation 86 of OETA.S and the scheme devised by Garstang could serve as the model.[36]

Stemming from Hogarth's recommendations of February 1919, an "Inspectorate of Antiquities" was announced in August 1919.[37] Ernest Mackay, who was to be the "Custodian of Antiquities," became responsible for OETA.S and a portion of OETA East, including Damascus. He was responsible for collecting archaeological information for the Allied Powers and their future governments; preventing plundering and traffic in antiquities; and safeguarding monuments. He was forbidden from doing excavation or restoration. In December 1919, Mackay started a survey of monuments in Jerusalem and Hebron for several months, eventually handing in a 70-page report.[38] Most of the monuments were Islamic, and the excavators of the Mandate period would hardly pay attention to them.

Mackay wrote a plan titled "Proposals for Provisional Regulations of a Service of Antiquities." It was part of a larger document, and the first four pages are missing.[39] Mackay envisioned a "Service" attached to a Department of Public Education or Public Works with inspectors, site *ghaffirs*, and a central museum (Part I, Art. 1–3). The Service would carry out a survey of "historical" and "underground" monuments, register them, declare some as state property, and be responsible for their upkeep and excavation. Those damaging monuments shall be punished (Part II, Art. 4–12). The trade and export of antiquities would be forbidden, unless approved by means of a certificate. Trade was to cease, though individuals could still keep and inherit private collections, and buy objects from the state or from other collectors (Part C, Art. 13–18).

Detailed rules would apply to excavations (Part D, Art. 19–28) carried out by the Service itself, by a licensed foreign state, or by a qualified learned society or body. Finds from excavations would be divided

[36] *TNA FO141/783/2, May 12, 1919.

[37] TNA FO608/2/3, Folios 240–242; OETA.S Gazette 5, September 16, 1919, 4.

[38] *ATQ1512; *ATQ SRF78.

[39] *ATQ Box1/ATQ93. It was given to Father Louis Vincent (1872–1960) (the famous French Archaeologist of the École Biblique in Jerusalem) in December 1919; we do not know the date of writing.

equally, but the Director of the Service would choose what to retain. Excavators could export their share, but must submit seasonal reports and a published (final) report within two years. The Service would organize museums "in the most important centres" (Part E, Art. 29–30). Museums could acquire objects from the "frozen" stock of dealers, from the state, or as donations.

The plan shows that the practical measures for the creation of a "Service" (the French equivalent to "Department") could not be detached from the concomitant legislation of an antiquities law.[40] The stress on the protection of monuments and the carrying out of surveys fits Mackay's work, and the liberal use of Turkish terms (e.g., in Art. 5 and 11) reflects the transitional period of 1917–1920.

Garstang's scheme was coherent. But this can hardly be said about Mackay's plan. Its horizons were limited (perhaps it seems so because of the missing first pages). Garstang stressed the universal importance of the antiquities of Palestine, while Mackay did not lift his eyes beyond the chief administrators of the OETA. Mackay's definition of "antiquities" (Art. 13: "any object marked by human hands prior to 1500 AD") came after the term was already used. Article 17 was repetitive. Several terms were interchangeable ("historical monuments," "visible archaeological treasures," "ancient buildings"), and the separation of "historical" from "underground" monuments was arbitrary. Some stipulations were clumsy, like Article 30: museums could sell "duplicates," but since the profits would go to the Service, why should they bother? Registering and supervising stocks of dealers would be difficult, and "frozen" dealers, once turned into "collectors," could still sell objects to other collectors.

Mackay asked Father Vincent to read the plan. Vincent praised it, except for a few comments. "Monuments" should be better defined. For example, one can hardly be interested in public buildings, chapels, *madrassas* (schools), and so on of the last century or two. These,

[40] The two go hand in hand in general, not just for the 1920 law. An antiquities law is necessary in order to give a legal basis to the work of an antiquities department. An antiquities department is necessary in order to see that the antiquities law is being implemented.

for Vincent, were not "serious archaeological remains". Communities should be warned (in Art. 10) that they would have to remove, at their expense, recent installations in cemeteries on important sites, in order to allow for excavations.[41] Mackay's plan was kept in the files and was likely known to Garstang, but had a limited impact on the 1920 Law.

The Paris Peace Conference

In early 1919, the proposals of the AJC for the International Commission for Antiquities regarding an antiquities law for Turkey were presented by the British delegation at the Paris Peace Conference.[42]

An informal committee of Hogarth (Britain), William Buckler (United States), René Cagnat (France), and Roberto Paribeni (Italy)[43] discussed the proposed law, and issued eight principles based on the AJC's draft, with some innovative features.[44] Turkey and the Mandates

[41] *ATQ Box1/ATQ93, Father Vincent, January 3, 1920.

[42] The conference (January 18, 1919 to January 21, 1920) included 32 nations, 52 commissions, and 1,646 sessions. However, the "Big Four" (Britain, France, Italy, and the United States) made the important decisions in informal meetings. Mathilde Sigalas (2021, 192–96) treats this period from an American perspective, but with mistaken statements. For example, that the British and French governments "started to draft the law in 1920"; that the DAP was "divided into two decision-making branches, the Director and the Archaeological Council"; and that the Advisory Board had a "committee" and a "president" (?). Sentences like "The whole supervision of the archaeology in Palestine relied on close collaboration between American, British and French diplomatic and archaeological organisations" (Sigalas 2021, 198) are incorrect.

[43] William Hepburn Buckler (1867–1952) was a lawyer, classical archaeologist and diplomat, and member of the Sardis Expedition (Luke 2019, 41–77). Professor of the Collège du France and a member of the Académie des Inscriptions et Belles-Lettres, René Cagnat (1852–1937), was a classical historian specializing in Latin inscriptions and the history of North Africa. Professor Roberto Paribeni (1876–1956) was a museologist and archaeologist. He worked an inspector and museum director in Rome and Naples, and in the 1920s he was Italy's General Director of Antiquities and Fine Arts (Luke 2019, 62).

[44] TNA FO608/82/3, Folio 174, April 14, 1919.

were supposed to enact their antiquities laws on the basis of these eight principles, which were approved almost verbally in 1920 (Butler and Bury 1958, 510–11). These principles passed to the Commission for the Mandates as "General Principles of a Model Law of Antiquities for the Near and Middle East" (reproduced in Hill 1920, 98–9), eventually becoming Article 421 of the 1920 Treaty of Sèvres (Sèvres 1920) (App. 3).

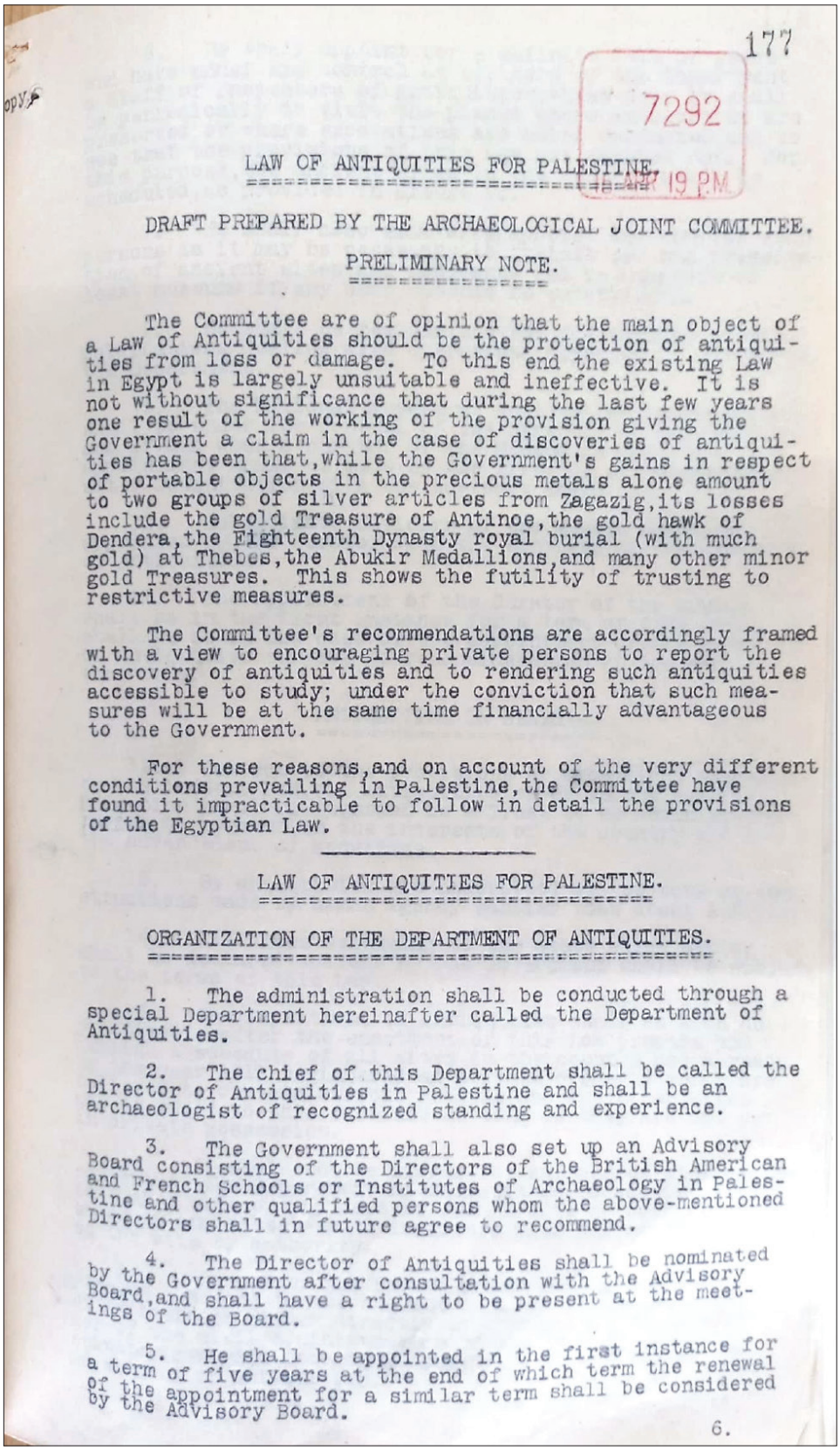
The eight principles defined antiquities as "any construction or any product of human activity earlier than the year 1700" (Art. 1). Finders of antiquities who reported them would be rewarded (Art. 2). Export was allowed under permit (Art. 3). Those who damaged antiquities would be liable to a penalty (Art. 4). Digging for antiquities was prohibited, except by authorized persons with archaeological experience. The authorities would not discriminate between excavators by nationality (Art. 5 and 7). Land of historical or archaeological interest could be expropriated under "equitable terms" (Art. 6). Finds from excavations would be divided according to a proportion set by the authorities (Art. 8). The most innovative, and quite idealistic feature, was provided in Article 2: "The law for the protection of antiquities shall proceed by encouragement rather than by threat."

The eight principles were based on the AJC's proposal, but Hogarth was present in Paris and participated in their drafting. Professor William Westermann of the American delegation proposed adding an American member to the International Commission for Antiquities.[45] Otherwise, his proposal repeated the AJC's text, but he used the term "Department of Archaeology", which was also the term employed in the eight principles).[46] Acting fast, the AJC drafted in April 1919 the "Law of Antiquities for Palestine," which took into consideration the eight principles.[47] (*TNA FO608/2/3, Folios 177–83). With 50 articles, it was far more detailed than anything that had been suggested earlier. Here was the profound contribution of the AJC to the 1920 Law (Fig. 5).

[45] *TNA FO608/82/3, Folios 164–66, March 15, 1919.

[46] William Linn Westermann (1873–1954) was Professor of Ancient History at the University of Wisconsin. He kept a diary in Paris, as did many of his fellow delegates (Cooper 2006).

[47] *TNA FO608/2/3, Folios 177–83.



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LAW OF ANTIQUITIES FOR PALESTINE.

DRAFT PREPARED BY THE ARCHAEOLOGICAL JOINT COMMITTEE.

PRELIMINARY NOTE.

The Committee are of opinion that the main object of a Law of Antiquities should be the protection of antiquities from loss or damage. To this end the existing Law in Egypt is largely unsuitable and ineffective. It is not without significance that during the last few years one result of the working of the provision giving the Government a claim in the case of discoveries of antiquities has been that, while the Government's gains in respect of portable objects in the precious metals alone amount to two groups of silver articles from Zagazig, its losses include the gold Treasure of Antinoe, the gold hawk of Dendera, the Eighteenth Dynasty royal burial (with much gold) at Thebes, the Abukir Medallions, and many other minor gold Treasures. This shows the futility of trusting to restrictive measures.

The Committee's recommendations are accordingly framed with a view to encouraging private persons to report the discovery of antiquities and to rendering such antiquities accessible to study; under the conviction that such measures will be at the same time financially advantageous to the Government.

For these reasons, and on account of the very different conditions prevailing in Palestine, the Committee have found it impracticable to follow in detail the provisions of the Egyptian Law.

LAW OF ANTIQUITIES FOR PALESTINE.

ORGANIZATION OF THE DEPARTMENT OF ANTIQUITIES.

1. The administration shall be conducted through a special Department hereinafter called the Department of Antiquities.

2. The chief of this Department shall be called the Director of Antiquities in Palestine and shall be an archaeologist of recognized standing and experience.

3. The Government shall also set up an Advisory Board consisting of the Directors of the British American and French Schools or Institutes of Archaeology in Palestine and other qualified persons whom the above-mentioned Directors shall in future agree to recommend.

4. The Director of Antiquities shall be nominated by the Government after consultation with the Advisory Board, and shall have a right to be present at the meetings of the Board.

5. He shall be appointed in the first instance for a term of five years at the end of which term the renewal of the appointment for a similar term shall be considered by the Advisory Board.

6.

Figure 5: "Law of Antiquities for Palestine" of the AJC, April 1919, opening page (TNA FO608/2/3)

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The first part of this draft (Art. 1–11), on the organization of the future "Department of Antiquities," envisioned a director (an archaeologist of "recognized standing and experience") and a head museum curator, with inspectors, conservators, and museum curators under them. The director would control the "National Museum of Antiquities in Jerusalem" with the help of an "Advisory Board."[48] Article 12 expressed a beautiful principle:

> Subject to the provisions or exceptions enacted by the present Law, all antiquities on or in the soil in Palestine shall be regarded as a Trust to be administered by the Government, in the interest of the country and for the advancement of knowledge.

Antiquities were defined as "human-made objects or constructions earlier than about 1500 AD" (Art. 13). The Department of Antiquities would prepare a schedule of antiquities sites, except those on private property. If it wanted to preserve sites on private land, it must either reach an agreement with the landowners, expropriate the land for 1.5 times the market value, or remove the remains and indemnify the owner for any damage caused. Finders of antiquities were to report to the Department and be "suitably rewarded." Though antiquities would be "vested in the Government," finders could become owners (after Art. 16, 49). The value of antiquities would be assessed by the Department and in cases of disputes by an arbitrator from the Advisory Board.

The largest part of the proposed law concerned archaeological excavations (Art. 22–43). Authorization for excavation would be given to learned societies/institutions or individuals of proven competence with institutional guarantees. Excavators would have to hand in a full scientific report within two years of the excavation and a summary report "acceptable for publication" on each season within four months of the end of the season. Applicants must specify the exact excavation areas and show that they have enough labour for the planned work. The Department could expropriate private land for excavations. Excavators

[48] These articles were modelled on the scheme that Garstang handed for the creation of a Department of Antiquities.

could receive permits for two sites at the same time (Art. 30).[49] They had to leave the areas "in satisfactory condition" at the end of the excavation. The draft recognized smaller excavations—"soundings"—from which the Department would keep all the finds (Art. 29). The proposed law called for a "fair" division of finds. The Department would choose the objects needed for the National Museum, but they could not amount to more than half the total value of the finds. The excavators could export their shares of the finds freely.

Five articles concerned trade in antiquities (Art. 44–48). Dealers had to acquire a licence or else be treated as finders. Licences were to be renewed annually and could be revoked by the director. Dealers had to report any object worth (in their estimation) £10 or more. Finally, two articles (49–50) set a low export tax (5 percent) on antiquities exceeding the value of £10, while cheaper finds and finds from licensed excavations would be exempt.

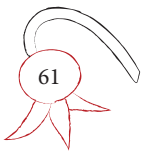
In the preamble, the AJC stated that the main aim of an Antiquities law was to protect antiquities. To this end, they stated, the existing Egyptian law was "largely unsuitable and ineffective." The AJC mourned its recently added provision, which gave the Egyptian government "a claim in the case of discoveries of antiquities." Claiming that conditions were different in Palestine, the AJC dismissed the usefulness of the Egyptian law for its purposes. Without going into details about the national awakening in Egypt,[50] we can see here the same tendency noticed earlier, when the AJC dismissed the Turkish law. The criticism was biased: the AJC wanted to ensure the flow of antiquities to Britain. They wanted to do this by giving the excavators half the finds (in value), exempting them from export tax, and setting a low tax only on expensive antiquities.

This proposal was sent to OETA.S, and revised within a short time (probably very slightly) by Garstang and two lieutenant colonels,

[49] Excavators had to fulfil all the conditions, even if they excavated on their own private land (Art. 28). In that case, however, they could keep all the finds.

[50] Goode 2007; Reid 2015; Doyon 2018.

Edward Gabriel and Crichton.[51] Still during the Paris Peace Conference, Garstang met the French delegate Alfred Coville (Director of Higher Education)[52] on January 8, 1920, and received from him a document on the issue of collaboration, which was approved (in March 1920) by the French authorities and by the AJC. It concerned archaeological and philological research in the former Ottoman countries in Asia, excluding Persia. It called for "an effective cooperation and coordination of research" between English, American, and French scholars. As an "absolute principle," all scholars would be treated equally in all the future Mandates. Each Mandate would establish a Department of Antiquities, which would be responsible for the control of excavations, the conservation of monuments, and the creation of museums. The departments should follow similar regulations, and each would be supervised by a "technical committee" of three members representing the main Allied Powers (Britain, France, and the United States).[53]



Drafting the Law in Palestine

Unfortunately, our knowledge about this stage is limited: drafts are mentioned in the relevant documents, but are hardly included. An "Archaeological Commission" was appointed by OETA.S on April 27, 1920, and met on May 20, 1920.[54] It recommended forming a sub-

[51] *TNA FO141/687/6, Garstang, April 4, 1919, 17, 19; draft not attached. Sir Edmund Vivian Gabriel (1875–1950), soldier and art collector, descended from the Garibaldi family. He served in India and in Italy and in the Aegean Squadron in World War I. From 1918 to 1919, he was Assistant Administrator in OETA.S, but resigned because of his pro-Arab stance. In World War II, he was an attaché in the British Air Commission in Washington.

[52] Alfred Coville (1860–1942) was a French historian and administrator. After teaching in several universities he served in the Government since 1912, and was Director of Higher Education in 1917–1927.

[53] *ISA M9/571, Dispatch 343, 9; *TNA FO608/276/3, Folios 609–10. This remained a utopia – the future Mandates developed separate archaeologies, and no "technical committees" were ever established.

[54] *IAA Box1/ATQ93, minutes by Storrs.

commission for drafting the Antiquities Law comprising Garstang (President), Lieutenant Colonel Norman Bentwich (Legal Secretary),[55] Major E. Mills (Military Governor, Gaza), Captain Mackay (Convenor); Father Vincent, and Dr. William Albright.[56]

The subcommission met on June 30, 1920. Garstang reported on the visit of Joseph Chamonard, Adviser on Antiquities to the High Commissioner for Syria, aimed at "obtaining parallelism on the prospective Laws of Antiquities" for the two Mandates.[57] The subcommission agreed about division of finds: after excavation, the Director of Antiquities shall choose the objects needed for the "National Museum" and then make a "fair division" of the rest. The subcommission recognized dealing in antiquities under licence and recommended establishing a sale room in the "State Museum." Finders of antiquities must report to the state; the antiquities would be kept by them, or acquired by the state for a generous reward.[58]

Frederic M. Goadby (Drafter of Laws) was added to the next meeting of the subcommission on August 3, 1920.[59] Goadby presented a draft law, "to which various amendments" were made. Goadby next prepared a final draft of the "Ordinance relative to Antiquities of Palestine," which was discussed by the Archaeological Commission at its last meeting (August 13, 1920). Present were Colonel Storrs (President); Norman Bentwich, Fredric Goadby, Father Vincent, Dr. William Albright, Major Legge (Director of Education); John Garstang (Director of Antiquities), and William J. Johnson (Treasurer). Goadby read the draft clause by

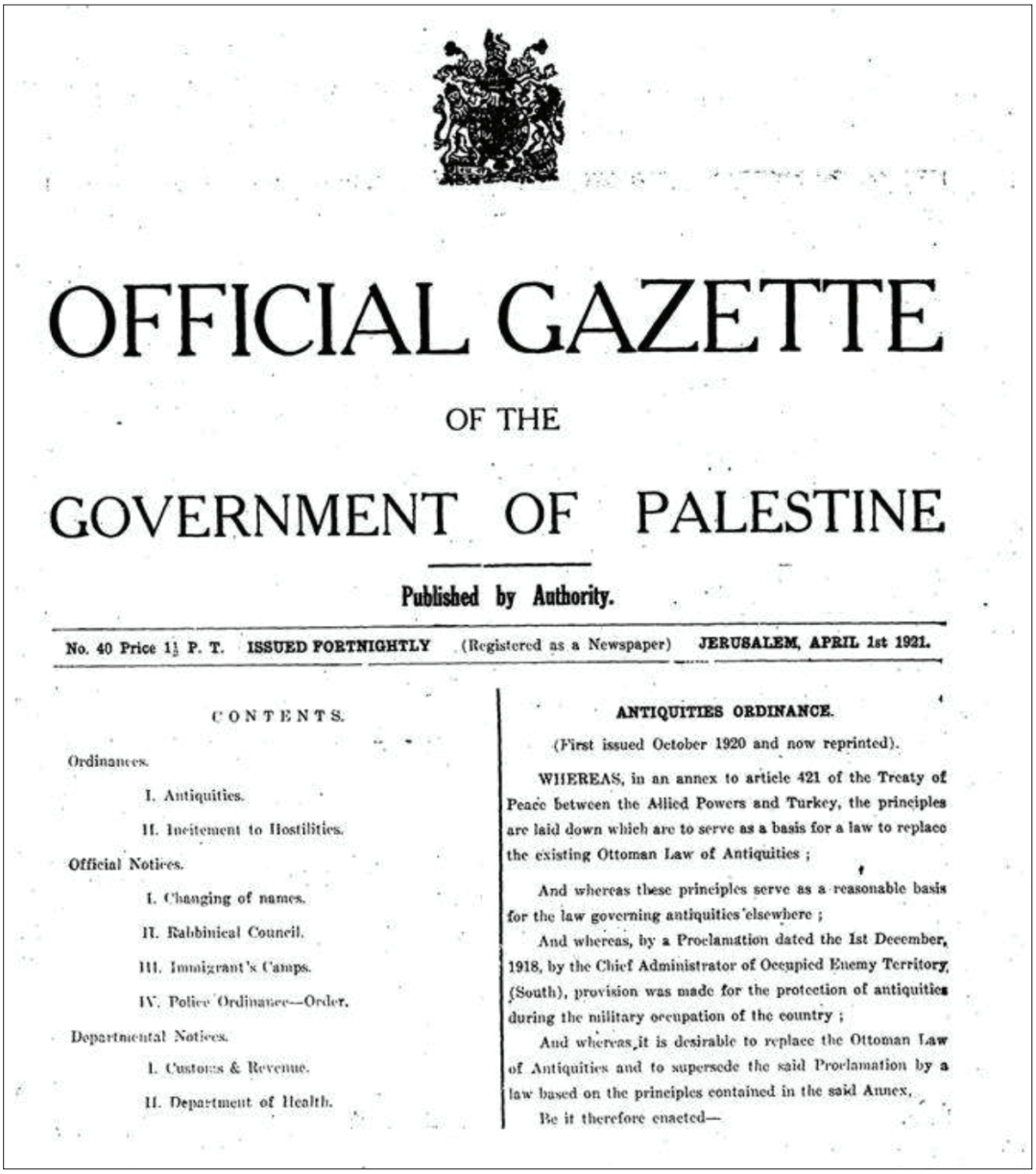
[55] Norman Bentwich (1883–1971) was a major in the Camel Transport Corps, Attorney General of Palestine from 1920 to 1931, and Professor of the Hebrew University from 1932 to 1951.

[56] *ATQ Box 1/ATQ93, minutes, May 20, 1920; Major Badcock to Garstang, June 19, 1920.

[57] Joseph Chamonard (1866–1936) was a French archaeologist who excavated in Greece and in 1915 at Eski-Hissarlik (Gallipoli) with French troops. In 1920, he became the first Director of the Antiquities Service in Syria, but was soon replaced by Jean Charles Virolleaud (Griswold 2020, 152).

[58] *ATQ Box 1/ATQ93, minutes by Garstang, June 30, 1920.

[59] *ATQ Box 1/ATQ93, August 4, 1920; also in *ISA M2/2.



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ANTIQUITIES ORDINANCE.

(First issued October 1920 and now reprinted).

WHEREAS, in an annex to article 421 of the Treaty of Peace between the Allied Powers and Turkey, the principles are laid down which are to serve as a basis for a law to replace the existing Ottoman Law of Antiquities ;

And whereas these principles serve as a reasonable basis for the law governing antiquities elsewhere ;

And whereas, by a Proclamation dated the 1st December, 1918, by the Chief Administrator of Occupied Enemy Territory (South), provision was made for the protection of antiquities during the military occupation of the country ;

And whereas it is desirable to replace the Ottoman Law of Antiquities and to supersede the said Proclamation by a law based on the principles contained in the said Annex,

Be it therefore enacted—

Figure 6: Antiquities Ordinance 1920, the Preamble (reprinted in the *Palestine Gazette* 40, 1921)

clause; certain amendments were made, and the amended draft was sent to the High Commissioner for approval.[60]

[60] *ATQ Box 1/93, Storrs, August 21, 1920. The text sent to the Foreign Office in August (in FO141/687/6) was equivalent to the law as published in the Gazette in October.

The Mandate over Palestine was approved on April 25, 1920, at the San Remo Conference. The eight principles of Paris—Sèvres Article 421—became, almost verbatim, Article 21 of the Mandate for Palestine.[61] Article 21 demanded the enactment of a Law of Antiquities within 12 months, but Palestine already had a law, which was enacted on October 15, 1920 (AO 1920) (Fig. 6).

Drafting a Published Law

Surprisingly, publishing the 1920 Law was not considered a final act, though the publication had all the features of a law and declared itself as such in the preamble ("to replace the Ottoman Law of Antiquities […] *by a law*"; emphasis added). Discussions continued with the AJC about a law for Palestine, reflecting the same earlier tensions. I present them here in brief.[62]

In November 1920, Sir Kenyon sent the observations of the AJC—61 comments, five pages—about the "proposed ordinance" to the Foreign Office.[63] The AJC was especially worried about the "severe provisions of clauses 10–13": honest finders should not be "deprived" of antiquities. Another major issue was Article 30, about the "unequal" division of finds from excavations.[64] The AJC also wanted to allow excavators to be able to dig two sites simultaneously and to reduce the export tax from

[61] Hill 1920, 95–99; Mandate 1922; Bentwich and Goadby 1924, 252.

[62] See also Ben Arieh (1999, 147–49). One should not confuse the Archaeological Commission that drafted the Antiquities Law until August 1920 with the Archaeological Advisory Board, which met for the first time on September 20, 1920.

[63] *ISA M1/570, Kenyon to Curzon, November 6, 1920.

[64] "It is obvious that no excavator will dig on the conditions here laid down," wrote the AJC; its minimum demand was a 50–50 division (*ISA M1/570). AO 1920 was reprinted in the *Palestine Gazette* 40, April 1, 1921; no reason was given why (there was no change in the 1921 reprint concerning division or export). British laws of the period did not limit the export of antiquities from England, probably because the empire was accustomed to importing, not exporting, antiquities (Brodie 2002, 187–88).

10 to 2 percent (exempting objects worth less than £5). Hogarth also read the ordinance and made several comments. Herbert Samuel was instructed to carefully consider all the comments. Though, if Palestine were to choose to amend the existing ordinance, better wait until the entry into force of the Mandate, "so that the changes might then appear to have been inspired by the terms of the Mandate."[65]

Minor points of difference were solved in a meeting held on February 18, 1921, and Garstang suggested other compromises.[66] The division of finds remained a bone of contention: the AJC demanded a larger share for excavators. Garstang said quite bluntly that the law should support scientific work, not "the filling of foreign museums." He suggested that the issue be resolved not in the text of the law, but by an "amicable" policy. He also argued that his amendments were required in order to fit the French and American views on the matter.[67]

The French views concerned Syria. Garstang met with the French and reported, as a success, that they were modifying their proposed law for Syria-Lebanon to conform to "the regulations laid down" for Palestine.[68] The French were divided too: Chamonard wished to keep, for several years, all the finds from excavations for local museums,[69] but the French High Commissioner objected and the current draft allowed export.[70] In another meeting in Paris on December 5, 1920, a compromise was reached about division. The Secretary of the British Commission in Paris (Hill) together with the French Commission and Garstang discussed, on March 18, 1921, the French and British

[65] *ISA M1/570, J. A. C. Tilley to Samuel, November 12, 1920.

[66] *ISA M9/571, Dispatch 343, Garstang to Samuel, September 19, 1921.

[67] *ISA M9/571, Dispatch 343, September 19, 1921.

[68] *ISA M9/571, Dispatch 108, August 24, 1920; Dispatch 296, August 24, 1921; *TNA CO733/5/26.

[69] *ISA M9/571, Dispatch 343, September 19, 1921, 10.

[70] *ISA M9/571, Dispatch 343, September 19, 1921; Griswold 2020; see also *TNA CO733/6/29. In July 1920, the law was still in draft form and Garstang sent excerpts of it to Chamonard, telling him about the AJC's demands and that he was looking out for the interests of the Palestine Museum.

"drafts."[71] The French pointed out that their draft fitted the formerly reached "entente," while the British draft for Palestine was much more generous about export. In reply, the British explained that the "drafts of the Palestine Law" that the French saw were only "preliminary and provisional notes, while "the final draft as now promulgated bore witness of material alteration." The French withdrew their objections, but expressed the wish that the British would modify their text in order to establish "parallelism between the two drafts."[72]

The Advisory Board decided about certain amendments to the published law.[73] On August 3, 1922, the Colonial Office (Churchill) ordered the Palestinian government to prepare a Law of Antiquities in accordance with the provisions of Article 21 of the Mandate text. A draft law, stressing encouragement rather than threat (with some other changes), agreed upon by the AJC and the Advisory Board, was sent to London.[74]

Yet, though "last" amendments were mentioned in 1924,[75] the 1920 Law remained valid until it was modified in 1929 (by AO 1929). It gave the necessary legal basis to the work of the DAP. Palestine was lucky—the Antiquities Law for French Syria was only passed in 1926.

Conclusions

The 1920 Law was created by diverse agents (archaeologists, historians, military administrators, museum managers, politicians, and legal experts) from several Western nations, working in Egypt, Palestine, Britain, and the international peace conferences held in the aftermath of World War I.

[71] Reaching "complete agreement as regards the outstanding differences of principles in the Antiquities Ordinance of the two mandatory areas of Palestine and Syria" (*ISA M23/4995, Garstang, April 1921).

[72] *ISA M9/571, Dispatch 343, September 19, 1921, 14.

[73] *ISA M9/571, Dispatch 311, September 3, 1921.

[74] *ISA M10/575, Dispatch 158, February 16, 1923; cf. *ISA M2/2.

[75] *ATQ Box 3/ATQ741, Annual Report 1924.

Proclamation 86 of OETA.S defined the *terminus ante quem* of antiquities as 1600 CE, and so did Hogarth in February 1919 (fixed to 1700 CE in the margin). Earlier dates existed in the Cypriot 1905 Law (1571 CE; Hill 1920, 97) and in the Greek 1899 Law ("Medieval Hellenism," implying 1453 CE; Voudouri 2010, 552). In their "Law of Antiquities for Palestine," the AJC proposed 1500 CE, as did also Mackay in his plan. The date 1700 CE appeared in the AJC's principles of April 1919; it entered the "canonical" eight principles of Paris and Sèvres—and the 1920 Law of Palestine.

The date 1700 CE was a "liberal" option in comparison to 1500 or 1600 CE. It reflected consideration, not ignorance. No date is objective, but almost everyone at the time, including the Turks, British, Egyptians and Americans, did not consider objects and buildings from the eighteenth and nineteenth centuries as antiquities. For example, even at a much later date, Mahmud Ahmed, the Egyptian architect responsible for the repairs to the Al-Aqsa Mosque from 1938 to 1942, refused to protect Crusader remains. He believed that they were medieval, and there were hundreds of similar buildings in Cairo that were, in his opinion, worthless.[76]

The date 1700 CE had a British origin: it did not stem from foreign countries/colonies (this was first noticed by Halevy 2016).[77] The 1908 Royal Commission on the Historical Monuments of England defined its work as "from the earliest times to the year 1700." The period was extended in 1921 to the start of the Georgian period in 1714 (Sargent 2001, 59–60). At the time, this date separated worthwhile antiquity from a recent period that was unworthy of protection:

> Prejudice against anything that was built after 1700 was all too typical at the time. Georgian Architecture was considered very ugly and not worth mentioning let alone preserving. (Ross 1995, 13)

When the "eight principles" were discussed on March 16, 1920, the French diplomat Philippe Berthelot took an exception, since "he re-

[76] *ATQ530, July 25, 1940.

[77] On colonial jurisprudence as an influence on British law, see Likhovski 2020.

garded 18th century art in Turkey as particularly deserving of protection." However, this minority opinion was forcefully rejected:

> Signor Scialoja questioned whether anything made in the 18th century merited the appellation antiquity'" while "Lord Curzon said that, as the clauses dealt with antiquities, he would prefer '1600' rather than '1800'. The clauses did not deal with artistic merits, but he suggested that as the clause was the work of experts it might be better to accept it as it stood." (Butler and Bury 1958, 510)[78]

The date 1700 CE was not an intentional measure against Ottoman heritage. The same date was used in Britain at the time, causing the neglect of "late" British heritage! If the British wanted to disacknowledge Ottoman heritage, they would have employed the beginning of the Ottoman period (1516 CE) and not 1700 CE.[79] One must also mention that the 1920 Law allowed the special declaration and protection of some post-1700 CE remains as antiquities. Indeed, the Mandate authorities declared and restored the important late Ottoman walls of Acre.

After 1948, Israel "blue-copied" the Mandate (1929) Law, using the same year of 1700 CE.[80] Yet, the Israeli Department of Antiquities under Shemuel Yeivin started already in 1948 to prepare a new law. For various reasons, this work continued for many years, and the new Israeli law was only enacted in 1978. Until then, various ideas were promulgated.

[78] Philippe Berthelot (1866–1934) was Secretary to the Ministry of Foreign Affairs. Vittorio Scialoja (1856–1933) was an Italian jurist and politician, senator, Minister of Justice, and in 1919–1920, Minister of Foreign Affairs. Any separation between "art" and "antiquities" is, of course, highly arbitrary.

[79] An example of taking care of Ottoman heritage was the expensive, large-scale, and long-term conservation of the Jerusalem city walls from 1922 until 1947, except for a few difficult years during the Arab Revolt and World War II (*ISA M4/4145; *ISA M9/4145; *ISA M10/4145; *ATQ1933, etc.). Many Ottoman-period buildings and monuments were Muslim holy sites. The Mandate text stipulated that the Mandate government must not interfere with such sites, and hence it did not manage or finance their conservation and restoration. Yet, the DAP often cooperated in restoration projects of the Wakf authorities, usually helping with modest donations and expert advice.

[80] For archaeology in Israel in this period, see Kletter 2006.

At first, Yeivin suggested setting the legal date to 1800 CE.[81] Soon after, a moving date (objects older than 150 years) was suggested.[82] At the time, it actually implied the same date of 1800 CE (1950 minus 150). In the 1960s, a moving date of 200 years was proposed.[83] By 1976, when the draft of the law reached discussion in Parliament before its enactment, the suggested date was 1800 CE, and behind it was the aim of including and protecting important Ottoman remains, such as the walls of Tiberias and Acre.[84] But the date finally chosen was 1700 CE.

Setting a *terminus ante quem* for defining "antiquities" is common to many antiquities laws. Without such a date, there is no clear criteria that set "antiquities" apart from other objects. Consider the case of the Ottoman Antiquities Law of 1884.[85] It defined antiquities very loosely in paragraph 1 as remains left by ancient populations: coins, historical inscriptions, statues, tombs, decorative objects of clay, stone and other materials, weapons and tools, statuettes, rings with stone inlays, temples, circus buildings, theaters, palaces, aqueducts, bodies and objects found in tombs, burial mounds, mausoleums, and pillars. The Ottomans wanted to prevent the taking of antiquities to Western countries, but were not averse to taking them to Istanbul. Hence, the law forbade the export of antiquities found in the Ottoman Empire. A loose definition of antiquities without a date might give undue, arbitrary powers to authorities to force a sale, confiscate, or prevent the sale/export of private property. A moving date complicates matters by turning, on a daily basis, objects that are not antiquities into antiquities

[81] For example, *ISA GL44865/7, August 1948; cf. *ISA G9/1755, ca. March 1949. The date 1800 CE, though not said explicitly, meant Napoleon's campaign in Egypt and Syria. It would shift from a date relevant to Britain to one relevant to Israel/Palestine.

[82] *ISA GL44865/7, draft, March 14, 1949 and July 4, 1950.

[83] For example, *GL44865/8, meeting of December 2, 1963.

[84] Minister of Education and Culture A. Yadlin, Protocol of the 8th Knesset Meetings, third meeting, July 26, 1976.

[85] Young 1906, 389–94; Ben Arieh 2000, 280–82. It was the third Ottoman law concerning antiquities. The first was issued in 1869, and the second in 1974 (Stanley-Price 2001).

(it has benefits, but is a modification and not a solution that avoids the setting of a legal date).

The 1978 Antiquities Law of the State of Israel adopted the date 1700 CE, which was useful for not preserving certain "late" remains (Kletter and Sulimani 2016). Accordingly, "late" remains were often underrepresented in archaeological museums in Israel.[86] However, the same date, and later 1750 CE, was also accepted by Jordan and the Palestinian Authority. Appreciation of "late" remains came slowly, thanks to the invention and development of historical archaeology.[87]

The 1920 Law was a colonial creation of the winning allies, which took care of the interests of Western archaeologists and institutions. However, it also reflected a genuine intention to improve the treatment of antiquities in Palestine for the benefit of its inhabitants. This was reflected in the compromises about the division of finds and export. The Mandate regime was a colonial regime, but it should not be grasped as a monolithic entity. Concerning archaeology, the Mandate period set a new era. The British antiquities legislation of this period improved significantly the documentation and protection of ancient sites and finds. Its success is evident from its long influence, for many years after 1948, on Israel, Jordan, and the Palestinian Authority.

Studies of the 1920 Law should pay attention to its complex origins, discussed here for the first time. They can cover many issues beyond the chosen legal date for defining antiquities, including development, policies toward legal and illegal excavations, relations to other laws, and implementation (I touched here on the division, trade, and export of antiquities). It seems that such studies are merely starting.

[86] Kletter 2015, 175; 2017, 95–96; Sulimani and Kletter 2022, 62–64.

[87] Palestinian archaeology is, in some aspects, a mirror image of Israeli archaeology. To remedy the matter of 1700 CE, after many years the 2018 Palestinian Heritage Law sets a date of 1905 CE for antiquities. Yet, "on the ground," due to economic hardships and rushed development, many remains are damaged or destroyed, including late Ottoman remains. In Israel, post-1700 CE sites are being treated by the Council for Preservation of Heritage Sites. However, this is not supervised by the state's archaeological authority, and most of the sites selected for treatment reflect one-sided heritage (Kletter and Kolska Horwitz, Forthcoming).

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FO – Foreign Office, The National Archive, Kew, London.

ISA – Israel State Archive, Jerusalem.

SRF – Israel Antiquities Authority Mandatory Archive, Jerusalem.

TNA – The National Archive, Kew, London.

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Appendix 1:
"Skeleton Proclamation or Law"

D.G. Hogarth (TNA FO141/678/6, 11.2.2019)

1. All antiquities are property of the Government.
2. Antiquities are all structures and products of human handiwork, movable or immovable, which were in existence before the 17th (?) Century A.D. [=before 1600; in handwriting, on the margins, "end of the", implying 1700] and still remain, in whatever condition of repair.
3. Notwithstanding the above, all antiquities which, prior to the issue of this proclamation, were in private possession, whether they be immovable structures etc. or portable objects, shall have the right to pre-emption of any such structures or objects as it desires to claim for public monuments or for exhibition in its public museums and of removing the same, if movable, indemnifying the owner for any damage done in the process of removal. The rate of pre-emption shall be fixed by the Government.
4. All excavations of ancient sites and all excavation undertaken with a view to the discovery of antiquities are hereby prohibited, except under license from the Government. Any antiquities found in contravention of this order become the absolute property of the Government.
5. All antiquities of the nature of "Treasure Trove", i.e., found "*bona fide*" by accident after the issue of this Proclamation must be declared to the Government within ____ days. The Government Inspector shall examine such objects and assess their value. Of this value three quarters (or one half?) shall revert to the finder or owner of the objects and one [added: quarter or] half to the Government. While the Government has the right of pre-emption of such objects at three quarters (or one half?) of the assessed value, should it not wish to exercise this right, it shall receive in cash the [added: quarter or] half of the objects so assessed. Should the finder or owner dispute the Government valuation and be unwilling to sell it on its basis, he can himself fix a price, but in this case

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the Government, if unwilling to purchase at the new value, shall be entitled to one half of that value payable in cash by the owner.

6. No antiquities may be sold or exported without Government permission. Any person attempting unauthorised sale or export of such shall be liable to punishment and the antiquities shall be confiscated.
7. No dealers in antiquities shall carry on business without a license from the Government. This license can be suppressed at any time and without any reason for such action being made public.
8. All objects purchased by dealers shall be by them submitted to the Government which shall put into operation Clause 9 and 10 [deleted, instead: 5] if the objects have not already been dealt with under these Clauses [fixed to: this clause]. Thereafter, such objects as remain in the hands of the dealers can be sold and exported.
9. The Government Inspectors have the right to examine at any time the stock-in-trade of any dealer in antiquities; the withholding from inspection of any objects in stock shall entail upon the holder the loss of his license. Antiquities acquired by the Government under Clause 5, and not required for the national collections, shall first be offered to the licensed dealers for sale by auction, a reserve price being put upon them. Should this price not be received, the objects shall be disposed of through the Museum Sale Room. Objects thus sold to dealers shall be exempt from any duty or liability, and are free of export [tax].
10. Damage done to any antiquity, whether movable or immovable, which comes under the definition in Clause 1, renders the agent liable to punishment.
    (N.B. The legal experts must draft this;
    This should be made to apply equally to antiquities in private hands – see Clause 3.)
11. The Inspector shall have the right at his discretion to visit any antiquity in private possession if he has reason to think it is not being properly safeguarded or kept in repair, and to call on the owner, under penalties, to take the necessary measures to remedy his neglect.

Appendix 2:
"Main Principles for a Law of Antiquities"

The Archaeological Joint Committee (TNA FO608/82/3, 19.2.2019)

1. "Antiquity" shall mean any object or construction made by human agency earlier than about A.D. 1700.
2. Any person who having discovered an antiquity reports the same to the nearest officer of the Commission shall be suitably rewarded;
3. No antiquity may be sold within the country except to the agents of the Commission, or to persons holding licences under the Commission; nor shall any antiquity be exported from the country except by persons holding certificates to export.
4. Any person who negligently or maliciously destroys, defaces or in any way damages any ancient monument or any site which is known or which he has reason to believe to contain antiquities, shall be liable to a penalty.
5. No clearing of ground or digging on a site known or believed to contain antiquities, whether with the object of finding antiquities or not, shall be allowed except to persons authorized by the Commission, under penalty.
6. Equitable terms for expropriation, temporary or permanent, shall be fixed, guarding against fictive or merely colourable claims of ownership.
7. Authorization to dig for antiquities shall only be granted to persons whom the Commission considers to be of sufficient Archaeological experience or to representatives of some learned society or institution.
8. The proceeds of excavations shall be divided in a proportion (to be fixed hereafter) between the excavators and the Commission. The former shall receive for his portion a certificate and licence for export of his portion.
9. The individual, society or institution responsible for the excavators shall be pledged to produce within a reasonable period a scientific publication of the results, under penalty of non-renewal of the authorization to excavate.

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Appendix 3: "General Principles of a Model Law of Antiquities for the Near and Middle East"

Treaty of Sèvres, 1920, Article 421

Note: "Turkish Government/Department" replaced by "Mandate Government/Department", to fit a discussion focused on Palestine.

1. "Antiquity" means any construction or any product of human activity earlier than the year 1700.
2. The law for the protection of antiquities shall proceed by encouragement rather than by threat. Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Mandate Department, shall be rewarded according to the value of the discovery.
3. No antiquity may be disposed of except to the competent Mandate Department, unless this Department renounces the acquisition of any such antiquity.
   No antiquity may leave the country without an export licence from the said Department.
4. Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.
5. No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Mandate Department.
6. Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest.
7. Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archaeological experience. The Mandate Government shall not, in granting these authorisations, act in such a way as to eliminate scholars of any nation without good grounds.

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8. The proceeds of excavations may be divided between the excavator and the competent Mandate Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find" (cf. Hill 1920:98–9; Bentwich and Goadby 1924:251–2).