

Introduction: The Intimate Fiscal State

In 1905 the farmers of Be'er Tuvia, a small Jewish village in the southern part of Ottoman-ruled Palestine, wrote a letter in which they complained about the collection of the Ottoman produce tax, the tithe. The official rate of the tithe at the time was 12.63 percent. However, the actual rate paid by the farmers of Be'er Tuvia was between 30 and 50 percent. The tax was collected using a system of tax farming. A local Arab notable leased the right to collect the tax from the government. Although he was supposed to be under government supervision, he and his assistants, said the farmers, “do as they wish,” and “steal as much as they desire of our grain, in addition to all that they eat during the threshing season, they, and their servants, and the servants of their servants, their horses and camels, a large locust-like camp.” Complaints to the local authorities (who sat in Gaza) did not help, because “the government [officials] of Gaza are evil and corrupt.”¹

¹ Avraham 'Etz-Hadar, *Ilannot: Le-Toldot ha-Yishuv be-Erets Yisrael 1830–1920* (Tel Aviv: Dfus Niv, 1967), 216–18. On the date of this letter, see Imanu'el Hareuveni, *Leksikon Erets-Yisrael* (Tel Aviv: Yedioth Ahronoth, 1999), 75. The letter is discussed in Haim Gerber, *Ottoman Rule in Jerusalem, 1890–1914* (Berlin: Klaus Schwarz, 1985), 168–9. On the rate of the tithe in the late nineteenth century see George Young, *Corps de Droit Ottoman* (Oxford: Clarendon Press, 1905–06), 5:303; Israel State Archives (ISA), Record Group 2, M 132/8, Report of the Rural Taxation Machinery Committee, June 22, 1933, appendix I, 4; Martin Bunton, *Colonial Land Policies in Palestine, 1917–1936* (Oxford: Oxford University Press, 2007), 141.

The letter written by the farmers of Be'er Tuvia was not part of a legal process in the local Ottoman courts or administrative bodies. Nor did the complaint appear in a petition sent to the Ottoman sultan in Istanbul.² Instead, the farmers chose another addressee: Michal Leib Katz, a Hungarian Jew living in Palestine.³ Katz was a subject of the Austro-Hungarian Empire, and as such he enjoyed the protection of the Austrian consul in Jerusalem. Such protection was part of the capitulation regime – grants of privileges made by the Ottoman Empire to citizens of various European countries.⁴ The farmers of Be'er Tuvia asked Katz to become the formal owner of their land, hoping that his foreign nationality would enable him to defend them from the rapacious tax collectors, which indeed proved to be the case.

Notably, there were no lawyers or courts involved in resolving the farmers' tax dispute. In their distress, the farmers did not turn to a lawyer to represent them in court in their case against the tax collectors. This was a result of the fact that, in the tax system to which these farmers were subject, legal norms played only a minor role, and the professional agents using legal norms – lawyers – were almost totally absent.⁵

During the First World War, Palestine was occupied by the British, who continued to tax the farmers of Palestine with little resort to formal law, its agents, or institutions. Edwin Samuel, a young District Officer in British-ruled Palestine of the 1920s, recalled in his autobiography that his:

² On petitions to the sultan see Yuval Ben-Bassat, "In Search of Justice: Petitions Sent from Palestine to Istanbul from the 1870's Onwards," *Turcica* 41 (2009): 89–114; Yuval Ben-Bassat, *Petitioning the Sultan: Protests and Justice in Late Ottoman Palestine* (London: I. B. Tauris, 2013).

³ On Katz see David Tidhar, *Entsiklopedyah le-Halutsey ha-Yishuv u-Vonav: Dmuyot u-Tmunot* (Tel Aviv: Sifriyat Rishonim, 1950), 4:1637–8.

⁴ See generally, Maurits H. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and Beratlis in the 18th Century* (Leiden: Brill, 2005), 7–9, 63–115.

⁵ I use the term legal norms in the traditional positivist sense, referring to written norms created and enforced by formally authorized and centralized state institutions (legislature, the courts, the police). On professional lawyers in late Ottoman Palestine see Chapter 5, text to nn. 45–6.

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most unpleasant task was trying to collect current taxes, and astro-nomic arrears, from heavily-indebted [Arab] peasants ... I tried to collect [these taxes] by fearsome threats in broken Arabic but on biblical models. “If you pay now what I ask, oh, my children, I shall be as dew upon your fields, as honey on your lips. But if you do *not*, then I shall come as a wolf in your sheep-fold by night and you shall be consumed as by fire on your threshing-floor.” When I had got their eyes fairly popping out of their heads, I told them to scurry home and bring something on account.⁶

Over time, the mode of tax assessment and collection evident in both this story and that of the farmers of Be’er Tuvia gradually gave way, in British-ruled Palestine and later in the State of Israel, to a different kind of taxation system, one that relied more heavily on law and its professional agents. However, the rise in the use of legal norms in the process of taxation was not the only change that occurred. It was accompanied in the middle decades of the twentieth century by the use of “softer” means to ensure compliance, in the form of social norms, that is “social attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done.”⁷ These norms were generated by the state as part of a broader attempt to induce taxpayers to provide information on their economic affairs and pay their tax without the threat of criminal sanctions, relying instead on loyalty, a sense of duty, and a feeling of individual and collective civic engagement, thus transforming taxpayers from disobedient subjects into cooperative citizens.

I call this kind of taxing regime *the intimate fiscal state*. This regime was “intimate” in that it gathered detailed information on the economic affairs of its taxpayers. It was also “intimate” because it sought to create a familylike, direct, and close relationship between itself and its

⁶ Edwin Samuel, *A Lifetime in Jerusalem: The Memoirs of the Second Viscount Samuel* (London: Vallentine Mitchell, 1970), 73–4.

⁷ See Cass R. Sunstein, “Social Norms and Social Roles,” *Columbia Law Review* 96 (1996): 903–68, 914. There is a large literature on the differences and similarities between legal and social norms. See, e.g., Matthias Baier, ed., *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (Farnham: Ashgate, 2013); Gillian K. Hadfield and Barry R. Weingast, “Law without the State: Legal Attributes and the Coordination of Decentralized Collective Punishment,” *Journal of Law and Courts* 1 (2013): 3–34.

taxpayers as a way of ensuring tax compliance. In this book, I tell the story of the rise, and subsequent decline, of the intimate fiscal state. The story is told by analyzing the history of taxation in late-Ottoman and British-ruled Palestine, as well as in the State of Israel after its independence in 1948, focusing specifically on income taxation and its norms.

Twentieth-Century Law

The story of the rise and decline of the intimate fiscal state offers a unique vantage point from which to understand the nature of law in twentieth-century states.⁸ What characterizes law in such states? One account, reflecting the nature of continental law at the beginning of the twentieth century, associated twentieth-century legal systems with formal-rational law.⁹ Another view, mainly describing Western states in the nineteenth and twentieth centuries, emphasized the appearance of sublegal, diffuse types of power, notably scientific and administrative

⁸ One can also talk about “modern” states, but modernity is a notoriously problematic concept to define. See, e.g., C. A. Bayly, *The Birth of the Modern World: 1780–1914* (Oxford: Blackwell, 2004), 9–12; Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 113–49; “AHR Roundtable: Historians and the Question of ‘Modernity,’” *American Historical Review* 116 (2011): 631–751. On modernity in the Middle East see, e.g., Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press, 2002), 247–8; Keith David Watenpaugh, *Being Modern in the Middle East: Revolution, Nationalism, Colonialism, and the Arab Middle Class* (Princeton: Princeton University Press, 2006); Huri İslamoğlu and Peter C. Perdue, eds., *Shared Histories of Modernity: China, India and the Ottoman Empire* (New Delhi: Routledge, 2009).

⁹ A “formal-rational” system is one based on general, abstract norms, logically derived from a limited set of principles, arranged in a gapless code that is created and mechanically applied by a special class of professionally trained jurists. See Max Weber, *Economy and Society*, eds. Guenther Roth and Claus Wittich (New York: Bedminster, 1968), 2:654–8, 2:789–92, 2:809–16, 2:852–5, 2:880–95, 3:976–8. For a discussion and critique, see Alan Hunt, *The Sociological Movement in Law* (Philadelphia: Temple University Press, 1978); Antony T. Kronman, *Max Weber* (Stanford: Stanford University Press, 1983); Joyce S. Sterling and Wilbert E. Moore, “Weber’s Analysis of Legal Rationalization: A Critique and Constructive Modification,” *Sociological Forum* 2 (1987): 67–89, 75–6. On the early modern roots of such systems see Assaf Likhovski, “Protestantism and the Rationalization of English Law: A Variation on a Theme by Weber,” *Law and Society Review* 33 (1999): 365–91.

techniques designed to efficiently control and discipline individuals and entire populations. These techniques were associated with institutions such as prisons, hospitals, and schools.¹⁰ These new types of power, it was argued, partly replaced and partly augmented law.¹¹

Taxation is an important aspect of state action, and the tax office, no less than the prison, hospital, or school, is an important site where the changing nature of states and societies can be observed. Sociologists, political scientists, historians, and scholars of accounting have therefore linked the study of taxation and its history to broader debates about the nature and transformation of various state forms during the twentieth century.¹² However, the history of tax *law* is not usually a major focus

¹⁰ See Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. Richard Howard (London: Routledge, 1989); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd edn (New York: Vintage Books, 1995); Michel Foucault, “*Society Must Be Defended*”: *Lectures at the Collège de France, 1975–1976*, eds. Mauro Bertani and Alessandro Fontana, trans. David Macey (New York: Picador, 1997); Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–1978*, ed. Michel Senellart, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2009). For a specific discussion of the nature of law in post-1945 neoliberal states, see Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, ed. Michel Senellart, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2010). Historians have often questioned the accuracy of the historical narrative found in Foucault’s works, arguing, for example, that pre-nineteenth-century states also used many of the techniques that Foucault associates with the nineteenth and twentieth centuries. See, e.g., Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression* (Cambridge: Cambridge University Press, 1984); Laura Engelstein, “Combined Underdevelopment: Discipline and the Law in Imperial and Soviet Russia,” *American Historical Review* 98 (1993): 338–53; Edward Higgs, *The Information State in England* (London: Palgrave Macmillan, 2004). See also James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).

¹¹ Foucault’s views on the exact relationship of law and newer types of power (the disciplines and bio-power) are unclear. See, e.g., Foucault, “*Society Must Be Defended*,” 243; Foucault, *The Birth of Biopolitics*, 312–13; Foucault *Security, Territory, Population*, 6–10. See generally, Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto Press, 1994); Ben Golder and Peter Fitzpatrick, *Foucault’s Law* (New York: Routledge, 2009); Ben Golder, ed., *Re-reading Foucault: On Law, Power and Rights* (Abingdon: Routledge, 2012).

¹² For surveys of recent trends in fiscal sociology and fiscal history see Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, eds., *The New Fiscal*

of such studies. Yet one cannot fully understand the history of taxation without taking into account the history of tax law. When and how did law, courts, and lawyers become involved in the process of taxation, and how did this involvement change over time? What other tools for extracting taxes from taxpayers did twentieth-century states use, and how did the use of these tools impact tax law? How were taxation and its law related to changing notions of civic identity and citizenship?

In this book, I answer these questions by analyzing the history of taxation and its law in a specific place and at a specific time, namely late-Ottoman and mandatory Palestine, and post-1948 Israel. The history of tax law in this specific locale shows that existing accounts of the transformation of law in the nineteenth and twentieth centuries are incomplete. In Palestine and Israel, law and its professional carriers – lawyers, of course, but also accountants – did indeed become more important over time, as the reliance of the state on law in the process of taxation grew. The rise of law was indeed accompanied by increasingly widespread use of scientific and administrative techniques designed to provide more information about taxpayers and ease the process of tax assessment and collection. However, there was another important aspect of the transformation in the use of law that accounts to date have ignored. At least in the Israeli case, the nation-state of the middle decades of the twentieth century also sought to tax its subjects by utilizing state-created social norms meant to generate community pressure on tax evaders, turning them into compliant citizens. The Israeli state understood itself as a community, modeled in some respects on pre-twentieth-century

Sociology: Taxation in Comparative and Historical Perspective (New York: Cambridge University Press, 2009); Margaret Lamb, “Taxation,” in *The Routledge Companion to Accounting History*, eds. John Richard Edwards and Stephen P. Walker (Abingdon: Routledge, 2009), 579–97; Lynne Oats, ed., *Taxation: A Fieldwork Research Handbook* (Abingdon: Routledge, 2012). For a discussion of the pre-nineteenth-century period, including a typology of different types of states and their tax systems see Richard Bonney and W. M. Ormrod, “Introduction: Crises, Revolutions and Self-Sustained Growth: Towards a Conceptual Model of Change in Fiscal History” in *Crises, Revolutions and Self-Sustained Growth: Essays in European Fiscal History, 1130–1830*, eds. W. M. Ormrod, Margaret Bonney, and Richard Bonney (Stamford: Shaun Tyas, 1999), 4–8. See also Bartolomé Yun-Casalilla and Patrick K. O’Brien with Francisco Comín Comín, eds., *The Rise of Fiscal States: A Global History, 1500–1914* (Cambridge: Cambridge University Press, 2012).

communities.¹³ As such, it attempted to augment the coercion already provided by state law with older, nonlegal, forms of community pressure. The result was the appearance of a specific type of taxing state, one that sought to create tax compliance based on a sense of duty, trust, and loyalty using social norms – an intimate fiscal state.

The attempt by the state to induce tax compliance using nonlegal means was largely abandoned after the 1960s, and was replaced by a reliance on professional intermediaries between the state and taxpayers speaking the language of law. However, in the process law itself was transformed. It became both more flexible (substantive rather than formal) and more intrusive (interested in taxpayers' states of mind), taking upon itself a role that social norms had taken in the past.

I provide a three-stage periodization scheme of the history of tax law and social norms in Ottoman and mandatory Palestine and post-1948 Israel.¹⁴ Before the twentieth century, taxation in Palestine (and in many other tax systems) was characterized by a two-tier model in which a layer of intermediaries existed between the state and individual taxpayers. The state collecting the taxes was distant and did not interact in a continuous or systematic manner with individual taxpayers. Taxation required relatively little information-collection, assessment was often arbitrary, and force (or the threat of its use) was an important method of ensuring compliance. The state lacked the necessary local information for effective tax collection, and therefore often outsourced the assessment and collection process to tax farmers – that is, rural village communities, or urban ethnic communities, or individual tax farmers, such as the Arab notable about whom the farmers of Be'er Tuvia complained in 1905. There were no professional intermediaries using legal norms to mediate between taxpayers and the state. Although taxation during this period was sometimes related to notions of social inclusion and exclusion, the intimate link between taxation and citizenship that we see later did not yet exist.¹⁵

¹³ See generally, Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, new edn (London: Verso, 2006).

¹⁴ The three stages described are ideal types. In reality, the boundaries between the stages were not clearly demarcated, and the transition from one stage to the next was not a linear one.

¹⁵ The description of taxation during the first stage is based on the general characteristics of Ottoman taxation, but many of these characteristics can be found elsewhere.

The two-tier model began to wane in the Ottoman Empire in the mid- and late nineteenth century with the rise of a reformed, centralized, and bureaucratic state.¹⁶ The advent of British rule in Palestine in the first decades of the twentieth century (formally as a trustee of the League of Nations, but practically as a colonial power) accelerated this process.¹⁷ However, the appearance of law and its agents initially had relatively little impact on the actual process of tax assessment and collection, and as we saw, the late Ottoman and British-colonial states often taxed their subjects with little regard to law and little resort to state courts.

Another important development that occurred with the growth in the power of the centralized state in the late Ottoman period was a weakening of the traditional separation between rulers and the ruled, leading to the rise of notions of citizenship rather than subjecthood.¹⁸ The appearance of the nation-state (in our case, the birth of the State of Israel in 1948) accelerated this process. The nation-state flattened

See generally Charles Tilly, *Coercion, Capital and European States, AD 990–1992*, rev. edn (Cambridge, MA: Blackwell, 1992). On taxation and social exclusion/inclusion in different places and eras see, e.g., David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1998), 21; Michael Kwass, *Privilege and the Politics of Taxation in Eighteenth-Century France: Liberté, Égalité, Fiscalité* (New York: Cambridge University Press, 2000); Yanni Kotsonis, *States of Obligation: Taxes and Citizenship in the Russian Empire and Early Soviet Republic* (Toronto: University of Toronto Press, 2014), 27–54; Lena Salaymeh, “Taxing Citizens: Socio-Legal Constructions of Late Antique Muslim Identity,” *Islamic Law and Society* 23:4 (2016), 333–67.

¹⁶ On the Ottoman state see, generally, Ergun Özbudun, “The Continuing Ottoman Legacy and the State Tradition in the Middle East,” in *Imperial Legacy: The Ottoman Imprint on the Balkans and the Middle East*, ed. L. Carl Brown (New York: Columbia University Press, 1996), 133–57; Carter Vaughn Findley, “The Ottoman Administrative Legacy and the Modern Middle East,” in Brown, ed., *Imperial Legacy*, 158–60.

¹⁷ Palestine was not a British colony, but a territory granted to Britain by the League of Nations as part of the post-First World War mandate regime. However, in practice the British treated the territory in almost every respect as if it were a colony.

¹⁸ On the separation of rulers and the ruled in the Ottoman Empire, see L. Carl Brown, “The Setting: An Introduction,” in Brown, ed., *Imperial Legacy*, 1, 7. On the attempt to create a shared sense of Ottoman citizenship during the late Ottoman period, see Ariel Salzmann, “Citizens in Search of a State: The Limits of Political Participation in the Late Ottoman Empire,” in *Extending Citizenship, Reconfiguring States*, eds. Michael Hanagan and Charles Tilly (Lanham: Rowman and Littlefield, 1999), 37–66; Michelle U. Campos, *Ottoman Brothers: Muslims, Christians and Jews in*

hierarchical social structures. Taxation now became individualized as the state gradually eliminated the use of local intermediaries between itself and individual taxpayers, and monopolized claims to revenue.¹⁹ Tax norms were no longer local, customary, and negotiated. They became universal, formal, and standardized. The relationship between the state and individual taxpayers also changed. The nation-state sought to create a sustained relationship with individual taxpayers over time, and to shape the mindsets of these taxpayers to increase their compliance. The threat of the use of force, while still present, mostly receded into the background as new tools for governing – administrative technologies but also state-produced social norms – augmented the power of the law to enforce compliance. The hierarchical relationship between government and subjects implicit in the old tax assessment and collection process was transformed into a more equal interaction between individual citizens and “their” state. The nation-state, which represented itself as an enlarged community belonging to the people, could make claims on its subjects that the older empires could not, based on the intimate fiscal relationship that it created.

Early Twentieth-Century Palestine (Stanford: Stanford University Press, 2011), 3–7, 60–5; Julia Phillips Cohen, *Becoming Ottomans: Sephardi Jews and Imperial Citizenship in the Modern Era* (Oxford: Oxford University Press, 2014). On post-Ottoman notions of citizenship in mandatory Palestine and Israel, see Gershon Shafir and Yoav Peled, *Being Israeli: The Dynamics of Multiple Citizenship* (New York: Cambridge University Press, 2002). On citizenship in British territories see Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Cambridge, MA: Harvard University Press, 2013), 27–50. On the history of citizenship, see, generally, Peter Riesenberg, *Citizenship in the Western Tradition: Plato to Rousseau* (Chapel Hill: University of North Carolina Press, 1992); Quentin Skinner and Bo Stråth, eds., *States and Citizens: History, Theory, Prospects* (New York: Cambridge University Press, 2003).

¹⁹ For a critical discussion of the beginning of this process in the late Ottoman Empire, see Huri İslamoğlu, “Towards a Political Economy of Legal and Administrative Constitutions of Individual Property,” in *Constituting Modernity: Private Property in the East and West*, ed. Huri İslamoğlu (London: I. B. Tauris, 2004), 3, 5, 12; Huri İslamoğlu, “Politics of Administering Property: Law and Statistics in the Nineteenth-Century Ottoman Empire,” in İslamoğlu, ed., *Constituting Modernity*, 276–319; Huri İslamoğlu, “Modernities Compared: State Transformations and Constitutions of Property in the Qing and Ottoman Empires,” in İslamoğlu and Perdue, *Shared Histories*, 109–46. On the beginning of this process in early modern France, see Kwass, *Privilege and the Politics of Taxation in Eighteenth-Century France*, 51–3.

However, this intimate fiscal relationship between taxpayer and state did not last long. Social, political, cultural, and professional changes beginning in the late 1960s led to a return, in some sense, to a two-tier system. Professional intermediaries that had played a minimal role in pre-twentieth-century taxation now assumed a growing role, blunting the communal, civic engagement model of taxation typical of the mid-twentieth century.²⁰

The role of these new intermediaries was different from that of tax farmers in the old empires. These professional agents served the taxpayers rather than the state. The fact that the law and its agents came to serve the tax-paying public in its attempts to reduce its tax burden, rather than serving the state, forced the state to change the nature of tax law to ensure continued compliance. Hence, tax law, or certain aspects of it, became substantive rather than formal, providing the government and the courts with new tools to deal with noncompliant taxpayers, and allowing them to intervene more freely in taxpayers' affairs in order to better tax them.

By describing the interplay between legal and social norms in the process of taxation, based on this three-stage periodization scheme, I seek to improve our understanding of the relationship between law and society. Rather than perpetuating the conventional story in which state law simply replaced community-based social norms during the nineteenth and twentieth centuries (or an equally incomplete story in which law was augmented in the nineteenth and twentieth centuries by the use of disciplinary techniques and scientific knowledge), I show how the mid-twentieth-century state attempted to turn itself into a large imagined community, using older, community-like techniques of social control to ensure tax compliance, and how this attempt gradually waned after the 1960s.

Existing Accounts

This book is not a history of types of taxes and their rates, of the politics of taxation, or of the technical aspects of tax law doctrines. Rather,

²⁰ For a somewhat similar argument about the changing role of experts in determining monetary policy in the twentieth century see Roy Kreitner, "The Jurisprudence of Global Money," *Theoretical Inquiries in Law* 11 (2010): 177–208.